	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM
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BEFORE THE AUTHORITY OF: Shri. S. Anilkumar IRS &
: Shri. B.S. Thyagarajababu B.Sc, LL.M

Legal Name of the applicant	Suresh.G, M/s.Govind Traders
GSTIN	321800000109ARZ
Address	45/470, Geetha Nivas, Pallipuram - P.O., Palakkad 678006
Advance Ruling sought for	GST rate applicable for kannypukayila
Date of Personal Hearing	01-03-2019
Authorized Representative	Sri. Sivadas Chettoor, C.A.

ADVANCE RULING No. KER/26/2019 Dt.01.03.2019

Applicant is an unregistered dealer and proposes to start wholesale business of "Kannypukayila", which is purchased from farmers of tobacco leaves in and around Puliampatti, Periyar District, Tamil Nadu, which are subject to sun-curing. The 'Kannipukayila' retains the basic character of tobacco leaves and the shape is also retained, though the colour and smell would change due to the sun-curing process. It is a special variety of tobacco leaves used mainly by people of Kerala especially people of Malabar for chewing along with betel leaves purposes. The petitioner filed an application for advance ruling on the following:

01. What is the HSN code applicable to sun-cured "Tobacco leaves" known in Kerala as "Kannipukayila" purchased from farmers of Puliampatti areas of Tamil Nadu used only for chewing by consumers in Kerala?

02. What is the rate of tax applicable to "Kannipukayila" of the description mentioned in the first question? It is 5% (CGST + KGST) classifiable under Serial No.109 of the Schedule I of Notification No.1/2017 - Central Tax (Rate) dated 28-06-2017 or 28% classifiable under Serial No.13 of Schedule IV of the said notification?

03. Is it permissible in law to charge a lump-sum price in the invoice without mentioning the quantum of GST?

04. If so, How the liability to GST would be determined i.e., Will it be on the lump-sum price or after deduction of the notional GST deemed to be included in the lump-sum price?

05. What are the penal consequences applicable to the applicant in case the applicant pays 5% but ultimately the liability is confirmed at 28%?

The authorised representative of the petitioner was heard and it is stated that the tobacco leaves purchased from farmers of Puliampatti area is known in Kerala market as "Kannipukayila". The area of cultivation is very much relevant as farming and curing practices differ according to the area where the cultivation and process is done.

In the case of tobacco, unlike in other crop plants, the farmer cannot get any return by merely producing the crop of the right type in the field. This has to be followed by successful curing. Curing is the process by which the harvested tobacco leaves is made ready for the market. Curing is essentially a drying process whereby most of the moisture in the harvested leaves is removed. However, this process of drying is conducted in such a way as to produce certain well-defined and desirable qualities in different

types of tobacco. A bad leaves produced on field cannot be improved by curing; but a good leaf can be spoiled by bad and defective curing. The process of curing has an intimate bearing on the quality of the final produce. During the progress of curing, some important biochemical changes take place. The curing operation followed in India are dependent on several factors, such as tradition, convenience, market value of the crop, consideration of economic production, etc.

Curing in relation to tobacco leaves means removal of moisture from tobacco leaves and includes other essential ordinary process to make it consumable. The curing process will take 172 days for delivery. After wilting, tobacco stem with leaves are hanged on bamboo poles for sun drying for three weeks. Then the leaves are bundled in lot of 5 to 7 Kg tied with plantain fiber and stacked in a shed layer by layer. Then it is covered with palm mate and kept for fermentation process for two months. Depending upon the temperature upon the bulk, frequent turning of bundled leaves are done. After this process, the leaves are graded and dipped in jaggery water. There after 5 tobacco leaves are bundled together and again arranged in bulks and stacked in the shed for 40 days. These leaf bundles are turned once in 10 days. During this process, the leaves became dark brown. Then the leaves are packed in palm mat and kept in shed for another 50 days. The tobacco leaves are marketable only after these process, and the same are done by the farmers themselves.

The produce "Kannipukayila" is nothing but tobacco leaves which are covered under Chapter 24 of Customs Tariff Act, 1975. As per HSN Code 2401, tobacco leaves are taxable at 5% GST. It is clarified that "tobacco" means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaves, stalks and stems of the

tobacco plants, but does not include any part of the tobacco plants while still attached to the earth. Accordingly, "tobacco leaves" in any form, i.e., cured and uncured including leaves, stalks, and stems of the tobacco plant comes under entry 109 of First Schedule.

It is well known fact that the fresh or green leaves are having no commercial marketability. Only after the long process of curing, the tobacco leaves became capable for marketing. Therefore legislature imposed tax only on cured tobacco leaves which are capable of being traded. As per serial number 13 of Schedule IV of Notification No.01/2017 - Central Tax (Rate) dated 28-06-2017 "un-manufactured tobacco" is brought under 28% taxable category. But the entry itself clearly specified that un-manufactured tobacco; tobacco refuse (other than tobacco leaves) are taxable at the rate of 28%. Since tobacco leaves are specifically excluded from Schedule IV, Sl. No.13; it will squarely come under Schedule I of Sl. No.109 and taxable at the rate of 5%. Therefore tobacco leaves including the leaves cut from plant, dry leaves, cured leaves by applying natural process ordinarily used by the farmers to make them fit to be taken to market shall qualify 5% tax rate. It is a common knowledge that without curing tobacco leaves cannot be consumed. The curing in relation to tobacco leaves, means removal of moisture from the tobacco leaves. Section 2(c) of Central Excise Act, 1944 specified that the term "curing" includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture. Hence, the unavoidable process of curing of tobacco leaves to make it fit for marketing will qualify the word "curing" mentioned in Chapter 24 of Customs Tariff Act, 1975.

In view of the observations stated above, the following rulings are issued:

01. What is the HSN code applicable to sun-cured "Tobacco leaves" known in Kerala as "Kannipukayila" purchased from farmers of Pullyampatti areas of Tamil Nadu used only for chewing by consumers in Kerala?

Sun-cured tobacco leaves comes under the HSN Code 2401.

02. What is the rate of tax applicable to "Kannipukayila" of the description mentioned in the first question? It is 5% (CGST + KGST) classifiable under Serial No.109 of the Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28-06-2017 or 28% classifiable under Serial No.13 of Schedule IV of the said notification?

Tobacco leaves is falling under heading no.2401 are subject to 5% GST (2.5% CGST + 2.5% SGST) vide notification No.01/2017, Central Tax (Rate) dated 28-06-2017.

03. Is it permissible in law to charge a lump-sum price in the invoice without mentioning the quantum of GST?

As per Rule 46 of SGST Kerala Rules, tax invoice issued by a registered person shall contain the particulars of amount of tax charged in respect of taxable goods or services.

04. If so, How the liability to GST would be determined i.e., Will it be on the lump-sum price or after deduction of the notional GST deemed to be included in the lump-sum price?

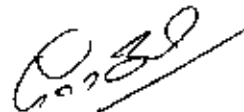
Tax to be collected on the taxable value of the supply of goods or services.

05. What are the penal consequences applicable to the applicant in case the applicant pays 5% but ultimately the liability is confirmed at 28%?

As per the provisions of law for the time being in force.



S. Anil Kumar, IRS
Additional Commissioner of Central Tax
Member



B.S. Thyagarajababu, B.Sc, LL.M
Joint Commissioner of State Tax
Member

To

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