Legal Name of the | M/s Pandey Traders  
‘| Appellant |  
  
BEFORE THE HON’BLE APPELLATE AUTHORITY FOR ADVANCE  
RULING, GOODS AND SERVICE TAX, UTTAR PRADESH  
4, VIBHUTI KHAND GOMTI NAGAR LUCKNOW-006010  
(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)  
  
Appeal Order No. Q jaaar/-22/28.-/2023 Dated: vse: 9.308-2023  
  
Before the Bench of:  
Dr. Uma Shanker  
Member, Central Tax  
Smt. Ministhy S,  
Member, State Tax  
  
Trade Name of the | M/s Pandey Traders  
| Appellant  
  
GSTIN Number of | GSTIN-O9FOSPP6028C1Z1  
the Appellant  
Registered address | M/s Pandey Traders Siyapuram, Station Road,  
  
Mainpuri -205001(U.P)  
  
Order of Advance | UP ADRG-21/2023 dated 02.03.2023  
  
Ruling Against  
which the appeal is  
filed  
  
[ Proceedings under Section 101 of the Central Goods and Service Tax  
  
Act, 2017 and Uttar Pradesh State Goods and Service Tax Act, 2017]  
  
The present appeal has been filed under Section 100 of the Central  
Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service  
Tax Act, 2017 ( here-in-after referred to as “ the CGST Act and UPSGST  
Act”) by M/s Pandey Traders, Siyapuram, Station Road Mainpuri, Uttar  
Pradesh-205001(here-iri-after referred to as the “ Appellant”) against the  
Advance Ruling Order No. UP ADRG-21/2023 dated 02.03.2023 issued  
by the Authority for Advance Ruling, Uttar Pradesh.  
  
At the outset, we would like to make it clear that the provisions of both  
the CGST Act and the UPSGST 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, 2017 would also mean  
  
1  
  
Scanned with CamScanner  
a reference to the same provisions under UPSGST Act, 2017 and the vice  
  
versa.  
  
1.0 Brief facts of the case  
  
The instant appeal has been preferred against Advance Ruling No.  
UP ADRG-21/2023 dated 02.03.2023 passed in the case of Appellant i.e.  
M/s Pandey Traders, Siyapuram, Station Road Mainpuri, Uttar Pradesh-  
205001  
The Brief facts of the case are as under:  
1.1 The Appellant is a proprietorship concern registered under GST vide  
GSTIN-O9FOSPP6028C1ZI having its principal place of business at  
Siyapuram Station Road Mainpuri, Uttar Pradesh. The Appellant is  
engaged in the manufacturing of unbranded unmanufactured tobacco  
from unmanufactured raw tobacco dust after procuring it from various  
traders and subsequently selling it to various customers on B to B and B  
to C basis after mixing of scent and ensuring packing from third party.  
1.2 As per Appellant understanding raw tobacco dust which is result of  
screening of raw tobacco through which leaves, its stem, and other  
tender parts are separated through the process drying, winnowing,  
crushing and separating through sieving and better part are used for  
chewing tobacco and remaining parts in form i.e. stem, hard veins, and  
leaves of tobacco plant are then crushed in dust form and sold as such  
for human consumption. Mixing of scent/ treatment with a touch of  
perfume has not undergone any proven irreversible change and it  
remains unmanufactured raw tobacco and therefore merits classification  
under Chapter 2401 of the GST Tariff.  
1.4 In the backdrop of aforementioned facts the appellant had  
presented following questions before the Authority for Advance Ruling to  
seek advance ruling .  
(a). “ Whether mixing of scent (mixture of various perfumes and not  
Jarda Scent ) in raw unmanufactured tobacco dust by the Appellant after  
procuring the same from various traders and, and its subsequent sale to  
customers on B to B and B to C basis, after ensuring packing from third  
party, would change the character of unmanufactured tobacco to  
  
manufactured tobacco.”  
  
Scanned with CamScanner  
(b) Whether processing of manufactured Tobacco dust by add mixing the  
scent (mixture of various perfumes and not Jarda Scent) would change  
the character of unmanufactured tobacco to manufactured Tobacco.  
  
The Authority for Advance Ruling in its Impugned Ruling relying upon  
the decision of Hon’ble Apex Court in the case State of Madras Vs Bell  
mark Tobacco Company [ (Laws) (SC) -1966-10.4] wherein it was held  
that “ cumulative effect of various processes to which Tobacco was  
subjected before it was sold amount to manufacturing process” ruled  
that addition of scent to the raw tobacco leaf changes the characteristics  
  
of unmanufactured tobacco to manufactured tobacco.  
  
1.5 The appellant being aggrieved by the aforesaid ruling has preferred  
an appeal before the Appellate Authority for Advance Ruling and prays to  
set aside/modify the impugned Advance Ruling Order No. UP ADRG  
12/2023 dated 02.03.2023 passed by the Authority for Advance Ruling.  
  
2.0 Grounds of Appeal  
  
Appellant has submitted following grounds of appeal -  
  
2.1 The order passed by the Authority is manifestly erroneous and has  
given the findings on the facts which were apparently misplaced. The  
Appellant relied upon the Tribunal’s decision in the case of Yogesh  
Associates Vs CCE Surat II reported in 2006(195) ELT 196 (Trib-Mumbai)  
which was also upheld by the in 2006 (199) ELT A 221(SC) but the  
Authority for Advance Ruling has flouted judicial discipline and simply  
ignored it. .  
  
2.2 The Hon’ble Tribunal in case of Yogesh Associates Vs CCE Surat II  
referred above held that “ Tobacco- Unmanufactured tobacco-Raw leaf  
treated with tobacco solution Quimam and other flavors including  
saffron water-Raw Tobacco leaf not undergone any irreversible change  
and remains raw leaf tobacco unmanufactured- Mixture too concentrated  
for comfortable consumption by human beings and fails to meet test of  
marketability of product as ‘Chewing Tobacco’ Classification under sub-  
  
heading 2401.10 of Central Excise Tariff appropriate.”This decision of the  
  
Tribunal is squarely applicable to the present case.  
  
2.3 The Appellant relies upon the decision of Hon’ble Tribunal in the |  
  
case of Suresh Enterprises Vs Commissioner of Central Excise Pune,  
  
reported in 2006 (203) ELT 432 (Tri-Mumbai) wherein it was held by the E  
Scanned with CamScanner  
Honble Tribunal “Tobacco-Raw Tobacco with Quimam and perfumes-  
classifiable under sub-heading 2401.10 of Central Excise Tariff and not  
under sub-heading 2404.40.”  
  
2.4 The Appellant has submitted that the Authority for Advance Ruling  
has failed to adduce any material to conclude that Raw Tobacco Leaves  
have undergone any proven irreversible change. In fact, raw tobacco leaf  
after addition of perfume (not Jarda Scent) remains raw leaf tobacco  
unmanufactured.  
  
2.5 The mixing of scent does not changes its essential characteristics or  
make any irreversible change that gives emergence of a new product  
having a distinct name, character and use which is being recognized in  
common parlance. The tobacco dust remains tobacco dust for chewing  
needs.  
  
2.6 The Authority has wrongly proceeded to discuss whether the |  
product is chewing tobacco or not and has not focused on the core issue  
of the case as to whether the process relating to the product leads to  
manufactured tobacco ( Ch-2403) or unmanufactured tobacco (Ch-2401). |  
The Authority has proceeded with pre-conceived notion that chewing  
tobacco has to be manufactured only, ignoring the fact that there can  
unmanufactured chewing tobacco too.  
  
2.7 The Appellant submits that their product is classifiable under  
  
Chapter sub-heading 2401. Ch.2401 which covers unmanufactured  
  
tobacco; tobacco refuse as given under-  
  
2401.10- Tobacco, not stemmed /stripped  
  
2401.20- Tobacco, partly or wholly stemmed/stripped  
  
2401.30-Tobacco refuse  
  
This heading covers: .  
  
(1)Unmanufactured Tobacco in the form of whole plants or leaves in the  
natural state or as cured or fermented leaves, whole or  
stemmed/stripped, trimmed or untrimmed, broken or cut (including  
pieces cut to shape, but not tobacco ready for smoking.)  
  
Tobacco leaves, blended, stemmed/stripped and “cased” (“sauced” or  
  
“liquored”) with a liquid of appropriate composition mainly in order to  
  
|  
prevent mould and drying and also preserve the flavour are also i  
covered in this heading.  
  
}  
  
Scanned with CamScanner  
er.  
&  
  
(2)Tobacco refuse, e.g; waste resulting from the manipulation of tobacco  
leaves, or from the manufacture of tobacco products(stalks, stems,  
midribs, trimmings, dust, etc.).  
  
The process adopted by the appellant does not amount to manufacture  
as defined under Section 2(72) of CGST Act, 2017 since, it does not  
bring into existence, a fresh new finished product, which is a distinct  
commodity and has a different commercial value. Raw Tobacco Leaf  
cannot be transformed from unmanufactured Tobacco to manufactured  
tobacco and the correct classification for the product manufactured by  
them stands to be ‘unmanufactured tobacco’ and merits classification  
under Chapter 2401 of the GST Tariff.  
  
The Authority has failed to appreciate the fact that Explanatory Notes to  
  
Chapter Heading 2403 of GST Tariff makes it amply clear that this  
  
chewing tobacco is highly fermented and liquored so as to merit its  
  
classification under Ch-2403. Thus for tobacco product to be classified  
under Ch-2403 higher fermentation and liquoring are the basic  
requirements whereas in the present case the process intended to be  
adopted is mixing of slight perfume only to give flavor to the raw tobacco  
  
dust and does not involve fermentation at all.  
  
2.8 The Appellant has relied upon the judgment of AAR : Gurjart Co-  
operative Milk Marketing Federation Ltd... reported in 2021 (53)  
GSTL368(A.A.R.-GST-Guj) wherein it has been held that- “adding flavors  
to milk does not change essential character of milk; flavored milk, a  
’ substitute for milk, being simple preparation of milk and no manufacturing  
process is involved nor does milk change its composition in any way-  
Classifiable under Tariff item 2202 99 30 of First Schedule to Customs  
Tariff Act, 1975 as a Beverage containing milk”  
  
3.0 The Appellant was granted the opportunity of personal hearing on  
27.06.2023. Shri, Rajeev Pandey, the proprietor of M/s Pandey Traders,  
appeared before the Authority. He reiterated the submission already  
made by them vide their application and argued the appeal. He  
submitted a written brief prepared by their counsel and assured to  
submit some additional submission on the matter which was submitted  
by them on 06.07.2023.  
  
4.0 Discussion and Findings  
  
Scanned with CamScanner  
We have considered the submissions made by the Appellant in their  
application for advance ruling. We have also considered the issues  
involved on which advance ruling is sought by the Appellant and relevant  
facts along with the arguments made by the Appellant during P.H. held  
on 27.06.2023 and the additional submissions made by them on  
06.07.2023.  
  
We find that the appellant has submitted that they are engaged in mixing  
scent in the raw/unmanufactured tobacco dust, procured from various  
traders and the said raw tobacco dust after mixing of scent (mixture of  
various perfumes and not jarda scent) is sent for packing along with  
packing rolls to the third party, who with the help of pouch packing  
machine ensures packing of pouches bearing no marking or brand name,  
whatsoever, and returns it to the Appellant. The Pouches being supplied  
for packing contain statutory marking only in terms of Prohibition of  
Advertisement & Regulation of Trade and Commerce production, Supply  
and Distribution Act, 2003 along with marking of Rate and weight in  
terms of legal and Metrology Act. The product manufactured by the  
appellant is then supplied on B to B and B to C basis classifying it under  
Goods and Service Tax Tariff sub-heading 24012090, as  
unmanufactured tobacco, under cover of proper tax invoice and  
on payment of applicable duty as per law.  
  
We also find that as per Appellant understanding/ interpretation of law,  
raw unmanufactured tobacco dust which is result of screening of raw  
tobacco through which tobacco leaf's, its stem, and other tender parts  
are separated through the process drying, winnowing, crushing and  
separating through sieving, and the better part are used for chewing  
tobacco and remaining part in raw form i.e. stems, hard veins and leaves  
of tobacco plant are then crushed in the dust form, and the dust is also  
sold as such for human consumption, mixing of scent (mixture of various  
perfumes and not Jarda Scent) by the Appellant in the said raw  
unmanufactured tobacco dust does not make any irreversible change  
and remains raw unmanufactured tobacco dust only and the same  
cannot be equated to manufactured tobacco.  
  
4.1 Before we proceed further we find that under Goods and Service Tax  
  
Regime for the purpose of classification the First Schedule to the  
Customs Tariff Act is made applicable. Further, the First Schedule to the  
  
Customs Tariff Act, 1975 and the Rules of interpretation therein are to  
6  
  
— Scanned with CamScanner  
“be followed for classifying a product in terms of Explanation 1 and 2 to  
the Notification No. 01/2017-Compensation Cess (Rate) dated  
28.06.2017. For the sake of reference, the Customs Tariff Classification  
in respect of Chapter 2401 is reproduced below-  
  
2401 J Unmanufactured Tobacco; Tobacco refuse.  
  
240110 --Tobacco not stemmed or stripped  
24011010 | --Flue cured Virginia Tobacco “Se |  
24011020 | ---Sun cured country (natu) tobacco  
| 2401 1030 | ---Sun cured Virginia Tobacco  
24011040 | --Burley Tobacco  
  
24014050 | ---Tobacco for manufacture of biris, not stemmed  
  
24011060 | ....Tobacco for manufacture of chewing tobacco  
  
24011070 | ---Tobacco for manufacture of Cigar and cheroot  
24011080 | --Tobacco for manufacture of Hookah Tobacco  
24011090 | Other  
  
240120  
24012090 | ---Unmanufactured tobacco; tobacco refuse-tobacco, partly  
  
----Tobacco, partly or wholly stemmed or stripped;  
  
or wholly stemmed or stripped; other  
  
Further as per Explanatory Note (1) Chapter 2401 covers  
Unmanufactured Tobacco in the form of whole plants or leaves in the  
nature state or as cured or fermented leaves, whole or  
stemmed/stripped, trimmed or untrimmed, broken or cut (including  
pieces cut to shape, but not tobacco ready for smoking).  
  
Tobacco leaves, blended stemmed/stripped and “cases” ( “ sauced” or  
“liquored”) with a liquid of appropriate composition mainly in order to  
prevent mould and drying and also to preserve the flavor are also covered  
  
in this heading. |  
A plain reading of Ch-2401 clearly reveals that it covers tobacco  
unmanufactured which is naturally cured or fermented leaves, whole or  
stemmed/stripped, trimmed or untrimmed, broken or cut (including  
pieces cut to shape, but not tobacco ready for smoking).  
  
Further Chapter 2403 of the First Schedule to Customs Tariff Act, 1975  
  
is also reproduced as under-  
  
i  
  
Scanned with CamScanner  
Other Manufactured Tobacco and Manufactured Tobacco  
substitutes “ Homogenized or “ reconstituted” Tobacco;  
Tobacco Extracts and essences  
  
-Smoking tobacco, whether or not containing tobacco  
substitutes in any proportion;  
  
240311  
24031110  
24031190  
240319  
24031910  
24031921 |....Other than paper rolled biris, manufactured without the  
[ aid of machine  
[24031929 | ....Other  
24031990 |..... Other  
  
Other  
24039100 | ..."Homogenized” or “recognized” tobacco  
240399  
  
24039910 | ....Chewing Tobacco  
24039920 | ...Preparations containing chewing tobacco  
  
24039930 | ...Jarda scented tobacco  
24039940 | ...Snuff  
  
24039950 | ....Preparations containing snuff  
24039960 | ....Tobacco extracts and essence  
  
24039970 | --Cut-Tobacco  
  
24039980 | --Other  
  
4.2 We find that the Appellant claims their product to be covered under  
  
Chapter Heading 24012090 -unmanufactured\_ tobacco; tobacco \_refuse-  
tobacco, partly or wholly stemmed or stripped; other. The Appellant has  
submitted that raw unmanufactured tobacco dust is the result of screening of  
raw tobacco through which tobacco leaves, its stem, and other tender parts  
separated through the process of drying winnowing, crushing and separating  
through sieving and the better part are used for chewing tobacco and  
remaining part in raw form i.e. stems, hard veins and leaves of tobacco plants  
are then crushed in the dust form which is sold as such for human  
consumption.  
  
4.3 We find that it is evident from Explanatory Notes to Chapter Heading 2403  
of GST Tariff that this chewing tobacco is highly fermented and liquored so as  
to merit its classification under Ch-2403. Thus for tobacco product to be  
classified under Ch-2403 higher fermentation and liquoring are the basic  
  
requirements whereas in the present case the process intended to be adopted  
  
Scanned with CamScanner  
flavor to the raw tobacco  
  
fixing of perfume only ( Not Jarda Scent) to give  
7 Aust and doe  
: 4.4 We find  
/ definition of m  
  
accordingly we h  
Tribunals decisions in the matter. There is no doub  
may be both manufactured and unmanufactured. The difference between the  
manufactured and unmanufactured tobacco is dependent on the process  
being undertaken to prepare the product. In the present case the process  
being undertaken by the Appellant involves screenin,  
  
and other tender parts sep  
separating. Reference is made to  
  
s not involve fermentation at all.  
that under Notification No. 01/2017-Centra Tax (Rate) no  
o has been provided and  
  
anufactured or unmanufactured tobacc  
Hon’ble Court and the  
  
ave to mainly rely upon the decision of  
t that chewing tobacco  
  
g of raw tobacco through  
which tobacco leaves, its stem, arated through the  
process of drying winnowing, crushing and  
the order CEGATE in the case of CCE, Pune Vs M/s Jai Kisan Tobacco Co.  
wherein it was held by the Tribunal “ rm of  
ackets without adding any ingredients and  
anufactured  
  
raw tobacco crushed in the fo  
  
flakes when packed into smaller p  
  
sold (under a brand name or not) should not be classifiable as m  
  
chewing tobacco.”  
  
4.5 We find that the Authority for Advance Ruling have re  
decision of the Apex Court in the State of Madras Vs Bell mark Tobacco  
[(loss) (SC) -1966-10.4] dated 04.10. 1966 wherein it was held by the  
processes to which Tobacco  
  
lied upon the  
  
Company  
Hon’ble Court that cumulative effect of various  
  
was subjected, before it was sold, amount to the manufacturing process. We  
  
have gone through the referred order we find that in the referred case the  
  
processing of raw tobacco included high fermentation and sprinkling of  
  
jaggery water (liquoring) whereas in the instant case the process adopted by  
the appellant does not involve fermentation and liquoring at all. The process  
  
adopted by the appellant involves mixing of perfumes (not Jarda scent) to  
avour only and thus it does not undergo a set of process/changes  
  
the referred case law on which the Authority for Advance  
  
preserve fl  
and accordingly,  
Ruling have relied upon is not relevant to the present case.  
  
4.6 The Appellant has relied upon the decision of Hon’ble Tribunal in the case  
of Yogesh Associates Vs CCE Surat II reported in 2006(195) ELT 196 (Trib.-  
Mumbai) wherein the Tribunal held “ Tobacco-Unmanufactured tobacco-Raw  
leaf treated with Quimam and \_ other flavors including saffron water —Raw  
tobacco leaf not undergone any irreversible change and remains law leaf  
  
tobacco unmanufactured- Mixture too concentrated for conformable consumption  
  
b . .  
y human beings and fails to meet test of marketability of product as ‘chewing  
9  
  
Scanned with Cane eaiier  
Fi  
  
Jaco’ -Classification under sub-heading 2401.10 of Central Excise Tariff  
appropriate. \*  
’ 4.7 We find that in the above case law referred by the Appellant the Hon’ble  
Tribunal held that ‘Mixture too concentrated for comfortable consumption by  
human being and failed to meet the test of marketability of product as  
chewing tobacco.”  
The Appellant has also relied upon the decision of CCE Kanpur Vs Ravindra  
U& Co. in case of ‘Bandar Dholak Chhap and Hari Chhap wherein the  
Tribunal held that “ Tobacco -Branded Chewing Tobacco prepared by beating,  
crushing and sieving the tobacco leaves purchased by the Assessee from  
market without adding any foreign material therein-Classifiable under sub-  
heading 2401 of Central Excise Tariff Act, 1985 as unmanufactured tobacco  
and not under sub-heading 2404.41 ibid.”  
  
4.8 Having gone through the above referred case law we find that in the  
referred cases it has been clearly held by the Hon’ble Court that mere mixing  
of flavours ( not Jarda Scent) to preserved raw tobacco does not convert it to  
manufacturing tobacco.  
  
5.0 From the discussions in foregoing paras we find that case laws cited by  
the Appellant hold ground in favour of the appellant and the process carried  
out by the Appellant does not amount to manufacture as defined under  
Section 2(72) of the CGST Act-  
  
(72) ‘Manufacture’ means processing of raw material or inputs in any manner  
that results in emergence of a new product having a distinct name, character  
and use and the ‘Manufacturer’ shall be construed accordingly.”  
  
Undoubtedly, in the present case the raw tobacco dust is the result of  
screening of raw tobacco through which tobacco leaves, its stem, and other  
tender parts are separated through the process of drying, winnowing, crushing  
and separating through sieving and the better parts are used for chewing  
tobacco and remaining part in raw form i.e. stems, veins, and leaves of  
tobacco plant are then crushed in the dust form and the dust is sold as such  
for human consumption. There is nothing on record which proves that mere  
mixing of various flavors( Not Jarda Scent) results in irreversible change and  
converts the nature of raw unmanufactured tobacco to manufactured tobacco.  
6.0 We find that the Authority for Advance Ruling has wrongly held that  
process adopted by the appellant amounts to manufacture and their product  
to be classifiable under Ch-2403 of GST Tariff. In fact the process adopted by  
  
the appellant does not involve fermentation at all and accordingly their  
10  
  
Scanned with CamScanner  
ys  
duet may be appropriately classified under Ch-2401 of GST Tariff subject  
fo the process adopted by the appellant | as provided under Explanatory Note to  
/ Ch- 2401.  
  
7.0 In view of above we modify the impugned ruling UP ADRG-21/2023 dated  
02.03.2023 passed by the Authority for Advance Ruling to the extent that the  
product of the appellant is appropriately classifiable under Ch-2401 of GST  
Tariff subject to the process adopted by the appellant as provided under  
  
Explanatory Note to Ch-2401.  
  
Ruling:  
  
We modify the impugned ruling classifying the product of the appellant  
under Ch-2401 of GST Tariff subject to the process adopted by the appellant  
  
as provided under Explanatory Note to Ch-2401.  
  
(Dr. Ariel (Smt oR Ministhy S)  
Member, AAAR (Central Tax) Member, AAAR (State Tax)  
  
To,  
  
M/s Pandey Traders, Siyapuram,  
Station Road Mainpuri  
  
Uttar Pradesh-205001  
  
The Appellate Authority For Advance Ruling  
Goods & Service Tax Uttar Pradesh  
  
Copy to-  
  
1. The Pr. Chief Commissioner, CGST & Central Excise, Lucknow, Member,  
Appellate Authority of Advance Ruling.  
  
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate  
Authority of Advance Ruling.  
  
3. The Commissioner, CGST & Central Excise, 117/7, Sarvoday Nagar  
Kanpur-208005  
  
4. The Deputy/Asst. Commissioner, CGST & Central Excise Division-  
Farrukhabad, Civil Lines, Fatehgarh, Farrukhabad-209601  
  
5. Through the Additional Commissioner, Gr-I], Commercial Tax, Etawah  
Zone, Etawah, Uttar Pradesh to the jurisdictional Tax Assessing Officer.  
  
11  
  
Scanned with CamScanner