

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id		27AAACN7084L2ZZ
Legal Name of Applicant		NUTAN WAREHOUSING COMPANY PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		1379, KRISHI BHAVAN, BHAWANI PETH, PUNE, MAHARASHTRA - 411002, INDIA.
Details of application		GST-ARA, Application No. 30 Dated 23.02.2018
Concerned officer		Commissionerate Pune, Division -II, (Swargate),
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Warehouse/Deport, EOU.
B	Description (in brief)	The company is in the activity of providing services in the nature of warehousing, wherein they allow to store the material or goods of his client on specific compensation allowed under Bombay Warehousing Act, for which state license is provided to them to carry on the said activity
Issue/s on which advance ruling required		(ii) applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as the CGST Act and MGST Act"] by NUTAN WAREHOUSING COMPANY PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following issues.

- Whether Exemption provided in serial no. 54 to Notification No. 12/2017 – Central Tax (Rate) is applicable to the activity carried by the company ?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-



STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

"Our company is in the activity of providing services in the nature of warehousing, wherein we allow to store the material or goods of our client on specific compensation allowed under Bombay Warehousing Act, for which state license is provided to us to carry on the said activity"

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF AFORESAID QUESTION(S)(i.e. APPLICANT'S VIEW POINT AND SUBMISSIONS ON ISSUES ON WHICH THE ADVANCE RULING IS SOUGHT) AND AS PER SUBMISSION DT. 10.04.2018

Brief Facts submitted by applicant on 10.04.2018

1. M/s Nutan Warehousing Company Pvt Ltd (hereinafter referred to as applicant) is a company formed for following main objective
 - a) To carry on the business of warehousing, cold storage and refrigeration in all its branches and activities and sphere.
 - b) To carry on the business of storage of fertilizers, insecticides, quality seed, agricultural and horticultural equipment, tool and machinery.
 - c) To carry on the business of quality seeds and develop quality seeds, acquire suitable lands and carry on agriculture.
 - d) To produce material and fertilisers and insecticides and acquire agency in the above lines and act as commission agents.
 - e) To act as clearing and godowns for proper and safe storing of valuable agricultural and horticultural produce and to provide goods and services of all kinds in connection therewith.
 - f) To provide godowns and warehousing facilities for goods of all descriptions of agricultural and allied products.
2. Applicant had been granted license for carrying out business of warehousing under the Bombay Warehousing Act, 1959. Accordingly, Applicant had constructed Warehouse at various places including warehouse at Fursungi, Pune (hereinafter referred to as the said warehouse). The applicant had given on rent the said warehouse to M/s Unilever India Exports Ltd (hereinafter referred to as Unilever) on specific compensation allowed under Bombay Warehousing Act.
3. M/s Unilever India Exports Limited is procuring tea of various quality in bulk either **from public tea auctions or directly from manufacturers of tea** and undertaking blending and packing of the same at the said warehouse. After packing, tea is exported to overseas countries.
4. Applicant is of strong view that the tea, procured in bulk, **either from public tea auctions or directly from manufacturers of tea** is an agricultural produce as defined in clause 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017. Further, storage & warehousing of tea post procurement, blending and packing undertaken by M/s Unilever is exempted under E. No. 54(e) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017.
5. Based on this understanding, applicant had neither taken GST registration nor discharged the GST liability. After, insistence from Applicant's client, M/s Unilever, applicant had taken registration and regularly discharging GST liability.
6. As the applicant had a serious reservation regarding taxability of renting of warehouse as the warehouse is used for warehousing of tea, an agricultural produce. Under this background, the applicant had requested for advance ruling on --

"Whether the supply of warehouse services used for packing & storage of tea, under above mentioned facts & circumstances was/is exempted vide Serial No 54(e) of Notification No. 12/2017- Central tax (rate) or otherwise."



7. Admissibility of Application-- The application is filed under Rule 97(1) of the Central Goods & Service Tax Act, 2017 (hereinafter referred to as the Act) for seeking advance Ruling on question framed above, under Rule 57(2) (g) of the Act
8. Further, we affirm that neither the question raised had been decided nor the question raised is pending for ascertainment in any proceeding against us under the Act. Hence, we are eligible for seeking advance ruling on the question raised by us.

Merit-

9. Applicant is owner of Warehouse given on rent to M/s Unilever India Exports Ltd on specific compensation allowed under Bombay Warehousing Act. M/s Unilever India Exports Limited (hereinafter referred to as Unilever) is procuring tea in bulk either from public tea auctions or directly from manufacturers of tea and undertaking blending of different quality of tea and packing them. After packing, tea is exported to overseas countries. Applicant claims that the storage and warehousing of tea is exempted vide Serial No 54(e) of Notification No. 12/2017- Central tax (rate). The said entry is reproduced as under

54	Heading 9986	<p>Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of--</p> <p>(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) agricultural extension services;</p>	Nil	Nil
		(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.		



10. The applicant considers tea as an agricultural produce. Agricultural produce is defined as per clause 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017 as under-

"agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

11. Before, going into interpretation, it is essential to mention the process involved in making green leaves marketable in form of tea-

Tea leaves are plucked from the tea plants and the green leaves plucked from the tree are not fit for the human consumption and it cannot be sold in the open market for human consumption. The raw tea leaves are withered by exposure in the shadow of the sun or by heating in trays until pliable. Thereafter the leaves are rolled by hand or machine in order to break the leaf cells and liberate the juices and

enzymes. Finally, the leaves are completely dried either by further exposure to the sun, over fires, or in a current of hot air then the tea leaves are fermented in baskets, glasses and in clothes. Thereafter the leaves were then subjected to grading with sieves of various sizes. The said leaves are finally roasted with charcoal for obtaining suitable flavour and colour. Thereafter the said tea is packed in the bulk packs.

12. The processing of the tea makes it marketable by minimal process they are made fit for human consumption. All the above processes are necessary for the purpose of saving the tea leaves from perishing. In case the above process is not carried out immediately the entire tea leaves would be perished. The process, as indicated above, at no point of time crossed that limit and robbed the tea leaves of their character of being and containing as such substantially.

13. The definition of Agricultural produce as defined under clause 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.6.2017 had three ingredients

- a) The produce must emerge from cultivation of plants or rearing of all life forms of animals.
- b) Either no further processing is done or such processing is done as is usually done by a cultivator or producer on the said produce.
- c) The process undertaken does not alter its essential characteristics but makes it marketable for primary market.

The process undertaken on green leaves consists of only above processes and not beyond them. All the three ingredients are fulfilled in the present case.

- a) The produce must emerge from cultivation of plants or rearing of all life forms of animals- Green leaves are plucked from the tea plant. Hence the first condition is undoubtedly fulfilled.
- b) Either no further processing is done or such processing is done as is usually done by a cultivator or producer on the said produce.

14. Tea leaves are plucked from the tea plants and the green leaves plucked from the tree are not fit for the human consumption and it cannot be sold in the open market for human consumption. The raw tea leaves are withered by exposure in the shadow of the sun or by heating in trays until pliable. Thereafter the leaves are rolled by hand or machine in order to break the leaf cells and liberate the juices and enzymes. Finally, the leaves are completely dried either by further exposure to the sun, over fires, or in a current of hot air then the tea leaves are fermented in baskets, glasses and in clothes. Thereafter the leaves were then subjected to grading with sieves of various sizes. The said leaves are finally roasted with charcoal for obtaining suitable flavour and colour. Thereafter the said tea is packed in the packets.

The processing of the tea makes it marketable by minimal process they are made fit for human consumption. All the above processes are necessary for the purpose of saving the tea leaves from perishing. In case the above process is not carried out immediately the entire tea leaves would be perished. The process, as indicated above, at no point of time crossed that limit and robbed the tea leaves of their character of being and containing as such substantially.

16. Unlike many agricultural products tea-leaves are not marketable in the market fresh from the tea gardens. Nobody eats tea-leaves. It is meant to be boiled for extracting juice out of it to make tea liquor. Tea-leaves are, therefore, only fit for marketing when by a minimal process they are made fit for human consumption. Processes were necessary for the purpose of saving the tea-leaves from perishing, making them fit for transporting and marketing them. The process applied was minimal. Withering, crushing and roasting the tea-leaves will be surely necessary for preserving them. The process of fermentation or final roasting with charcoal for obtaining suitable flavour or colour and also the process of grading them with sieves were all within the region of minimal it no point of time it crossed that limit and robbed the tea-leaves, the agricultural produce, of their character of being and continuing as such substantially. These processes are normally done by the cultivator or the producer, hence the second ingredient is also satisfied.

17. The process undertaken does not alter its essential characteristics.

The tea leaf remained what it always was. It was tea leaf when selected and plucked and it continued to be tea leaf when after the process of withering, crushing and roasting it was sold in the market. The process applied was intended to bring out its potential qualities of flavour and colour. The potential inhered in the tea leaf from the outset when still a leaf on the tea bush. The potential surfaced in the



tea leaf when the mechanical processes of withering, crushing and roasting, fermenting by covering with wet sheets and roasting again were applied. The tea leaf was made fit for human consumption by subjecting it to those processes. At no stage, did it change its essential substance. It remained a tea leaf throughout. In its basic nature, it continued to be agricultural produce."

Thus, the condition of processes not altering the essential characteristics of the agricultural produce is also satisfied.

18. The Hon'ble Supreme Court in case of COMMISSIONER OF SALES TAX, LUCKNOW Vs. D. S. BIST & ORS. (Annexure-1), while deciding issue under UP Sales Tax Act, 1948 had upheld that Tea leaves after drying and processing remained agricultural produce.. Similar view had been expressed by the Hon'ble Uttaranchal High Court in case of Dehradun Tea Company Ltd. vs State Of Uttaranchal And Ors.[2006 148 STC 56 Uttra) (Annexure-2).
19. C(ii) The processes undertaken makes it marketable for primary market. The process undertaken is seen from the submission on record . it is not repeated herein .it is the not direct activity link with cultivation.

20. Circular cannot override the Notification.

Notifications are issued using the subordinate legislative power and are tabled in parliament. Circulars are issued for clarifying the issue, which had been dealt in the Act/rule/notification in a legal language. Circulars are issued by authority expressing their view point. It cannot override the Notification. Any circular contrary to the law (including notification) is non est in the eye of the law. It is neither binding on the department nor on the Assessee. The applicant intend to rely on the five member Hon'ble Supreme Court decision in case of CCE Bolpur Vs Ratan Melting & Wire Industries (2008 (231) ELT 22 (SC)] (Annexure-4).

21. Circular No. 16/16/2017-GST dated 15.11.2017 is contrary to the Notification No. 12/2017-CT (Rate) dated 28.6.2017, hence not legal.

The CBEC had issued Circular No. 16/16/2017-GST dated 15.11.2017 (Annexure-5) clarifying the scope of Entry S. No. 54 of the Notification No. 12/2017-CT (Rate) dated 28.6.2017. The said circular had clarified that the "Tea is not an agricultural produce", hence loading, unloading, packing, storage or warehousing of tea is not exempted under Notification No. 12/2017-CT (Rate) dated 28.6.2017. The said view expressed by the CBEC is contrary to the Notification No. 12/2017-CT (Rate) dated 28.6.2017 as explained supra. The taxability cannot be fastened by issuance of a circular, if some activity is exempted by the Notification.

22. Even the activity of warehousing was exempted under Service Tax regime as well.

Therefore, tea was an agricultural produce during entire service tax regime.

In light of the above, he pray for passing the appropriate order.

Addition submission by Applicant dated on 11.05.2018 .

Please refer to our application reference No. 30 dated 23.2.2018 in respect of which, hearing was held before you on 24.4.2018 and our earlier letter dated 3.5.2018 on the above subject. During the hearing, we were directed to submit documents/data from M/s Unilever Export, Pune within ten days from the date of hearing. Accordingly, M/s Unilever Export had been requested to submit the same.

We are pursuing the matter with the M/s Unilever Export. However, we are yet to receive the complete reply as M/s Unilever Export are in a process of shifting their activity from our premises to Dubai. It is therefore requested to grant us some more time to submit the same. Accordingly, the detail process was submitted on record is considered while passing of order. Hence it is not repeated again here.

03. CONTENTION – AS PER THE CONCERNED OFFICER Submitted on this issue

A. The submission, as reproduced verbatim, could be seen thus-



QUESTION NO.14. Whether Exemption Provided in Sr.No.54 of Notfn No.12/2017-Central Tax(Rate)is applicable to the activity carried by the Company-

Reply -

The Question raised by the applicant have already solved as per the Board Circular No.16/16/2017-GST issued under F.No.354/173/2017-TRU dated 15.11.2017 as per Sr.No. 4 and 7 (Anne.I) which is as under -

Sr.No.4- Green Tea Leaves are falling in the definition of Agricultural Produce and Tea is not falling in the definition of Agricultural produce

Sr.No.7- It is hereby clarified that processed products such as Tea(i.e. black tea, white tea etc)processed coffee beans or powder, pulses(dehusked or spit),jaggery, processed spices, processed dry fruit, processed cashew nuts etc fall outside the definition of agricultural produce given in the Notfn No.11/2017-CT (Rate)and 12/2017-CT(Rate) and corresponding Notification issued under IGST and UGST Act and therefore the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary of Service Tax or Vat/Sales Tax is no more relevant.

Applicant have obtained online Service Tax Registration No.AAACN7084LST001 on 29.06.2005 for providing Taxable Service under the category of Storage and Warehousing Services. They are providing services in the nature of Warehousing and storage viz. storing Tea Bags (manufactured)in various format such as Service Sachet, Squeezables, Herbals, Infusion, Flavoured Tea, Packet Tea and blended tea and receiving consideration on account of Warehousing charges, Service Charges, Lease Rent, other charges and Transport charges from M/s. Unilever India Exports Ltd. 100% EOU. Further applicant vide their letter date **13.10.2017, 15.12.2017 02.02.2018** informed this office that they are providing warehousing services 100% EOU viz. Unilever India Export Ltd and the warehoused goods **Tea** is agricultural produce hence the services provided by them are exempted as Per Order No.1/2002 dated 01.08.2002 and submitted a extract of LOP NO.PER:99(2001)/SEEPZ/EOU/80/2001-02/5 in which name of the applicant and items to be stored in Warehouses is mentioned **Copy of the letter issued by SEEPZ is enclosed. (Anne.II)**

Taking into consideration the activities carried out by applicant and clarification issued vide Circular dated 15.11.2017 ,it appears that the exemption provided at Sr. No.54 to Notfn No.12/2017 (**Anne,III**) is not applicable to the applicant since 01/07/2017 in GST. However applicant is registered under GST and paying GST.

QUESTION NO.15- Our Company is in the activity of providing Services in the nature of warehousing for loading, unloading, packing, storage or warehousing of agricultural produce therefore we sought an advance ruling regarding applicability of exemption to such activity

For applicability of exemption to the activities carried out by the applicant, the definition of agriculture produce, clearance of tea stored in EOU and category of the service recipient is to be discussed as under.

The definition of Agriculture Produce as per Section 65B (5), for the purpose of clause (102) of Section 65, w.e.f. 01.07.2012 in Service Tax is as under

*Agriculture produce means any produce of agricultural on which either no further processing is done or **such processing is done as is usually done** by a cultivator or producer which does not alter its essential characteristics but **makes marketable for primary market**

The Definition of agricultural produce for the purpose of Sr.54 of Notfn No.12/2017 in GST is as under -



" agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, **on which either no further processing is done or such processing is done as is usually done** by a cultivator or producer which does not alter its essential characteristics **but makes it marketable for primary market;**

On going through the definition of agriculture produce in Service Tax and GST, it seems that there is no change in the definition of agriculture produce viz. TEA after GST Also Board vide Circular No.16/16/201-GST issued under F.No.354/173/2017-TRU dated 15.11.2017 clearly clarified that the green tea leaves is a agricultural produce but tea is a processed product made in tea factories after carrying out several process on green tea leaves hence the exemption from payment of GST for loading ,unloading, packing, storage or warehousing services is not applicable and that any clarification issued in the past to the contrary of Service Tax or Vat/Sales Tax is no more relevant.

As regards the category of service recipient M/s. Unilever India Export is a 100% EOU and added the premises situated at S.No, 157(New 190) to 8/2 Pune Saswad Road Fursungi Pune 412308 in the LOP No.PER. 99(2001)/SEEPZ/EOU/80/2001-05/5 valid upto 31/03/2022, it means the possession / control of the premises is with 100% EOU. In this case, the status of applicant is Service Provider and received consideration for providing services as mentioned in Answer to Question No. 14.

The Tea stored in 100% EOU is manufactured packed in bags in the factory and exported, and the exemption is applicable only to the agriculture produce which are marketed in primary market therefore the exemption claimed by the applicant is not applicable As per the balance sheet ,the service wise income received from M/s. Unilever India for the period 2013-2014 to 2015-2016 is as under –

Category of service provided	2013-2014	2014-2015	2015-2016
Warehousing charges	2979264	3507604	55000
Service charges	19440003	19059D984	23037450
Lease Rent	8947365	7572675	8883305
Other charges	340920	167280	559320
Transport charges	11310000	3069800	6288000

Zero copies of extract of Note 14 of Balance Sheet for 2013-2014 to 2015-2016 and Zerox copy 26AS for the year 2015-2016 and 2016-2017 enclosed as Anne.IV

The legal provision in respect of service provided to EOU by DTA unit is as under-

Para 6.11 (c)(ii) of Foreign Trade Policy 2015-2020, the EOU unit shall be entitled to following

- (i)...
- (ii).
- (iii).
- (iv) Cenvat Credit on Service Tax paid

That means the service provided by the service provider to EOU is Taxable & therefore the Deptt have called for the documents for investigating the case in detail for recovery of govt dues since 01.07.2012. Applicant is submitting the documents in piece meal basis which cause incontinence in enquiry therefore Deptt. have issued summons calling for the documents.

B. Question No. 16-STATEMENT CONTAINING THE APPLICANT' INTERPRETATION OF LAW AND/OR FACTS AS THE CASE MAY IN RESPECT OF THE AFORESAID

QUESTIONS(S)i.e. applicant's view point and submission on issues on which the advance ruling is sought

The Statement containing the applicant's interpretation of law is based on the legal provisions which were valid up to 30.06.2012. The changes made by the Govt. in the definition of Agriculture Produce after 01.07.2012 and nature and category of service recipient is not considered while filling application under Advance Ruling.

The definition of "Agricultural produce" as defined under Section 65B (5), for the purpose of clause

(102) of Section 65, w.e.f. 01.07.2012 in Finance Act, 1994 is as under

"agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market; "

Further Board vide Circular No.16/16/2017-GST issued under F.No.354/173/2017-TRU dated 15.11.2017 clarified that the green tea leaves is a agricultural produce but tea is a processed product made in tea factories after carrying out several process on green tea leaves hence the exemption from payment of tax for loading, unloading, packing, storage or warehousing services is not applicable.

In this case, applicant is providing services of storage, warehousing etc for processed/manufactured/ packed tea to 100% EOU and not for Green Tea Leaves hence the exemption claimed by applicant is not applicable for the supply of services to 100% EOU units.

Since the date of Registration and also from the change in the legal provision in definition of Agriculture produce since 01/07/2012, the applicant has neither paid service tax nor filed ST 3 returns by claiming exemption from payment of Service Tax. Therefore, the deptt is investigating the issue of evasion of Service Tax in respect of the services provided to EOU for storage / warehouse of processed tea.

It is further to state that the deptt. started investigation on 10th January 2018 by issue of letter for submission of documents. However, the applicant have filed application for advance ruling on 25th January 2018 which is much later than the action initiated by deptt for investigation. It is also noticed that the Registered office of the applicant as per Service Tax Registration is at Krishi Bhavan, 1379, Bhavani Peth, Pune- 411042 falling under the jurisdiction of Swargate Division. However, the applicant has willfully shown the address of Registered office at the time of GST Registration as Krishi Bhavan, 1379, Bhavani Peth, Pune 411002 by quoting wrong PIN code falling under Shivajinagar Division to mislead the deptt. **Thus, the applicant, by mentioning the wrong Pin Code as 411002 instead of 411042 for the same address in GST Registration, the applicant has tried to mislead the deptt for hiding the evasion made in the past period from 01/07/2012 to 30.06.2017 with intention to make the loss to the Govt. exchequer.**

Applicant vide letter dated 19.03.2018 reported that the enquiries by various officers were conducted and enclosed copies of correspondence but not enclosed the copies of decision of enquires. On perusal of the said letters, it is observed that the instant issue of evasion of tax by willful mis-declaration of processed tea as agricultural produce was never taken up for investigation by the deptt in past. The said correspondence from the department was for other reasons as under

- 1) Vide letter dtd 11.10.2004 an enquiry was made for non filling of ST-3 Returns for the period Sept 2002 to Oct 2004.
- 2) Vide letter dtd 22.11.2007 and 30.08.2008 an enquiry was made for non payment of Service Tax on Renting of Immovable Property.

It is further to mention that the applicant vide letter informed that the warehouse were used for storage of tea and hence registration was cancelled vide letter dated 30.10.2004. However, as per the ACES system, the applicant has obtained online Registration Certificate bearing No. No.AACN7084LST001 on 29.06.2005 for storage and warehousing services and the same is valid till date.

It is therefore requested to consider the legal provision of the Service Tax/ GST/ Foreign Trade Policy while taking the decision on the application as evasion of tax made by the applicant involves revenue of more than Rupees One Crore.

Additional submission by Jurisdictional Officer dated 21.05.2018

The applicant requires advance ruling on two issues viz.-

a) Whether exemption provided in Sr.No.54 (e) to Notfn No.12/2017-Central Tax (Rate) is applicable to the activity carried out by the company?

b) Applicability of Exemption for the activity of providing Services in the nature of warehousing for loading, unloading, packing, storage or warehousing of agriculture produce?

Issue No. 1 - In this issue, the assessee is asking whether exemption provided in Sr.No.54 to the Notfn No.12/2017-C.T(Rate) is applicable to the activities carried by the company.

In this connection it is submitted that the applicant has warehouse facilities which is rented to M/s. Unilever India Export Ltd. for storing manufactured tea which is ultimately exported and hence this manufactured tea by M/s. Unilever India Export Ltd cannot be considered as Agriculture produce required for primary market. In support of contention, we rely on the ratio of following judgments of Supreme Court

Union of India Vs. Belgachit Tea Co. Ltd.(2008-TMI-3950-Supreme Court

ISSUE-The assessment of Agricultural income under Income Tax Act on the sale of Agriculture produce manufactured by assessee -

Decision-It has been held that the activity of cultivation and sale of green tea leaves is falling under Agricultural activity and Activity of purchasing tea leaves and manufacture and sale of tea is falling under Business activity for the purpose of Computation of Income Tax under Income Tax Act.

In the instant case, the manufacturing EOU unit is procuring raw tea, manufactured in the factory and sale in the open market as well as in overseas countries, the service provided by the applicant to Business activity is not treated as service provided to agricultural produce hence there is not exemption from payment of service tax/GST .

i) High Court Decision in the case of Brook Bond Lipton India Ltd. Vs State of Karnataka 109 STC 265 in which it was stated that packing led to value addition for the purpose of excise and sales tax and that it was a possible view that packaged blended tea produced in the Industrial unit of the appellant is a manufactured product in which packing material are inputs.

The contents of the exemption in Sr.No.54 of Notfn No.12/2017 dated 28.06.2017 are as under

Sr.54 -Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for foods ,fibre, fuel, raw material or other similar products or agricultural produce falling under Chapter 9986 by way of -

(a) to (d)

(e)Loading, unloading, packing, storage or warehousing of agricultural produce

(f) to (g)

As per GST Tariff, the services classified under group 9986 is as under

SUPPORT SERVICES TO AGRICULTURE, HUNTING, FORESTRY, FISHING, MINING AND UTILITIES

998611	Support Services to Crop Production
998612	Animal Husbandry Services
998613	Support Service to hunting
998614	Support Services to forestry and logging
998615	Support Services to agriculture, hunting, forestry an fishing

In this case applicant is providing support services to manufacturing unit i.e. business entity whereas the exemption is applicable to support services provided to Agriculture, Hunting, forestry, fishing mining and utilities.

In Circular No. 16/16/2017- GST dated 15.11.2017 issued by CBEC New Delhi, at Sr.No.3, it is clearly mentioned that that "Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes ,such as drying, rolling, shaping, refining, oxidation, packing etc on green leaf and is the processed output of the same.

This Circular is also in consonance with the above referred judgments.

In view of the above, Applicant's Question whether exemption provided in Sr.No.54 (e) to Notfn. No.12/2017-Central Tax (Rate) is applicable to the activity carried out by the company can be answered in the Negative.

5. ISSUE No.2- The Second issue on which applicant sought Advance Ruling is "Applicability of Exemption for the activity of providing Services in the nature of warehousing for loading, unloading, packing, storage or warehousing of agriculture produce"

The propriety of the asking Advance Ruling in respect of this Question is not understood since from the facts described by the applicant in his application, it appears that he is only storing tea manufactured by M/s. Unilever India Export Ltd ,which is branded and packed and ready for distribution for tertiary market which is mainly 100% export market. Therefore the question posed by the applicant may be answered in Negative since the applicant is not providing Services in the nature of storage and warehousing for agriculture produce as envisaged at Sr. No.54 (e) to the Notfn. No.12/2017-Central Tax (Rate)

As per Sr. No. 24 of Notification No.12/2017 ,the service provided by way of loading, unloading ,packing ,storage or warehousing of rice are exempted from payment of GST. There are no exemption for the services provided by way of loading, unloading ,packing ,storage or warehousing of "Tea ", the issue of taxability of Service Tax already decided by issuing Notfn/circulars the question raised by the applicant can be answered in the negative.

The ratios of judgments cited by the applicant during the personal hearing held on 24.04.2018 are irrelevant to the issues determined by the applicant for seeking advance ruling. The details of the judgments cited and how there are irrelevant are discussed as follows-

a) Supreme Court in the case of Commissioner of Sales Tax Vs. D. S. Bist and others dated 11.09.1979

Issue-Assessee, agriculturist and having owned Tea Garden grown tea leaves on his own land ,after carrying out some kind of process or treatment ,tea is sold therefore the sale of tea effected by him was exempted from sales tax under the proviso to Sr.2(i)of the Act. The Sales Tax authorities rejected the assessee's contention.

Decision-While giving decision High Court held that sales of tea leaves were not exigible to sale tax. The commodity which was sold was not different from the commodity therefore the proviso to Sr.2 (i) of the Act is attracted.

The decision given in the above case is relating to exemption from payment of sale Tax allowed to Agriculturist of Tea , whereas in applicant's case, the applicant is providing Services to the manufacturing Tea unit registered as 100% EOU, hence the same decision is not applicable as the tea is manufactured goods classified under CSH 0902 under Head "Tea whether or not flavored(other than unprocessed Green Tea Leaves attracting CGST -2.5%, SGST -2.5% and IGST -5% in GST Tariff.

b) Uttaranchal High Court in the case of Dehradun Tea Company Ltd Vs. State of Uttaranchal and Ors dated 26.06.2006

ISSUE –Whether purchase tax is leviable upon the resale of the processed tea to other dealers and whether raw tea leaves purchased from other tea gardens on which the sale tax had already been levied, if the purchaser processes it and makes it usable and resells the same to the dealer, whether the purchase tax is liable to be levied on the said goods or not

Decision-The revision petition filed by assessee is allowed by allowing exemption from payment of Sales tax

The decision given in the above case is relating to purchase tax is leviable on raw tea leaves purchased on payment of Sales Tax and after processing resell the same to dealer, the same decision is not applicable in this case as the issue is relating to warehousing services provided to branded and packed tea manufactured by M/s. Unilever India Export Ltd. which comes to applicant's warehouse in packed form ready for tertial market.

c) The decision of Supreme Court in the case of Commissioner of C. Ex. Bolpur Vs. Ratan Melting and Wire Industries

Issue-Departmental Clarification vis-à-vis court Decision Binding nature of Circulars Contrary to Statutory Provisions having no Existence in law

Decision-wherein it has been held that a circular which is contrary to the statutory provision has really no existence in law. It is for the court to declare what the particular provisions of Statute Says and it is not for the Executive Since CBEC's Circular is in consonance with the provision of CGST/SGST Act, the ratio of Ratan Melting and Wire Industries is not applicable in the facts of applicant's case.

On going through the letter dated 11.05.2018 submitted by the applicant to Advance Ruling Authority along with the letter of M/s. Unilever Export dated 9.7.2014 mentioning the details of manufacturing activities ,it appears that the applicant is providing various services to the manufacturing unit, whereas the exemption claimed by the applicant is applicable to support services provided to Agriculture ,hence applicant is not eligible the exemption provided in Sr.No.54(e) to Notification No.11/2017-Central Tax(Rate).

It is therefore requested to consider the Supreme Court's decision mentioned above, provisions of CGST/SGST , Notification No.01/2017 dated 28.06.2017 ,Notification No.12/2017 dated 28.06.2017 and exemption at Sr.No.24 of Notification No.12/2017 and manufacturing activities carried out at manufacturing units while answering the questions raised by the applicant .

04. HEARING

The case was taken up for Preliminary hearing on dt. 28.03.2018 with respect to admission or rejection of present application when Sh. Ghanshayam L Navalakha , Director alongwith Sh. Bhushan Patil, C.A. appeared and contended for admission of application as per their contentions made in ARA. During hearing Jurisdictional Officer, Sh. Sachin Ghagare, Asstt. Commr. Division-II (Swargate) Pune -II, CGST Commissionarate, Pune also appeared and made written submissions and contended that investigations against the applicant is already going on and therefore their application is required to be rejected. Further he was requested to produce documentary evidences in respect of initiation of investigation at the earliest. The applicant was also requested to submit their contentions and written submissions in this regard.

The application was admitted and called for final hearing on 24.04.2018, Sh. Suresh Singh C.A along with Sh. Ghanshayam L Navalakha , Director and Sh. Bhushan Patil, C.A. appeared and filed written submissions and orally contended as per their written submissions. They were orally requested to give details of exact nature of product that was being stored, including photographs of the product, sample of bags in which it was stored along with markings or details of manufacturer on the

bags stored and also a brief note on the nature of product from M/s. Hindustan Lever, including details of suppliers from whom M/s. Hindustan Lever had purchased the products

They were also requested to give sequential details about the process that have undergone on tea leaves from time of plucking of tea leaves from tea gardens upto the time of storage in the present warehouse and also further what activities are being done by EOU Unit on the tea purchased and also are requested to give photographs of final products. Jurisdictional Officer, Sh. Sachin Ghagare, Asstt. Commr. Division-II (Swargate) Pune -II, CGST Commissionerate, Pune also appeared and made written submissions.

05. OBSERVATIONS--

1. We have gone through the facts of the case, including the written submission and documentary evidences produced by the applicant as well as Jurisdictional officer of this case. The company is engaged in the providing the services in the nature of warehousing, loading unloading, packing, storage of agricultural produce. The Applicant is seeking the advance ruling in relation to whether exemption as per Serial No.54 of Notification No.12/2017 Central Tax (Rate) is applicable to the activity carried out by the company or not?
The Notification 12/2017 is reproduced herein below.

54	Heading 9986	<p>Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of--</p> <p>(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) agricultural extension services;</p>	Nil	Nil
		(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.		

In order to resolve present controversy, it is necessary first to understand the expression 'Agricultural Produce'. We find that the expression 'Agriculture Produce' is defined under Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017) which is as below:

2. Definitions. – For the purposes of this notification, unless the context otherwise requires, the Definition of agricultural produce for the purpose of Sr.54 of Notification No.12/2017 under the GST law is as under -

(g) "Agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products, **on which either no further processing is done or such processing is done as is usually done** by a cultivator or producer which does not alter its essential characteristics **but makes it marketable for primary market;**



In view of the above, we are required to ascertain if the goods being stored by M/s. Unilever India Export Ltd., in the warehouse of applicant would fall in the definition of 'Agricultural produce' as given above. To ascertain the exact nature of goods being stored in warehouse, we find that a letter received by the applicant from M/s. Unilever dated 09.07.2014 gives the details about the exact nature of goods being stored by them. We find that the letter gives the details of product being stored by them which as mentioned as being Lipton Pure and Simple 100s Tea Bags. Further details of products are as under-

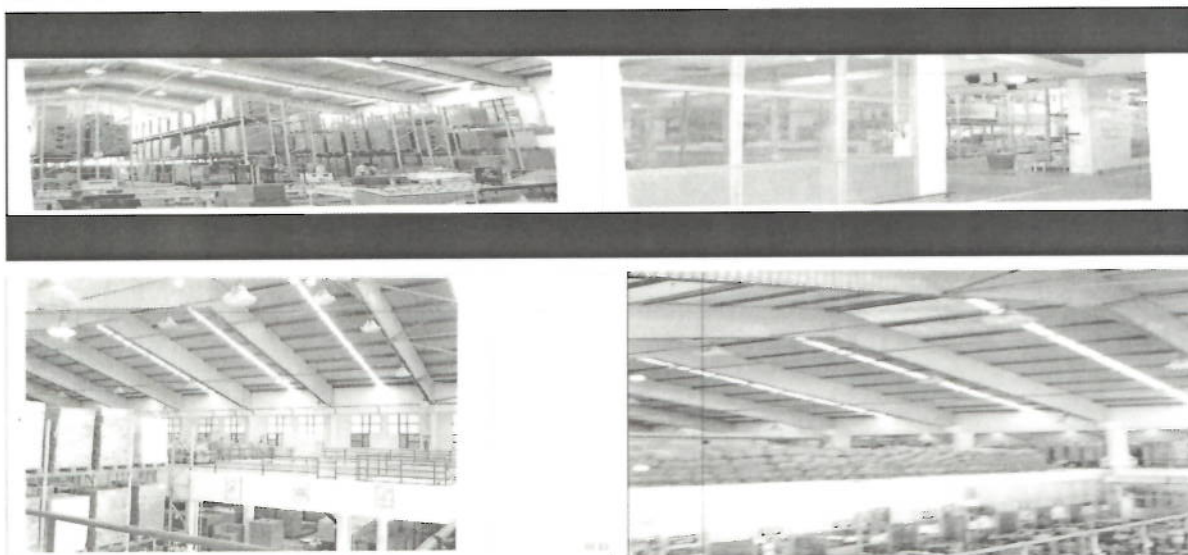
1. **Lipton Pure and Simple** 100s Tea Bags
2. Ingredient : Black Tea 100%
3. Manufacturing Process : Blending of tea and Packing
4. Shelf Life of Finished Goods : Two years
5. Package : 100 Tea bags per unit carton. 12 cartons in outer shipper (box)
6. Storage : Clean and dry area under ambient storage condition.

Manufacturing Process

Sl No.	Process step	Control & Checks
1	Sourcing and Processing of Tea (RM) at Gardens/Processing Units - Plucking tea leaves, withering, fermentation, processing, drying, grading and packing	1. Compliance to RA requirements 2. GMP compliance
2	Receipt of Raw material (Tea) and Packing materials	Vehicle inspection, incoming checks as per ;sampling plan
3	Issue of QC Cleared Material	
4	Assembly of Raw material as per Bled Order	Cross checking of assembled Tea
5	Tipping of Tea over Magnetic Grid	Inspection while tipping
6	Conveying under closed condition	
7	Vibratory sieving	Perforated Mesh : 3 mm
8	Conveying thru bucket elevator to feed hopper	
9	Transferring teas to Blend Drum & Blending	Under covered condition
10	Conveying and drawing Blended Tea into Mobile Storage Hopper	Closed Hopper. Blended tea checked for sensorial and other Lab clearance
11	Placing Mobile Hopper on machine chute having Mesh and Magnetic Grid	5000 Gauss Strength.
12	Filling tea into Tea bags on Constanta Machine	
13	Auto filling of Tea bags into Inner carton	Online Quality checks for Tea bag Quality
14	On line Lid closing of Inner carton	
15	On line Laser Coding on Inner carton	
16	On line over wrapping of Inner carton	
17	Packing into Outer Shipper	End of line Quality checks and Inspection
18	100% inspection of Each Inner Unit	Pre dispatch clearance
19	Storage of Cleared Stock	
20	Stuffing FG stock into container	Container Inspection, Sealing of container
21	Despatch	To Port for sailing



Photographs



From the perusal of above activities provided by M/s. Unilever including photographs of manufacturing process as above as well as photographs of manufactured goods being stored by them, it is crystal clear that even if we assume that in the beginning they are bringing raw tea leaves or may be semi processed tea leaves which they have not clearly specified to the godown, they are under taking further processing and manufacturing of the same as per processes given above and are finally storing manufactured tea as per details given by them self above which finally culminates into packing of Lipton Pure and Simple 100s tea bags. This activity of M/s. Unilever of processing of raw tea leaves into tea results in emergence of a new product having distinct name i.e. Tea, which has distinct name, character and use i.e. Lipton Pure and Simple 100s Tea bags. As such the impugned activity is a 'manufacture' as defined in clause (72) of section 2 of the GST Act. The final product considering various processes undertaken by M/s. Unilever cannot be considered as Agricultural Produce. Both the applicant as well as Jurisdiction Officer have cited several judgments in support of their contentions which we have already referred in their submissions portion but we find that the decision cited by the applicant are not applicable to the facts of the case and hence not discussed. However, the decision of Income Tax Appellate Tribunal, Kolkatta in the matter of Narendra Tea Co (P) Ltd Vs. Assesse dated 20/07/2017 is a direct authority on the issue. In this case on reference by Division Bench, Special Bench was constituted and following question was referred for consideration and the decision.

1. "Whether, on the facts and in the circumstances of the case, the Assessees, who are in the business of blending & processing of tea and export thereof, can be said to be "Manufacturer/Producer" of the tea for the purpose of Section 10A/10B of the I.T. Act, 1961?"

37. Accordingly, we answer the question referred in favour of the assessee by holding that the assessee who are in the business of blending and processing of tea and export thereof, in 100%

EOUs are manufacturer/ producer of the tea for the purpose of claiming exemption u/s.10B of the Act. Further, assesseees who are in the business of blending and processing of tea in respect of undertakings in free trade zones are manufacturer/producer of tea for the purpose of claiming exemption u/s. 10A of the Act. We have examined and discussed the facts in the case of Madhu Jayanti International Ltd. and found that there is blending of tea and consequently the assessee is eligible for exemption u/s. 10B of the Act as prayed for. Further the judgments cited by the jurisdictional office namely Union of India Vs. Belgachit Tea CO and Brook Bond Lipton India Ltd cited supra support the view that 'Tea' is a manufactured product and not agricultural produce.

Thus, we find that the goods being stored in the applicant's godown are not agricultural produce as per definition given in Notification No.12/2017 – Central Tax (Rate) dated 28th June, 2017 and the same is reiterated by Board Circular No. 16/16/2017-GST issued under F No. 354/173/2017-TRU dated 15.11.2017.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)


NO.GST-ARA- 30/2017-18/B- 38 Mumbai, dt. 23.05.2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1. Whether Exemption provided in serial no. 54 to Notification No. 12/2017 – Central Tax (Rate) is applicable to the activity carried by the company ?

Answer :- Answered in the negative.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI