

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX**  
**(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)**

**ORDER NO. MAH/AAAR/AM-RM/07/2022-23**

**Date-02.06.2022**

**BEFORE THE BENCH OF**

**(1) Shri Ashok Kumar Mehta, MEMBER (Central Tax)**

**(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)**

Name and Address of the Appellant:	M/s. N. B. Patil, Plot No. 271, Market Yard - 2nd Lane, Sangli, Maharashtra - 416416.
GSTIN Number:	27ABPPP6076PIZK
Clause(s) of Section 97, under which the question(s) raised:	(a) classification of any goods or services or both; (b) applicability of a notification issued under provisions of this Act; (f) whether applicant is required to be registered;
Date of Personal Hearing:	07.04.2022.
Present for the Appellant:	(i) Shri Deepak Naik, (ii) Shri S.K. Patil, (iii) Shri Sunil Javalekar
Details of appeal:	Appeal No. MAH/GST-AAAR/14/2021-22 dated 12.02.2022 against Advance Ruling No. GST-ARA-108/2019-20/B-115 dated 22.12.2021.
Jurisdictional Officer:	Assistant Commissioner of State Tax (SAN-VAT-D-004), Sangli office, Kolhapur Division.

**(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

- I. 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 provisions under the MGST Act.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [**hereinafter referred to as “CGST Act” and “MGST Act”**] by M/s. N. B. Patil, Plot No. 271, Market Yard - 2nd Lane, Sangli, Maharashtra - 416416, (**“hereinafter referred to as “Appellant”**) against the Advance Ruling No. GST-ARA-108/2019-20/B-115 dated 22.12.2021, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as **“MAAR”**).

### **BRIEF FACTS OF THE CASE**

#### **Brief details of the activity relating to questions raised by the Appellant**

- 3.1 Nitin Bapusaheb Patil, Proprietor of M/s. N. B. Patil, (hereinafter referred to as **the Appellant**) is a registered person under the CGST Act, 2017, having GSTIN 27ABPPP6076P1ZK for supplying services as a 'Commission Agent' to farmers in Agricultural Produce and Marketing Committee, Sangli, Maharashtra (APMC Sangli).
- 3.2 The Appellant, as a 'Commission Agent', renders his services to farmers in relation to supply of turmeric (whole turmeric, not in powder form) to traders in APMC, Sangli. The Appellant is also engaged in selling the turmeric on his own as the 'trader'.
- 3.3 The Appellant is registered as a 'commission agent' and also as 'trader' under the provisions of the Maharashtra Agricultural Produce and Marketing (Development and Regulation) Act, 1963 (The APMC Act), the Maharashtra Agricultural Produce and Marketing (Regulation) Rules, 1967 (The APMC Rules) and the Byelaws of the APMC Sangli.
- 3.4 Services of the Appellant as a 'commission agent' are regulated by APMC Rules and Byelaws of the APMC Sangli. Based on the tender / auction, if farmer and buyer mutually agree to sale and purchase, the Appellant, being a commission agent, facilitates activities ancillary to supply of turmeric in APMC Sangli. The Appellant gets a fixed commission @ 3% of the sale value of the turmeric as per APMC Rules and Byelaws of the APMC Sangli.
- 3.5 In a situation where the Appellant is selling the turmeric in capacity of the 'trader', there is no dispute regarding applicability of GST on turmeric.
- 3.6 However, in a situation where the Appellant is engaged in selling the turmeric on behalf of the farmers in APMC markets as the 'commission agent' there is no clarity about the GST liability of the Appellant as the supply of turmeric by farmers is not liable to GST.

**Application for Advance Ruling and the Advance Ruling Order**

- 3.7 As there was no clarity, the Appellant decided to refer the matter before Maharashtra Authority for Advance Ruling to get clarity on the application of Goods and Services Tax on the activities carried out by the Appellant regarding sale of turmeric in APMC markets on behalf of farmers as commission agent.
- 3.8 In the background referred above, the Appellant vide the Advance Ruling Application Reference No. 108 dated 17.02.2020 sought Advance Ruling in respect of the following questions:

**Question No. 1: -**

*Whether the Turmeric (Turmeric in Whole form - not in powder form) is covered under the definition of 'Agricultural Produce' and exempted from GST? If not, what is the HSN code of Turmeric and the rate of GST on the Turmeric?*

**Question No. 2: -**

*Whether services rendered by the Appellant as a Commission Agent in APMC, Sangli, are liable to GST in terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No.11/2017-C.T. (Rate) dated 28.06.2017?*

**Question No. 3: -**

*Whether the Appellant is required to be registered under the CGST Act, 2017 for his activities specified under Annexure-I? If yes, under which section of the GST Act, he is required to be registered?*

- 3.9 The MAAR Authority has issued Order No. GST-ARA-108/2019-20/B-115 dated 22.12.2021 (hereinafter referred to as the impugned order) and answered the questions as under:
- (a) *Dried and Polished Turmeric, as in the instant case, is not covered under the definition of 'Agriculture Produce' and is not exempted from GST. The HSN code of the impugned product is 0910 30 20 and the rate of GST is 5% (2.5% each of CGST and SGST).*
- (b) *The impugned services rendered by the applicant are taxable under GST and not exempt in terms of Sl. 54 Heading 9986 of Notification No. 12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017.*
- (c) *The applicant is required to be registered under the relevant provisions of the CGST Act, 2017 for his impugned activities.*
- 3.10 The Appellant, being aggrieved by the impugned MAAR Order, has filed the present appeal.

### **Regarding delay in filing this Appeal**

- 3.11 The Appellant submits that the MAAR Order has been passed on 22.12.2021. In terms of section 100 (2) of the CGST Act, the period of limitation for filing the appeal against the Advance Ruling Order before the Appellate Authority for Advance Ruling is 30 days from the date of communication of the AR Order. Thus, in consideration of above, the Appellant was supposed to file this Appeal on or before 20.01.2022.
- 3.12 Whereas the Hon'ble Supreme Court of India vide order dated 10.01.2022 in Miscellaneous Application No. 21 of 2022 / No. 665 of 2021 and in *suo motu* writ petition No. 3 of 2020, directed that the period from 15.03.2020 to 28.02.2022, is to be excluded for calculation of the limitation period on account of the pandemic situation caused by Covid-19.
- 3.13 In view of the aforementioned order of the Hon'ble Supreme Court, the Appellant submits that the limitation period will start from 28.02.2022. Hence, there is no delay in filing of this Appeal.
- 3.14 Without prejudice to above, with regards to the question of condonation of delay the Appellant submits that the proviso to sub section (2) of section 100 of the Central/ State Goods and Services Tax Act also grants power to the Appellate Authority to condone the delay in filing the appeal. Considering the Covid-19 pandemic situation the Appellant prays and requests to condone the delay in filing of this appeal as the same is being filed within the further period not exceeding 30 days.

### **GROUND OF APPEAL**

#### **Background about activities carried out by the farmer**

- 4.1 Following background activities are carried out by the farmer: -
- i Sowing of turmeric crop is done by the farmer in agricultural land. Normally, the turmeric crop is ready for harvest in seven to nine months depending on the variety and time of sowing. Usually, the land is ploughed, and the turmeric rhizomes / fingers / bulbs are gathered by hand picking or lifted with a spade.
  - ii Harvested turmeric is then washed with the help of normal water to clean the mud and other extraneous matter adhering to them. This process is done by farmers themselves on the farmland. The turmeric acquired is known as fresh turmeric. Generally, the consumption of the fresh turmeric is very minimal and marketing of the same is done by farmers themselves without bringing the same in to APMC markets. Therefore, the harvested turmeric before entering the APMC market is converted into a sustainable and non-perishable commodity

through several post-harvest operations like boiling, drying and polishing which are carried out by farmers themselves.

- iii Boiling is the first post-harvest operation to be performed at the farm level which involves cooking of fresh turmeric in water until soft before drying. The fresh turmeric is boiled in a movable boiler by farmers at their farmland. Boiling destroys the vitality of fresh turmeric, avoids the raw odour, reduces the drying time and yields uniformly coloured product.
- iv Boiled turmeric is spread in the natural sun light for drying purpose by the farmers in the farmland only.
- v As the colour of the processed turmeric influences the price of the produce, the farmers also carryout polishing of the turmeric. Dried turmeric has poor appearance and rough dull outer surface with scales and root bits. Polishing of dried turmeric also helps in removing the wrinkles and skin. The appearance is improved by smoothening and polishing the outer surface by manual or mechanical rubbing. The polishing consists of rubbing the dried turmeric fingers on a hard surface.
- vi Generally, the polishing is done by farmers themselves with moveable polish machines using a rotating drum mounted on an axel of farm tractor. When the drum filled with turmeric is rotated with the help of farm tractor, polishing is effected by abrasion of the surface against each other as they roll inside the drum.
- vii Farmers generally carry out the polishing of the turmeric to improve the appearance and thereby to increases the marketability. However, due to limitations of polishing process as explained hereinabove, the rough appearance continues to some extent and dull / pale blackish yellow colour is acquired to dried turmeric rhizomes / fingers / bulbs. This polishing process is carried out by farmers at the farm level only. Thereafter, such turmeric is packed in gunny bags and brought by farmers to the APMC markets for sale.

4.2 Whereas, the ultimate consumption of the turmeric in spices, in medicinal use or in industrial use is in the form of powder or pest and not in the whole form of turmeric as sold by farmers. Therefore, depending upon the end use and requirements of the consumers, the traders carry out further polishing and other process after purchasing the turmeric from the farmers in order to avoid black soil particles and achieve bright and vibrant yellow colour.

**Legal Provisions under the APMC Laws:**

4.3 Provision of APMC Law relevant for the current issue are furnished below:

**The Maharashtra Agricultural Produce Marketing [Development and Regulation] Act, 1963**

*Section 2 (a) "agricultural produce" means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture, fisheries and forest specified in the Schedule;*

*SCHEDULE [See section 2 (1) (a) and section 62]*

*I... .. to IX... ..*

*X. Condiments, spices and others*

*1. Turmeric*

*... ..*

*XI ... .. to XIX ... ..*

*Section 31 Power of Market Committee to levy fees and rates of commission*

*(1) ... ..*

*(2) It shall be competent to a Market Committee to fix, with the prior approval of the State Government, the rate of commission (adat) to be charged \*[by the commission agents from the buyer] in respect of an agricultural produce or class of agricultural produce marketed in the market area.*

*\*These words were substituted for the words "by the commission agents" in 2017.*

**Legal provisions under GST Law**

4.4 Provisions of GST law relevant for the current issue are furnished below.

**The Central Goods and Services Tax Act, 2017**

*Section 2. Definitions.*

*... ..*

*2(5) "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;*

2(7) "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

(c) 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;

2(105) "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;

2(107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

**Section 9. Levy and collection.** — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. ... ..

**Section 22. Persons liable for registration.** — (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees

**Section 23. Persons not liable for registration.** (1) Following persons shall not be liable to registration, namely: —

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) ... ..

*Section 24. Compulsory registration in certain cases. - Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, —*

... ..

*(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;*

... ..

4.5 The Appellant is rendering the service as a commission agent to farmers in relation to sale of turmeric in the APMC Sangli. The Appellant believes and understands that the commission agent services provided to farmers relating to sale of turmeric are covered as ‘support services to agriculture by a commission agent for sale of agricultural produce’. The said services are classifiable under SAC 9986 in terms of entry sl. No.24 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 and attracts nil rate of GST as the same are provided for sale of agricultural produce. Simultaneously, the said services are also exempted in terms of entry Sl. no. 54 of the Notification No. 12/2017 C.T. (Rate) dated 28.06.2017. As the nil rate of GST as well as the exemption is based on the ‘*agricultural produce*’, the meaning of the said term is also explained below the said notifications. Relevant entry of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 is extracted below:

<i>Sl. No.</i>	<i>Chapter, Section, Heading, Group or Service Code(Tariff)</i>	<i>Description of Service</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
54	Heading 9986	<i>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</i>  <i>(a) ... .. to (e) ... ..</i>	Nil	Nil



		<p><i>(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</i></p> <p>.....</p>		
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*Definitions. - For the purposes of this notification, unless the context otherwise requires,*

*(d) "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;*

4.6 On perusal of above provisions, it appears that the meaning of the term "agricultural produce" has been defined under these notifications, and is independent of HSN codes attached to agricultural produce /commodity. Therefore, the same will be applicable for supply of services (in the present case, supply of 'commission agent services').

4.7 In the light of the aforesaid definition, an "agricultural produce" will have following criteria:

- (i) Any produce out of cultivation of plants and rearing of all life forms of animals.
- (ii) Such produce does not require any further processing to make it marketable and where any processing is done, the same is usually carried out by the cultivator or producer.
- (iii) Such processing does not alter the essential characteristics of such produce.
- (iv) Such processing is carried out to make the produce marketable for primary market.

In the present case, the turmeric supplied by farmers in the APMC Sangli qualifies as the 'agricultural produce' on the above criteria as submitted below.

**The turmeric is the produce out of cultivation of plants:**

4.8 Sowing of turmeric crop and its harvesting of fresh turmeric is done by farmers in agricultural land. Hence, the turmeric is a produce out of cultivation of plants. This fact is not in dispute.

**The processing of fresh turmeric is usually carried out by cultivators / farmers:**

- 4.9 Normally, the turmeric is not marketed in fresh form by farmers. The harvested turmeric before entering into the market, is converted into a stable commodity through a number of post-harvest processing operations like boiling, drying and polishing carried out by farmers themselves.
- 4.10 The Appellant has submitted relevant facts before MAAR. However, while passing the AR Order, in para 5.4 it is mentioned that the Appellant has not produced any evidence to show that the farmer has carried out such processes on his own in his land. And further mentioned that these processes add to the marketability and value of turmeric and make them suitable for sale directly to the consumer. This is mere conjuncture and surmise of the MAAR without a sound basis.
- 4.11 The Appellant hereby submits the proofs that these processes are carried out by farmers only.
- (i) Affidavit dated 18.01.2022 executed by one of the local farmers stating that various processes such as boiling, drying and polishing of fresh harvested turmeric are carried out by farmers in their farms to make the turmeric marketable.
- (ii) Letter dated 05.01.2022 issued by the Halad Saunshodhan Yojana, Krishi Saunshodhan Kendra Digraj, Sangli working under the Mahatma Phule Krishi Vidyapeet, Rahuri stating that various processes such as boiling, drying and polishing of fresh harvested turmeric are carried out by farmers on their farms to make the turmeric marketable.
- (iii) Letter dated 01.02.2022 issued by APMC Vasmat, Hingoli stating that various processes such as boiling, drying and polishing of fresh harvested turmeric are carried out by farmers before bringing to APMC markets to get best prices. (Exhibit - I)
- 4.12 It is also important that the definition of 'agricultural produce' also mentions that such processing is done as is 'usually' done by a cultivator or producer. The term "usually" denotes 'ordinary' or 'normal' practice followed by farmers.
- 4.13 As a normal and ordinary practice, farmers never sale the turmeric in fresh form to traders in APMC markets. In order to make the produce sustainable and to improve its appearance to get good prices, farmers carry out various processes such as boiling, drying and polishing on fresh harvested turmeric to make it marketable. Therefore, it is usual practice followed by farmers across India to sell turmeric in processed form and not in fresh form.
- 4.14 Sangli is one of the biggest markets for turmeric in Maharashtra. Apart from the market in Sangli, various other markets in Nanded, Vasmat in Hingoli, and Wai in Satara are also big markets for turmeric in Maharashtra, where the similar practice is followed by farmers while bringing the turmeric for sale in APMC markets.

4.15 The MAAR Order also mentions in para 5.4 that the said processed turmeric is suitable for sale directly to the consumer. This conclusion in the AR Order is irrelevant, baseless and not supported by facts. Firstly, the condition for a produce to qualify as 'agricultural produces' is not based on whether the same is directly usable as processed by farmers or otherwise. Secondly, it is reiterated that the use of turmeric by consumers as processed by farmers will lead to inclusion of black soil particles and acquiring pale and dull blackish yellow colour. Therefore, depending upon the end use and requirements of consumers, the traders carry out further polishing and other process after purchasing the turmeric from the farmers. Hence, the argument in the AR Order that the said processed turmeric is suitable for sale directly to the consumer irrelevant and incorrect.

4.16 In view of above submissions, it is clearly evident that there is a common and usual practice of boiling, drying and polishing of the fresh harvested turmeric carried out by farmers which makes the turmeric marketable.

**The processing carried out by farmers does not alter the essential characteristics of the turmeric**

4.17 Various processes such as boiling, drying and polishing of fresh harvested turmeric are carried out by farmers on their own. During this process the fresh turmeric is converted into dried turmeric.

4.18 Firstly, as mentioned herein above, the trade in fresh turmeric is very minimal and generally done by farmers in small quantities. Whereas these process reduces the moisture and soil contents coated on turmeric and improves sustainability and appearance of the turmeric. However, the essential characteristic of the turmeric continues in dried turmeric.

4.19 In this connection, the Appellant produces copies of the test reports of 'fresh turmeric' and 'dried turmeric' as Exhibit. It will be observed that essential characteristics of turmeric in fresh form and dried processed form are same. Only difference is in increase of components due to reduction in moisture. Therefore, the processing of fresh turmeric into dry turmeric by farmers does not alter the essential characteristics of the turmeric.

**Such processing is carried out to make the produce marketable for primary market:**

4.20 It is reiterated that normally the turmeric in fresh harvested form is not sold by the farmers. Therefore, various processes are carried out by farmers to make the turmeric sustainable, and to improve its appearance, to make it marketable.

4.21 Normally, farmers do not sell the turmeric directly to traders in wholesale markets located in cities. Farmers mostly sell the turmeric to traders through commission agents in nearby APMC Markets.

4.22 In view of above, it is clear that the sale of such turmeric as processed by farmers through commission agents in APMC markets is covered as services provided by a commission agent for

sale or purchase of 'agricultural produce' as prescribed under the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 and the Notification No. 12/2017 C.T. (Rate) dated 28.06.2017.

- 4.23 The Appellant also relying upon the following Advance Rulings wherein it is held that the processed turmeric sold by farmers is covered as agricultural produce and services provided by commission agent, are exempted from GST. As the same ratio is applicable in the present context.
- (i) *LAWRENCE AGRO STORAGE PVT. LTD. 2021 (48) G.S.T.L 47 (A.A.R. - GST- Haryana)*

... ..

20. *The term primary market for agricultural produce can be understood to mean the agricultural produce markets where the cultivator or the producer can make first sale of their produce. The agricultural produce on which certain process has been rendered which alters its essential characteristics are generally sold in the secondary markets like stores, kiriyana shops, etc., Turmeric, red chili in whole are generally marketed in the primary markets and once converted in powdered form these are sellable in the secondary market.*

... ..

24. *In the backdrop of above discussions and findings the advance ruling on the questions is pronounced as under :-*

*(D) Whether turmeric whole (gatha & fali), turmeric powder, red chili (whole), red chili powder, chili seeds are covered under the definition of 'Agriculture Produce ' as defined under Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017.*

*(ii) ERODE MANJAL VANIGARKAL MATRUM KIDANGU URIMAIYALARGAL SANGAM 2018 (17) G.S.T.L. 151 (A.A.R - GST)*

... ..

**RULING**

8. *The service by the commission agents as per the submissions of the applicant to the agriculturists of turmeric is service under the Heading 9986 and is taxed to 'NIL' rate of CGST as per Sl. No. 24(i)(i)(g) of the Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 as amended and 'NIL' rate of SGST as per Sl. No. 24(i)(i)(g) of G.O.(Ms) No. 72, dated 29.06.2017 No. II(2)/CTR/532(d-14)/2017 as amended.*

- 4.24 The MAAR Authority in the AR Order dated 22.12.2021 also relied upon the CBIC Circular No. 16/16/2017-GST, dated 15.11.2017. The said clarification deals with certain issues and the relevant para are extracted below.

S. No. 1

Comments 7.

*In view of the above, 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 split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017C.T. (Rate) and 12/2017-C.T.*

4.25 The Appellant submits that the reliance placed by the MAAR on the said circular is unwarranted and misplaced on account of following reasons:

- Firstly, there is no specific and direct reference of the turmeric in the clarification.
- Secondly, the term 'processed spices' does not consider difference between processes carried out by farmers and those carried out by others such as traders/industries.
- Thirdly, the question for clarification was warehousing services and not commission agent services.
- Lastly, as the issue was relating to warehousing all items under clarification appears to have been processed subsequently post sale by farmers or commission agents. i.e., appears to have been found processed by industrialists and not by agriculturist.

**Applicants understanding that the same is not required to be registered under the CGST Act, 2017 for activities carried out as commission agent relating to sale of turmeric**

4.26 The Appellant has asked the third question as below.

*Whether the Appellant is required to be registered under the CGST Act, 2017 for his activities specified under Annexure-I? If yes, under which section of the GST Act, he is required to be registered?*

There are two aspects of this question as below.

- i GST liability of the Appellant for supply of commission agent services to farmers relating to sale of turmeric (i.e., GST on supply of services).
- ii GST liability of the Applicant for sale of turmeric on behalf of farmers (i.e., GST on supply of goods on behalf of principal).

4.27 While giving the answer, the MAAR has replied as under: -

*The applicant is required to be registered under the relevant provisions of the CGST Act, 2017 for his impugned activities.*

The Appellant submits that the reply to this query by the MAAR is very cryptic, non-speaking and ambiguous. While giving the answer to the third question, the MAAR in the part 'Observations

and Findings' of the AR Order dated 22.12.2021 at para 5.11, simply jumped to conclusion that as the services supplied are not exempt, the Appellant has to get registered under the provisions of GST Law. Therefore, the MAAR not only failed to understand the facts of the case, but also failed to furnish any logical, legal and well-reasoned reply.

- 4.28 The intention of the Appellant while asking this question was twofold as mentioned above and the same was very well clear from the application itself. The same was further clear based on additional submissions made by the Appellant. The MAAR have also taken note of the same at para 2.10 in the part '*Facts and Contentions - As per the Applicant*' of the AR Order. Whereas, in para 5.11, the MAAR have merely concluded that since the services supplied are not exempt the Appellant has to get registered under the provisions of GST Law.
- 4.29 Therefore, the answer has been given considering only one aspect relating to GST liability of the Applicant for supply of commission agent services (i.e., GST on supply of services). Whereas, the MAAR has ignored the second aspect about the GST liability of the Applicant for sale of turmeric on behalf of farmers (i.e., GST on supply of goods).
- 4.30 The Appellant has already submitted grounds in detail on the first aspect that how services as a commission agent (i.e., supply of services) relating to sale and purchase of turmeric are covered as services relating to 'agricultural produce' and thereby exempt from the GST. Hence the same are not discussed again.
- 4.31 As there is no clarity and the answer is ambiguous (in fact the answer itself is not given) on the second aspect of GST liability of the Appellant for supply of turmeric (i.e., supply of goods) on behalf of farmers, the very purpose of the Advance Ruling itself has been defeated.
- 4.32 Therefore, the Appellant hereby reiterates and resubmits the understanding how the Appellant is not required to get registered under the CGST Act with respect to supply of turmeric (i.e., the aspect of supply of goods) as detailed below.
- 4.33 The charge of GST has been created in terms of section 9 of the CGST Act and the same shall be paid by the 'taxable person'. Whereas, in terms of section 2 (107) of the CGST Act, a "taxable person" means a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act.
- 4.34 Every supplier shall be liable to get registered under the CGST Act in terms of section 22 of the CGST Act subject to threshold exemption. Whereas the commission agent is covered as an 'agent' in terms of section 2(5) of the CGST Act. Further, in terms of section 2(105) of the CGST Act, the 'supplier' shall include an agent acting on behalf of supplier.
- 4.35 In the present case, the Appellant is supplying the turmeric on behalf of farmers in APMC markets. Thereby, one cannot jump to the conclusion that the Appellant is covered as 'supplier' being agent

of farmers and thereby liable to get registered under section 22(1) of the CGST Act. In this connection, mere provisions of section 22 of the CGST Act cannot be considered in isolation but provisions of section 23 and 24 of the CGST Act must also be referred to understand whether an agent of an agriculturist is liable to be registered under the CGST Act, or otherwise.

4.36 In terms of section 23(1)(b) of the CGST Act, an agriculturist is exempted and not liable to get registered under the CGST Act to the extent of supply of produce out of cultivation of land. Whereas provisions relating to compulsory registration in certain cases including agent has been specifically prescribed under section 24 of the CGST Act. Therefore, an agriculturist is neither required to get registered under section 22 of the CGST Act nor under Section 24 of the CGST Act. Thereby, an agriculturist is not covered as taxable person in terms of section 2(107) of the CGST Act.

4.37 During the entire process of sale of turmeric in APMC markets through commission agents, the ownership is retained by farmers. Therefore, in situation, where traders are selling the turmeric on their own, there is no dispute about GST Registration and payment of GST. However, where farmers are selling the turmeric through commission agents by retaining the ownership, the same tax treatment should be applicable as is applicable to farmers.

4.38 Therefore, once it is clear that the farmer as an agriculturist is exempted from GST registration and also from payment of tax on supply of turmeric, it is corollary that his agent including commission agent is also not liable to get registered and not liable to pay GST.

4.39 As provisions relating to registration of an agent are specifically covered under section 24 of the CGST Act, the same would be relevant in the present context as extracted below.

*Section 24. Compulsory registration in certain cases. —*

*Notwithstanding anything contained in sub-section (1) of section 22 the following categories of persons shall be required to be registered under this Act, —*

... ..

*(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;*

... ..

*(Emphasis supplied)*

4.40 As the section 24 of the CGST Act contains non-obstante clause (i.e., Notwithstanding anything contained in sub-section (1) of section 22), these provisions are having overriding effect over provisions of section 22(1) of the CGST Act. Therefore, the requirement of GST registration by such specified persons including agent will be governed under provisions of section 24 of the CGST Act and not under section 22(1) of the CGST Act.

- 4.41 As the GST registration for agent has been specifically covered under section 24(vii) of the CGST Act, saying it already covered under section 22(1) of the CGST Act would make the provisions of section 24(vii) of the CGST Act as redundant. Hence, one must interpret harmoniously to give effect to all provisions of the CGST Act. Therefore, in the present case, provisions of section 22, 23 and 24 of the CGST Act have to be read together and then the GST liability of an agent of agriculturist needs to be decided.
- 4.42 In view of this, provision of section 24 of the CGST Act needs to be understood in proper perspective. Accordingly, in terms of clause (vii) of section 24 of the CGST Act, a person making taxable supply of goods or services on behalf of other taxable persons as an agent or otherwise is liable for mandatory registration. Therefore, the requirement of compulsory registration for commission agent, under the said clause shall arise only when both the following conditions are satisfied:
- i. the principal should be a taxable person; and
  - ii. the supplies made by the commission agent should be taxable
- 4.43 Whereas the turmeric is the produce out of cultivation of land and farmers producing the same are covered as an agriculturist within the meaning of section 2(7) of the CGST Act. As the farmers are not required to get registered in terms of section 23(1)(b) of the CGST Act, the same are not covered as taxable person. Hence, another condition under clause (vii) of section 24 of the CGST Act is not satisfied and therefore the commission agent is not liable to get registered under the said provisions.
- 4.44 In addition to above, the GST, on specified agricultural produces (i.e., cashew nuts, tendu leaves, tobacco leaves and raw cotton) supplied by an agriculturist, is liable to be paid under reverse charge mechanism (RCM) by the recipient who is registered under the GST Law in terms of section 9(3) of the CGST Act read with the Notification No. 4/2017-Central Tax (Rate), dated 28.06.2017. It is worthwhile to note that the turmeric is not covered under the RCM. Hence, the commission agent is also not liable to discharge the GST under RCM.
- 4.45 The above view also found support by the clarification issued by the Central Board of Indirect Taxes and Customs (the CBIC) vide circular no C.B.I. & C. Circular No. 57/31/2018-GST, dated 04.09.2018 as below.

9. ... ..

*In respect of commission agents in Scenario 4, notification No. 12/2017 Central Tax (Rate), dated 28.06.2017 has exempted "services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce " from GST. Thus, the 'services ' provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission*



agents (even when they qualify as agent under Schedule-I) are not liable to be registered according to sub-clause (a) of sub-section (1) of section 23 of the CGST Act, if the supply of the agricultural produce, and/or other goods or services supplied by them are not liable to tax or wholly exempt under GST \*[Further, according to clause (vii) of section 24 of the CGST Act, a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other taxable persons. Accordingly, the requirement of compulsory registration for commission agent, under the said clause shall arise when both the following conditions are satisfied, namely:

-

- a) the principal should be a taxable person; and
- b) the supplies made by the commission agent should be taxable.

Generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist. Further, as per provisions of clause (b) of subsection (1) of section 23 of the CGST Act an agriculturist who supplies produce out of cultivation of land is not liable for registration and therefore does not fall within the ambit of the term 'taxable person'. Thus a commission agent who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under clause (vii) of section 24 of the CGST Act. However, where a commission agent is liable to pay tax under reverse charge, such an agent will be required to get registered compulsorily under section 24(iii) of the CGST Act.]

\* Amended and corrected vide C.B.I.C. Corrigendum F. No. CBEC/20/16/04/2018-GST, dated 05.11.2018

- 4.46 As the CBIC has issued the clarification in terms of powers conferred under section 168(1) of the CGST Act, the same is having legal force. Further, it is specifically clarified that the commission agent of agriculturist is not liable to get registered under GST law except in case of RCM liability. Hence, the intention of law makers on this issue has been also made clear.
- 4.47 The Appellant also wishes to rely on the CPGRAM reply dated 14.01.2020 issued by CGST Commissioner, Guntur, on the same issue. The answer has been given that the commission agents in AMPC are exempted from GST registration. Wherein the CBIC clarification referred above has been found relied upon. This also shows the practice followed in State of Andhra Pradesh which is one of the largest turmeric producing State in India.
- 4.48 As the Appellant is neither required to get registered under the GST law for supply of goods nor for supply of services, the answer given by the MAAR for the third question needs to be set aside. Therefore, the Appellant submits that the same is not required to get registered in terms of section 24(vii) of the CGST Act.

**RESPONDENT'S SUBMISSION DT. 14.03.2022**

- 5.1 That the farmer after harvesting of turmeric, do some post harvesting practices on fresh Turmeric to make it marketable;
- 5.2 That the post harvesting practices carried out by the farmers on turmeric to make it marketable are boiling, drying and polishing;
- 5.3 That the Commission Agent in APMC market, sells goods on behalf of principals (Agriculturists) to the traders, issues invoices to the traders/buyers. Commission Agent collects the commission, on the services provided to the principals & same is also reflected in the invoices issued by the commission agent.
- 5.4 That the supply of goods by the commission agent on behalf of the farmer (principal) to the trader / purchasers is a taxable supply in terms of definition as at section 2(108) of MGST Act, 2017. The goods i.e., Turmeric is classified under tariff heading 0910 and are taxable at 5%. The Commission agent has the authority to pass the title of goods on behalf of the principals to the buyer & also raises the invoice in their own name. (Invoices provided by the applicant shows the same.)
- 5.5 That the Appellant is liable to get registered u/s a 22 (1) of MGST Act, 2017. As the Appellant is also actively involved in the sale of Turmeric to the traders on behalf of the farmers, the Appellant raises an invoice to the traders in their own name. This activity constitutes supply of goods, i.e., Turmeric, classified under tariff heading 0910 that are taxable to 5% of GST.
- 5.6 In view of the above, the Appellant, in the instance case, qualifies to be Agent under schedule I to the MGST Act 2017 and liable to be registered in terms of sub-section (1) of section 22 of MGST Act with regard to supply of goods to the buyer on behalf of the principals. The same issue has been discussed by the Hon., Advance ruling Authority, Karnataka state in case of Morigeri traders. Advance Ruling No. KAR ADRG 23/2019 DATED 12.09.2019.

**ADDITIONAL SUBMISSION DT. 05.04.2022 BY THE APPELLANT**

- 6.1 That the Respondent, vide their submission dt. 14.03.2022, have accepted that the farmers are carrying out post-harvest activities such as curing, boiling, drying and polishing before selling the turmeric in APMC market or to traders. This fact itself makes clear that the observations and findings of MAAR at para. 5.4 of MAAR Order dt. 22.12.2021 are incorrect. In view of this, it is established that the farmers are carrying out post-harvest operations on turmeric on his own in his land to make it marketable.

6.2

The Respondent has also relied upon the Advance Ruling No. KAR ADRG 23/2019 dated 12.09.2019 issued by the Advance Ruling Authority, Karnataka State in case of Morigeri Traders. The Appellant submits that the reliance placed by the Respondent on the said Advance Ruling order dated 12.09.2019, is unwarranted and misplaced on account of following reasons,

- (I) Firstly, the Advance Ruling is about the dry chillies and there is no specific and direct reference of the turmeric.
- (II) Secondly, where the ratio has to be taken treating dry chillies and turmeric at par, then in fact the said AR Order supports the stand taken by the Appellant that the turmeric is covered as 'agricultural produce' and the GST is not applicable on the commission charged by the Appellant (as a commission agent) to farmers in terms of entry sl. no. 24 (i) (g) of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 entry sl. no. 54 (g) of the Notification No. 12/2017 C.T. (Rate) dated 28.06.2017.
- (III) Thirdly, the said AR Order at para 6.8 mentions that the provisions of section 24(vii) of the CGST Act are applicable only if both, agent as well as principal are taxable. As the principal i.e., farmer is not a taxable person, it has been concluded in the said AR Order that the provisions relating to compulsory registration under section 24(vii) of the CGST Act are not applicable. And thereby further jumped and concluded that the agent is liable to get registered under section 22(1) of the CGST Act. The Appellant submits that this conclusion is mechanical and without support of legal portions. As the section 24 of the CGST Act contains non-obstante clause (i.e., Notwithstanding anything contained in sub-section (1) of section 22), these provisions are having overriding effect on provisions of section 22(1) of the CGST Act. Therefore, the requirement of GST registration by such specified persons including agent will be governed under provisions of section 24 of the CGST Act and not under section 22(1) of the CGST Act. If the intention of lawmakers is that the agent is always liable to tax and get registered under section 22(1) of the CGST Act even if the principal is not covered as taxable person, then the provisions of section 24 (vii) of the CGST Act would become redundant. Where in all case the agent is considered as a taxable person (even including a situation where the principal is not liable to tax) and liable for registration under section 22(1) of the CGST Act, then making the agent again liable for compulsory registration under section 24(vii) of the CGST Act is unwarranted. The Appellant submits that all provisions of the law have to be read and understood in harmonies way so that the specific provisions does not become redundant and the intention of law makers behind the same is honored. Whereas the Central and State Government GST Departments have specifically clarified that the agent is also not

liable to get registered, where the principal is not liable to get registered. As the said AR Order has failed to understand, explain and refer the legal provisions and the clarifications as mentioned hereinabove, the conclusion is also not justifiable, not applicable and cannot be relied upon. In this connection, the Appellant has already made detailed submissions in Ground No. 11 of the appeal.

**PERSONAL HEARING DT. 07.04.2022**

- 7.1 The personal hearing in the matter was conducted on 07.04.2022 in virtual mode via Video Conferencing, which was attended by Shri Deepak Naik, Shri S.K. Patil, and Shri Sunil Javalekar on behalf of the Appellant, wherein the Appellant reiterated their earlier submissions made while filing the Appeal under consideration.
- 7.2 Shri Naik, in the aforesaid hearing, contended that the Appellant, besides being a trader of the impugned product, i.e., dry turmeric (whole), where he is discharging his due GST liability as per the applicable GST rate on the impugned product, is also acting as a Commission Agent to the farmers and sells the impugned product, i.e., dry whole turmeric, to the buyers, on behalf of his principals, i.e., the farmers. He also supplies the commission agent services to his principals, i.e., the farmers, during the sale of the impugned product as per the regulations/bye-laws of the APMC Sangli, formulated under the Maharashtra APMC (Development and Regulation) Act, 1963 and Maharashtra APMC (Regulation) Rules, 1967. The Appellant's counsel further contended that though the Appellant was discharging his GST liability arising out of the trading of the impugned product undertaken by him on his own account, he was not liable to GST on the sale of the impugned product undertaken by him as a commission agent of the farmers in terms of the provisions of Section 24(vii) read with Section 23(1)(b) of the CGST Act, 2017. He further contended that the Appellant was also not liable to GST for providing the commission agent services to the farmers, as mandated under the local APMC bye-laws, during the sale of the impugned product in the APMC market as the impugned product, i.e., dry turmeric (whole), would fall under the definition of "Agricultural Produce" as provided under 2(d) of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, and thereby, the commission agent services provided by the Appellant should be exempted from levy of GST as per the entry at Sl. No. 24(i)(g) and Sl. No. 54(g) of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017 and Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, respectively. In view of the foregoing, the Appellant's counsel further contended that the Appellant was not required to take GST registration. Shri Naik further placing reliance on the Respondent's submissions contended that even the State GST Department has categorically mentioned the fact that the processes of boiling, drying, and

polishing, on the raw turmeric, are being performed by the farmers themselves on their land to make it marketable for the primary market, thereby, satisfying the essential conditions laid under the definition of "Agricultural produce". As regards the jurisdictional officer's reliance placed on the Advance Ruling No. KAR/ADRG 23/2019, dated 12.09.2019 issued by the Karnataka Advance Ruling Authority in the case of Morigeri Traders, it was argued that the said Advance Ruling referred by the jurisdictional officer is misplaced, and is not applicable in the facts and circumstances of the present case as the impugned product in the cited case is dry chilly, and not dry turmeric, which is the impugned product in the case under consideration.

- 7.3 Shri Naik also sought to file additional submissions with respect to a query raised by the Bench as to how the question of the taxability attributable to the trading of the impugned product undertaken by the Appellant as a commission agent to the farmers would get covered under the set of questions asked by the Appellant before the Authority for Advance Ruling at the time of filing Advance Ruling Application.

**ADDITIONAL SUBMISSION DT. 08.04.2022 BY THE APPELLANT POST P.H.**

- 8.1 The Appellant holds 2 separate licenses (1.) as a Trader & (2.) as a Commission Agent (Artiya/Adatya) issued by the APMC Authority concerned. As a Trader, Appellant has no dispute regarding registration and paying GST on the sale of Turmeric. However, Appellant had doubts and no clarity about applicability of GST on the activities undertaken by him as a licensed Commission Agent (Artiya/Adatya). Hence, an application was submitted before the MAAR seeking answers relating to activities undertaken by the Appellant as 'Commission Agent (Artiya/Adatya)'.
- 8.2 As mandated by the APMC Rules, Regulations and by-laws, the Appellant is facilitating the sale/marketing of 'agricultural produce' brought by the agriculturists in the designated market area of APMC. The Turmeric grown, harvested, processed, dried and as polished by agriculturists is one such agricultural produce.
- 8.3 The original application before MAAR Authority was filed for the activities undertaken by the Appellant as specified in Annexure-I viz: as a Commission Agent. Therefore, the present appeal preferred is restricted on the taxability of activities undertaken as "Commission Agent (Artiya/Adatya)" by the Appellant. Accordingly, following submissions are made with reference to the role of Appellant as 'Commission Agent' only.
- 8.4 The Appellant is one of the market functionaries as defined and duly licensed by Sangli Agricultural Produce Market Committee under provisions of the Maharashtra APM (Regulations)

Rules 1967 and his activities are regulated by these Rules, especially Rule 6, 12, 16, 17, 19, 20 & 31A. In addition, Market Committee has also prescribed by-Laws for Format/Register to be used / maintained by such license holders.

- 8.5 The Appellant's activities are exclusively related to the declared 'agricultural produce' which is brought for sale by the agriculturists / farmers in the primary market viz: APMC market areas. The 'turmeric' is one of such declared agricultural produce and is brought for marketing/sale by the agriculturist /farmer, duly processed and polished as is the general practice in vogue since long. Sangli is one of the largest and oldest turmeric market in India.

### DISCUSSIONS AND FINDINGS

- 9.1 At the outset we would like to examine the **first issue** as to “*whether the Turmeric (Turmeric in Whole form - not in powder form) is covered under the term 'Agricultural Produce'.*” The term 'Agricultural Produce' has been defined in GST law under 2(d) of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, which reads as under:  
*(c) “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;*
- 9.2 On perusal of the aforesaid definition of the term “agricultural produce”, it is observed that “agricultural produce” definition contains the expansion term “any” before the term “produce”, which clearly imparts a very wide connotation to the term “agricultural produce” under the GST law. The only constraint for any produce, to qualify for the “agricultural produce”, is that, 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.
- 9.3 In the instant case, the impugned product is Turmeric (whole), which is supplied by the farmers in the APMC by availing the services of the Appellant, who acts as an authorised commission agent in the sale/purchase of the impugned commodity in the APMC, Sangli. It has been submitted by the Appellant that before the impugned product is brought to the market by the farmers for sale, certain post-harvest processes, like, boiling, drying and polishing which are carried out by farmers themselves on the fresh turmeric harvested from the farm land. The said processes are carried out by the farmers themselves on their farm land only in order to make the product more sustainable, non-perishable, and marketable.

9.4

On perusal of the above, it is seen that the turmeric is harvested from the farm land in the form of raw turmeric. It is to be noted that the fresh turmeric contains moisture, and is blackish in colour, which renders the fresh or raw turmeric perishable and unsustainable. Therefore, to make it more sustainable and marketable, the raw turmeric is subjected to post-harvesting operation, like, boiling, drying and polishing, which are carried out by the farmers themselves on their farm land. Thus, it is clear that the impugned product, i.e., dried turmeric (whole) is a produce out of cultivation of plant, which is subjected to certain post-harvesting processes. Now, the next thing which is to be ascertained is as to whether these post-harvesting processes on the raw turmeric are usually carried out by the cultivator or producer. In this regard, the Appellant has submitted that the said post-harvesting processes, such as, boiling, drying, and polishing, are carried out by the farmers or producers themselves on their farm land. In order to support their contention, they have furnished an affidavit filed by one of the local farmers stating that various processes, such as, boiling, drying and polishing of fresh harvested turmeric are carried out by farmers in their farms to make the turmeric marketable. They have also furnished a letter dated 05.01.2022 issued by the Halad Saunshodhan Yojna, Krishi Saunshodhan Kendra Digraj, Sangli working under the mahatma Phule Krishi Vidyapeeth, Rahuri, stating that various processes, such as, boiling, drying and polishing of fresh harvested turmeric are carried out by farmers in their farms to make the turmeric marketable. Further, they have also furnished a letter dated 01.02.2022 issued by APMC Vasmat, Higoli, stating that various processes, such as, boiling, drying and polishing of fresh harvested turmeric are carried out by farmers in their farms to make the turmeric marketable. Thus, on perusal of the above affidavit and the declaration made by the said organisation to the effect that various processes, such as, boiling, drying and polishing of fresh harvested turmeric are carried out by farmers in their farms to make the turmeric marketable, it is established beyond any doubt that the post-harvesting processes are carried out by the farmers or producers themselves on their farm.

9.5

Now, next thing, which is to be ascertained is, as to whether the said post-harvesting processes carried out by the farmers alter the essential characteristics of the turmeric or not. In this regard, the Appellant has submitted that the said post-harvesting processes carried out on the raw turmeric do not alter the essential characteristics of the turmeric. In order to support their contention, they have furnished a Laboratory Test Reports in respect of the tests performed on the samples of raw turmeric and dry turmeric. On perusal of the said Test Reports, it is observed that there is no difference between the essential characteristics of the raw turmeric and the dried turmeric as oil content and the curcuminoid content are invariably present in both the samples, though in different concentration. The said difference in the concentration of both the components in both the samples,

i.e., raw turmeric and dried turmeric, is attributable to the drying of the fresh/raw turmeric having greater content of moisture, which eventually gets removed upon drying during post-harvesting operation to render higher concentration of the aforesaid components in the dried turmeric.

- 9.6 Now, the last thing, which is to be examined is whether the said post-harvesting processes on the raw turmeric are carried out to make it marketable for primary market. In this regard, the Appellant have submitted that normally, the turmeric in the raw/fresh form is not sold by the farmers in the market, therefore, various post-harvesting processes are carried out by the farmers to make the turmeric sustainable in terms of its appearance and quality, suitable for bringing into a market. Now, the next thing, which is to be examined is whether the APMC markets where the impugned product is sold by the farmers to the traders by availing the services of commission agent will be treated as primary market or otherwise. Since, the term primary market is not defined under GST law, we would like to refer to the letter dated 01.02.2022, issued by APMC, Basmathnagar, Distt.-Hingoli (Maharashtra), wherein it has inter-alia been declared that "The APMC market across the state of Maharashtra act as primary or wholesale market for sale of agricultural produce by the farmers where the Traders/wholesalers make the purchase of such agricultural produce, by following laid down procedure. Thus, attributable to the said APMC letter, it can be aptly concluded that the APMC market, where the impugned product is sold by the farmers, is nothing but primary market.
- 9.7 Thus, the impugned product has squarely satisfied all the conditions required to qualify for the "agricultural produce".
- 9.8 Now, we move to decide the HSN code and rate of GST on the impugned product. For this, we would like to refer to the first schedule of the Customs Tariff Act, 1975 as mandated under the GST rate Notification 1/2017-C.T. (Rate) dated 28.06.2017. On perusal of the relevant Chapter and Heading, it is observed that the impugned product, i.e., dried turmeric(whole) will get classified under the Heading 0910 30 20 bearing description as "Dried Turmeric (Curcuma)", attracting the GST at the rate of 5% (i.e., CGST @ 2.5% +SGST @ 2.5%).
- 10.1 Now, we proceed to decide the **second issue** as to whether the services rendered by the Appellant as a Commission Agent in APMC, Sangli, are liable to GST in terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No.11/2017-C.T. (Rate) dated 28.06.2017. For this, we would first like to refer to the relevant entry of the Notification No. 12/2017 CT(R) dated 28.06.2017 as well as that of the Notification No.11/2017-C.T. (Rate) dated 28.06.2017. The relevant entry of the exemption notification no. 12/2017-C.T. (Rate) dated 28.06.2017 is being reproduced hereinafter for ease of reference:



Sl. No.	Chapter, Section, Heading, Group or Service Code(Tariff)	Description of Service	Rate (per cent.)	Condition
54	Heading 9986	<p><i>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 -</i></p> <p><i>(a) ... .. to (e) ... ..</i></p> <p><i>(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</i></p> <p><i>.....</i></p>	Nil	Nil

**Definitions.** - For the purposes of this notification, unless the context otherwise requires, -

(c) "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;

10.2. On perusal of the aforesaid entry at Sl. No. 54 of the exemption notification, and applying its ratio decidendi in the facts of the present case, it is observed that the services provided by the Appellant in the capacity of the commission agent for sale or purchase of impugned product, i.e., dried turmeric(whole), which has been held as an agricultural produce hereinabove, will not be subject to levy of GST.

11.1 Now, we proceed to discuss the **third and final issue** as to Whether the Appellant is required to be registered under the CGST Act, 2017 for his activities specified under Annexure-I? If yes, under which section of the GST Act, he is required to be registered? In this regard the Appellant have submitted that they undertake the supply of dried turmeric(whole) in the capacity of agent on

behalf of the farmers. They have further contended that since they are undertaking the said supply of the impugned product as an agent of the farmer, who is not regarded as taxable person in terms of Section 2(107) of the CGST Act, 2017 read with Section 23(1)(b) *ibid.*, they are also not required to take registration as envisaged under Section 24(vii) of the CGST Act, 2017. The Appellant have also relied upon the CBIC Circular No. 57/31/2018-GST, dated 04.09.2018 to substantiate their contention that they are not liable for compulsory registration under clause (vii) of section 24 of the CGST Act, 2017.

11.2 In this regard, we would like to examine the relevant CBIC Circular No. 57/31/2018-GST, dated 04.09.2018 and the corresponding corrigendum to this Circular issued vide F.No. CBEC/20/16/04-GST dated 05.11.2018. The relevant extract of the aforesaid corrigendum is being reproduced hereinunder for the sake of reference:

*“Further, according to clause (vii) of section 24 of the CGST Act, a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other taxable persons. Accordingly, the requirement of compulsory registration for commission agent, under the said clause, shall arise when both the following conditions are satisfied, namely:*

*(a) the principal should be a taxable person; and*

*(b) the supplies made by the commission agent should be taxable;*

*Generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist. Further, as per clause (b) of sub-section (1) of section 23 of the CGST Act, an agriculturist who supplies produce out of cultivation of land is not liable for registration and therefore does not fall within the ambit of the term ‘taxable person’. Thus, a commission agent, who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under clause (vii) of section 24 of the CGST Act. However, where a commission agent is liable to pay tax under reverse charge, such an agent will be required to be registered compulsorily under section 24(iii) of the CGST Act.”*

On perusal of the above, it is adequately clear that the Appellant, who is undertaking the supplies of agricultural produce purely as a commission agent for the farmer, are not liable for compulsory registration under clause (vii) of section 24 of the CGST Act, 2017. However, as they are also undertaking supplies of the impugned product from their own account as a trader, they are required to take registration under section 22(1) of the CGST Act, 2017 subject to the condition that their aggregate turnover exceeds the threshold limit prescribed under section 22(1) *ibid.*

12. In view of the above discussion and findings, we pass the following order:

**ORDER**

13. We, hereby, set aside the impugned Advance Ruling Order No.GST-ARA-108/2019-20/B-115 dated 22.12.2021 issued by the Maharashtra Authority for Advance Ruling, and answer the questions raised by the Appellant as under:

- (i) The Turmeric (Turmeric in Whole form - not in powder form) is covered under the definition of 'Agricultural Produce'. The HSN code of Turmeric is 0910 30 20 and the applicable rate of GST is 5% (CGST @ 2.5%+ SGST@ 2.5%). However, the first supply of Turmeric (Turmeric in Whole form -not in powder form) by farmers, being supply by non-taxable person in Agricultural Produce and Marketing Committee, is not liable to GST by virtue of provisions of section 23 (1) (b) and 2 (107) of the CGST Act, 2017.
- (ii) Services rendered by the Appellant as a Commission Agent in APMC, Sangli, are not liable to GST in terms of Sl. 54 Heading 9986 of Notification No.12/2017 CT(R) dated 28.06.2017 read with Sl. No. 24 of Notification No.11/2017-C.T. (Rate) dated 28.06.2017.
- (iii) The Appellant is required to be registered in terms of Section 22(1) of the CGST Act, 2017.



(RAJEEV KUMAR MITAL)  
MEMBER



(ASHOK KUMAR MEHTA)  
MEMBER

**Copy to the:**

1. Appellant;
2. AAR, Maharashtra
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.
4. Commissioner of State Tax, Maharashtra.
5. Assistant Commissioner of State Tax (SAN-VAT-D-004), Sangli office, Kolhapur Division.
6. Web Manager, WWW.GSTCOUNCIL.GOV.IN
7. Office copy.