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PUNJAB APPELLATE AUTHORITY FOR ADVANCE RULING  
  
Order No. 03/ AAAR/Bansal Industries /202. 43 gated: 20.03.2023  
  
Present:  
  
1. Sh. Rajesh Puri, Chief Commissioner, IRS (C&IT), CGST  
  
~Commissionerate, Chandigarh Zone, Chandigarh, -  
  
2. Sh. Kamal Kishor Yadav, LAS, Commissioner of State Tax, Punjab  
  
Name and Address of appellant M/s Bansal Industries, Old Fazilka Road,  
Abohar, Punjab.  
  
03AADFB0920D1ZF  
-Date of Application 12-12-2022  
Jurisdictional Authority-Centre (LUDHIANA),(FEROZEPUR),(ABOHAR)  
  
Jurisdictional authority-State (Punjab),(Ferozepur),(Fazilka),(Fazilka-  
Ward No.3) :  
  
~ ==" -)Represented By ~~" "> “Sh. Rishab Singla, Advocate ee  
  
Date of Personal Hearing 09-02-2023  
  
Order of Authority of Advance | AAR/GST/PB/30 dated 10.11.2022 issued  
by the Punjab Authority for Advance  
Ruling, Punjab.  
  
PROCEEDINGS  
  
At the outset, we would like to make it clear that the provisions of both the  
Central Goods and Services Tax Act, 2017 and the Punjab Goods and Services Tax  
Act, 2017, (hereinafter referred to as, “CGST Act” and “PGST Act”) are the same  
except for certain provisions. Therefore, unless a mention is specifically made to  
such dissimilar provisions, a reference to the CGST Act would also mean a  
  
reference to the corresponding similar provisions under the PGST Act.  
  
A. Facts of the Case:  
M/s Bansal Industries, as detailed in the table above and hereinafter referred to as  
  
‘appellant’ is a partnership firm engaged in the business of ginning and pressing of  
  
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cotton as well as crushing of oil seeds (Cotton Seeds obtained in the ginning of raw  
cotton (narma)). The appellant had requested an advance ruling seeking to know  
whether Purchase of raw cotton from Kacha Arhtiya, who is a registered taxpayer,  
constitutes a purchase from agriculturist so as to attract liability under Reverse  
Charge Mechanism in view of sub-section (3) of section 9 of CGST/PGST Act,2017.  
  
B. Order of the Authority for Advance Ruling: .- . es  
  
Relevant extract of the order No.AAR/GST/PB/30 dated 10° of November,2022  
issued by the Punjab Authority for Advance Ruling (for brevity, “AAR”)is  
reproduced. hereunder:  
  
"The applicant is liable to pay GST under reverse charge basis being a registered person in  
terms of Notification no. 13/2017-Central Tax(Rate) dated 28" June,2017 as amended  
vide notification no. 43/2017-Central Tax(Rate) dated 14" November,2017 and not the  
Kacha Arhtiya."  
  
C. Submission of the appellant:  
  
(i) The appellant herein purchases raw cotton from Kacha Arhtiyas, who issues |  
Form-I (under Agricultural Produce Marketing Committee Act (APMC ~  
Act)) on behalf of the agriculturists. Form-I is issued in the name of the  
Kacha Arhtiya detailing wherein the quantity of raw cotton (Narma) and the  
incidental charges. The payment is also made to Kacha Arhtiya in his  
account through banking channels. Kacha Arhtiya issues Form-J to the  
agriculturist and also transfers the amount to agriculturist after deducting its  
commission. ,  
  
(ii) From above it is clear that Form J is issued to the agriculturist and Form I to  
the purchaser. Kacha Arhtiya does not purchase goods but is only acting as  
an agent of the farmer and does not engage in the purchase of raw cotton.  
Kacha Arhtiya is getting the raw cotton cleaned, packaging, weighing,  
sewing of bags etc. and the amounts are indicated in Form-I.  
  
(ii) The appellant has contended that a Kacha Arhtiya is not an agriculturist  
within the meaning of section 2(7) of the CGST Act,2017 and therefore, is  
not covered under the notification no. 43/2017-Central Tax(Rate) dated 14"  
November,2017. It was contended that the Kacha Arhtiya is an agent of the  
agriculturist within the scope of circular No. 57/31/2018 dated 04" of  
  
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(iv  
  
(v)  
  
September, 2018 and is therefore, the recipient of goods from the agriculturist  
and liable to pay GST under reverse charge mechanism.  
  
) On the date of personal hearing i.e. 09" of February,2023, Mr Rishab Singla,  
  
Advocate, appeared on the behalf of the appellant and reiterated the facts as  
illustrated above. On being asked, whether Kacha Arhtiya or the farmer is  
raising any invoice on the appellant to which he replied that there is no  
separate invoice being raised by the Kacha Arhtiya or the farmer but the bill  
of Kacha Arhtiya is itself an invoice.  
The cotton is eventually purchased by the Kacha Arhtiya and payment is  
made to the farmer. The advocate submitted that Kacha Arhtiya is an agent  
of farmer. He pleaded that similar dispute had come up before the Appellate  
Authority for Advance Ruling, Haryana in the case of M/s Bhaktawar Mal  
Kamra and Sons and the said authority vide order dated 30" of August, 2018  
had held that the commission agent is liable to be registered under the CGST  
Act, 2017.  
  
(vi) The appellate authority desired to know as to whether farmer advices Kacha  
  
Arhtiya to sell the cotton not below a particular price, for which the advocate  
replied that the farmer is not present during the bidding process and Kacha  
  
Arhtiya sells the goods as per the prevailing market prices.  
  
D. Discussion and Findings:  
  
1.  
  
The primary issue that emerges from the appeal filed by the appellant is  
regarding the interpretation and the applicability of the Notification no.  
43/2017-Central Tax (Rate) dated 14"° November,2017 where the raw cotton  
(narma) is being procured by the appellant from the Kacha Arhtiya. The  
question to be answered is who shall be liable to pay tax through Reverse  
Charge Mechanism (for brevity, “RCM”) where the raw cotton is being  
supplied by the farmer through the Kacha Arhtiya to the appellant.  
  
It is pertinent to mention here that the AAR in its order has given reference to  
the Notification No. 13/2017-Central Tax(Rate) dated 28" June,2017 as  
amended vide notification no. 43/2017-Central Tax (Rate) dated 14™  
November,2017 which is not the correct notification for the purpose of issue  
  
under consideration. The Notification No. 13/2017-Central Tax(Rate) dated  
  
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28" June,2017 was issued for notifying the services that would be subject to  
RCM under sub-section (3) of section 9 of the CGST Act. The Notification  
No. 4/2017-Central Tax(Rate) dated 28" June,2017 was issued for notifying  
the goods that would be subject to RCM under sub-section (3) of section 9 of  
the CGST Act. The said notification was further amended by Notification no.  
  
43/2017-Central Tax (Rate) dated 14” November, 2017 which is germane to  
  
the issue under consideration.  
  
. Before going into the legal aspects of the case, it would be useful if one goes  
into the basic work being carried out by the kaccha Arhtiya. The appellant  
themselves have accepted that kaccha Arhtiya acts as an agent of the  
agriculturist and the appellant procures raw cotton from the kaccha Arhtiya.  
From the Form J and Form J issued by the Kacha Arhtiya, it is evident that he  
charges remuneration under various heads namely, commission, brokerage,  
‘dressing, cleaning, unloading, palledari, filling charges and other charges.  
From the heads of remuneration, it is clear that the Kacha Arhtiyais charging  
commission for the services rendered by him to the agriculturist,  
loading/unloading, cleaning of goods, bag sewing charges etc. It is a  
commonly known fact that the Kaccha Arhtiya receives cotton from the  
agriculturist, stores it, cleans it, fills the produce in the bag and then sells it by  
way of auction. So, it is clear that Kacha Arhtiya is carrying out various  
  
activities for selling the goods by way of auctioning it.  
  
. In order to comprehend the issue under consideration it would be pertinent to  
reproduce the contentious entry of the said notification so that a clarity can be  
  
developed regarding the identification of the person liable to pay tax on RCM.  
  
S. No. Tariff item, | Description of | Supplier of | Recipient of  
sub-heading, | supply of | goods  
heading or | Goods ae  
Chapter  
4A 520] Raw Cotton Agriculturist Any registered  
ee le  
  
. Before delving into the discussion on the matter, it is noted that the said entry  
  
was inserted in the Notification No. 4/2017-Central Tax(Rate) dated 28"  
  
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June,2017 only with effect from 15" of November, 2017 which implies that .  
the transactions effected before the said date were not falling within the  
  
purview of the said entry.  
  
. Now, looking at the said entry there are certain points that are required to be  
considered in order to have a comprehensive view of the said entry as well as  
the issue under consideration. The amplitude of said entry is limited to the  
“Raw Cotton” where the supplier of goods is the “Agriculturist” and the  
recipient of supply is “any registered person”. So, a combined reading of the  
said entry implies that supply of raw cotton by an agriculturist to any  
registered person shall be subject to RCM with effect from 15" of November,  
2017.  
  
. The expression, “supplier”, “Agriculturist”, “recipient” and “registered  
person” have been defined in the CGST Act and it would be useful if the  
  
same are reproduced here for reference.  
  
. As per clause (105) of section 2 of the CGST Act, "supplier" in relation to any  
goods or services or both, shall mean the person supplying the said goods or services or  
both and shall include an agent acting as such on behalf of such supplier in relation  
to the goods or services or both supplied. The important point to be noted here is  
that an agent acting on behalf of the supplier in relation to goods or services or  
both supplied is also covered within the ambit of supplier. So, the ambit of  
supplier has been extended to bring the “Agent” within the cover of supplier  
provided he/she is acting on behalf of the supplier in relation to relation to  
  
goods or services or both supplied.  
  
. Further, as per Clause (7) of section 2 of the CGST Act “agriculturist"” means an  
individual or a Hindu Undivided Family who undertakes cultivation of land-  
(a) by own labour, or  
  
(b) by the labour of family, or  
  
(6) by servants on wages payable in cash or kind or by hired labour under personal  
supervision or the personal supervision of any member of the family.  
  
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So, the definition of an agriculturist is a functional definition which is entirely  
focussed on the activity of undertaking of cultivation of land which may be  
carried out by the deployment of own labour or labour of the family or by  
  
hired labour.  
  
10. As per Clause (93) of section 2 of the CGST Act, "recipient" of supply of  
  
goods or services or both, means- Se oo  
  
(a) where a consideration is payable for the supply of goods or services or both, the  
person who is liable to pay that consideration;  
  
(b) where no consideration is payable for the supply of goods, the person to whom the  
goods are delivered or made available, or to whom possession or use of the goods is given  
or made available; and  
  
(c) where no consideration is payable for the supply of a service, the person to whom the  
service is rendered,  
  
and any reference to a person to whom a supply is made shall be construed as a reference  
to the recipient of the supply and shall include an agent acting as such on behalf of the  
  
recipient in relation to the goods or services or both supplied.  
  
11.The point to be noted here is that the definition of recipient is primarily  
  
attributed to the payment of consideration and the person who is liable to pay  
such consideration. Where the element of consideration does not come into  
play, the definition ventures into the aspect of identification of the person to  
whom the goods are delivered or made available, or to whom possession or  
use of the goods is given or made available. In the case of services, the same is  
effected by of identification of the person to whom the services have been  
rendered. Furthermore, the definition also brings the “agent” within the  
ambit of recipient where he/she is acting on the behalf of the recipient in  
  
relation to the goods or services supplied.  
  
12. As per clause (94) of section 2 of the CGST Act, "registered person" means a  
  
person who is registered under section 25 but does not include a person having  
a Unique Identity Number. So any person who has obtained registration  
  
under section 25 of the CGST Act shall be covered by the said definition.  
  
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13.So, with the definition of various expressions delineated in the said entry being  
reproduced and comprehended, it is now opportune to look at the nature of  
transaction being effected by the appellant in order to determine whether the  
same falls within the ambit of the entry No. 4A of the Notification no.  
43/2017-Central Tax (Rate) dated 14" November, 2017.  
  
14. As submitted by the appellarit, the appellant purchases raw cotton from Kacha  
Ashtiyas and the payment is also made to Kacha Arhtiya in his account  
through banking channels. Thereafter, as per the submission of the appellant,  
the Kacha Arhtiya transfers the amount to agriculturist after deducting its  
commission. Since the element of commission has been identified by the  
appellant in the said transaction which flows from the farmer to the Kacha  
Arhtiya, the question of kacha arhtiya as an agent of the farmer or the  
agriculturist needs to be looked into. This is also important for determination  
of the supplier and recipient in the transaction as it has been detailed above  
that both the definitions of “supplier” and “recipient” include agent acting  
  
on their behalf in relation to the supply of goods or services. -  
  
15.As per clause (5) of section (2) of the CGST Act, “agent" means a person,  
including a factor, broker, commission agent, arhatia, del credere agent, an  
auctioneer or any other mercantile agent, by whatever name called, who  
carries on the business of supply or receipt of goods or services or both on  
behalf of another. The definition of agent includes an arhatia and further  
postulates that he/she should carry on business of supply or receipt of goods  
or services on behalf of another. So, in the issue under consideration, the  
Kacha Arhtiya shall fall within the definition of an agent provided he/she  
carries on business on the behalf of another i.e. the principal, which in this  
case would be the agriculturist. This assertion is further supported by the fact  
that the Kacha arhtiya charges commission from the agriculturist for the goods  
supplied and the expression, “commission” in commercial parlance is  
  
attributed as an income of the agent for the services rendered.  
  
16.As seen earlier in the definition of supplier and recipient as well as in the  
  
definition of agent as detailed in para above, the emphasis is on the aspect of  
  
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whether the person is carrying on business or supplying goods or receiving  
goods on behalf of the person. The aspect of “on behalf of” has been  
examined in the Circular No. 57/31/2018-GSTdated 04" September,2018.  
  
The said circular draws inspiration from the Indian Contract Act, 1872 which  
  
is the font and source of the principal-agent relationship and discusses the said  
  
relationship in the context of para no. 3 of the Schedule I of the CGST Act  
wherein the supply or receipt of goods by an agent on behalf of the  
principal without consideration has been deemed to be a supply. The said  
circular lays down an important parameter for determination of said supply in  
  
para 7 which is reproduced hereunder:  
  
“Tt may be noted that the crucial factor is how to determine whether the agent  
  
is wearing the representative hat and is supplying or receiving goods on behalf of  
  
the principal. Since in the commercial world, there are various factors that might  
  
influence this relationship, it would be more prudent that an objective criteria is  
used to determine whether a particular principal-agent relationship falls within the  
ambit of the said entry or not. Thus, the key ingredient for determining  
relationship under GST would be whether the invoice for the further supply of  
goods on behalf of the principal is being issued by the agent or not. Where the  
invoice for further supply is being issued by the agent in his name then, any provision of  
goods from the principal to the agent would fall within the fold of the said entry.  
However, it may be noted that in cases where the invoice is issued by the agent to the  
customer in the name of the principal, such agent shall not fall within the ambit  
of Schedule I of the CGST Act. Similarly, where the goods being procured by the  
agent on behalf of the principal are invoiced in the name of the agent then further  
provision of the said goods by the agent to the principal would be covered by the said  
entry. In other words, the crucial point is whether or not the agent has the authority to  
  
pass or receive the title of the goods on behalf of the principal.”  
  
17. The above para clearly brings out the fact that an important determinant of  
  
defining the nature of principal —agent relationship in context of supply under  
GST is whether the invoice to the customer consumer is being issued by the  
agent in his own name or otherwise. Where the invoice to the customer is  
  
being issued by the agent in his own name then there would be two supplies  
  
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ie. one from the principal to the agent and another from the agent to the  
customer. However, where the invoice to the customer is being issued by the  
agent in the name of the principal then there would be only one supply ie.  
from the principal to the customer. This is an important aspect for the issue in  
hand as the nature of the entry in the notification hinges on identification of  
supplier and the recipient and the supply thereto.  
  
18.Now, the question is concerned as to for the purpose of Notification  
No.4/2017-CT dated 28" June, 2017 who is supplier of goods as per the  
column No.4 to attract the provisions of RCM. Supplier has to be agriculturist  
and recipient has to be a registered person. Now issue arises whether the  
supplier of goods for the purpose RCM Notification includes its agent or not.  
As detailed earlier, the definition of supplier of goods in section 2(105) of the  
CGST Act includes his agent and, therefore, KachaArhtiya becomes supplier  
of goods. Ifa view is taken that supplier of goods is only the agriculturist and  
not KachaArhtiya, then it goes against the very definition of supplier so also  
goes against the logic as an agent is working in the capacity of having  
authority to act on behalf of principal. In other words, an agent enters into the  
shoes of principal. Thus, for the purpose of the said notification, the  
expression “agriculturist” would include the agent who acts on the behalf of  
  
the said person.  
  
19.The contention of the appellant is that the Kacha Arhtiya is an agent of the  
agriculturist within the scope of circular No. 57/31/2018 dated 04" of  
September, 2018 and is therefore, the recipient of goods from the agriculturist  
and liable to pay GST under reverse charge mechanism. It needs to be  
comprehended that the said Circular only clarifies as to whether agent is  
required to be registered or not under the CGST Act. The crucial factor has  
been clarified in the last line of para 7 is “whether the agent has authority to  
pass on or receive the title of goods on behalf of principal” .In cases where  
agent issues the invoices on behalf of buyer, he gets a authority to pass on title  
on behalf of principal and therefore, he is covered under the definition of agent  
for the purpose of schedule 1 but in the cases where the agent does not get any  
  
authority to pass on title of goods and a title directly passes on from principal  
  
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to the buyer (without moving through agent) in such situation the agent  
transaction with the principal are not covered under schedule 1. Accordingly,  
in para 9 of the said circular, it has been clarified that agent will be required  
registered under section 24(vii) being a person the causes taxable supply of  
goods or services on behalf of principle in a situation where such agricultural  
produce is not exempted. This circular does not talk about RCM liability at  
all which is covered under Notification No.4/ 2017-Central Tax (rate) dated  
28" June, 2017 (as amended) vide Entry No.4A provides that in case of supply  
of raw cotton supplier of goods being agriculturist the liability to pay GST will  
arise on recipient of supply in case such recipient is a registered person. For  
interpretation of this notification it is necessary to see who is supplier of goods  
and in terms. of Section 2(105) supplier includes it is an agent, therefore,  
KachaArhtiya, by virtue of being an agent of the agriculturist steps into the  
shoes of supplier of goods and registered person receiving such goods is liable .  
  
for discharge of tax under RCM liability.  
  
20. Schedule II to the CGST Act, 2017 specifies the activities or transactions  
which are to be treated as supply of goods or services. This Schedule is aimed  
at enumerating as to which supplies under the Act will be treated as supplies  
of goods and which supplies will be treated as supply of services under the  
  
CGST Act, 2017. In the said Schedule, the entry 1(b) reads as under:  
  
“SCHEDULE IT  
  
[See Section 7 of the CGST Act]  
  
“Activities or Transactions” to be treated as Supply of Goods or Supply of Services  
  
1) Transfer  
  
(b) any transfer of right in goods or of undivided share in goods without the transfer  
  
of title thereof, is a supply of services;  
  
”  
  
From the above, it becomes clear that the any transfer of right in goods or of  
undivided share in goods without the transfer of title thereof, is a supply of  
  
services and not goods. It is anaccepted position that KachaArhtiya does not  
  
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hold title to the raw cotton so supplied to him by the agriculturist. However,  
  
from the activities so enumerated in para 3 of this order, he gets the right in  
  
goods in respect of receiving, storing, cleaning, grading and finally auctioning  
  
of raw cotton which he receives from the agriculturist without getting any  
  
title over the raw cotton. Therefore, in terms of above entry of Schedule I,  
  
this transfer is deemed as supply of services for the purpose of CGST Act, oe eae  
2017.  
  
eer ee = ee .  
  
21.This brings us to the RCM Notification No.4/2017-CT dated 28 June, 2017  
as reproduced in para 4 of the order. As is abundantly clear from the  
notification, RCM liability is in respect of supply of goods and not in respect  
of services in connection with goods. Hence, as discussed above, the  
transaction between an agriculturist and that of Kaccha Arhtiya is a  
transaction involving supply of services and therefore, by no stretch of  
imagination, it could be covered under RCM Notification No.4/2017-CT  
dated 28" June, 2017 as reproduced in para 4 of this order.  
  
22.Even, for the sake of argument, if the contention of the appellant is given  
credence, then it would emerge that an agent who is acting on behalf of  
principal, would be liable for the GST liability which would perforce imply  
that the principal i.e. the agriculturist is responsible for- discharge of GST  
liability. This will defeat the very purpose of reverse charge mechanism as  
provided under Section 9 of the GST Act, 2017. Any interpretation which  
leads to illogical conclusion has to be eschewed. Therefore, it is clear that by  
no canon of interpretation, Kacha Arhtiya can be made liable to pay GST in  
terms of Notification No. 4/2017-CT dated 28" June, 2017(as amended).  
Moreover, the ultimate objective of RCM is to fix the GST liability on the  
person who is better organized being engaged in the business of supply of  
goods and services. Pakka Arhtiya by its very nature of activity is much more  
  
organised in the business dealing as compared to Kacha Arhtiya as he is  
  
purchasing cotton primarily for trading and hence is having much higher level  
of business volume and turn over. This also logically leads to fixing the  
liability of GST on Pakka Arhtiya in terms of sub-section (3) of Section 9 of  
CGST Act.  
  
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23.The submission of the appellant regarding the order of Appellate Authority for  
Advance Ruling, Haryana has conveniently overlooked the basic nature of the  
ruling given by the Authority for Advance Ruling. The said rulings are in the -  
nature of “in personam” and not “in rem” and therefore their applicability as  
  
well as their protection cannot be sought by the others who were not party to  
  
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the said proceedings.  
  
24.In view of the foregoing discussions, we pass the following order:  
  
ORDER  
We uphold the order AAR/GST/PB/30 dated 10" of November, 2022 issued  
by the Authority for Advance Ruling, Punjab and the appeal filed by the appellant  
  
M/s Bansal Industries stands dismissed on all counts.  
  
Rajesh Puri IRS \yr \_.. \_, Kamal Kislfo Yadav, IAS, er ;  
Chief Commissioner, , . Commissioner of State Tax,  
  
CGST and CX Zone, Chandigarh, Punjab.  
  
Chandigarh  
  
Place: Chandigarh  
  
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