

**AUTHORITY FOR ADVANCE RULING  
TAMILNADU ADVANCE RULING AUTHORITY  
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-6**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE  
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, IRS Joint Commissioner/Member,  
Office of the Commissioner of GST & Central Excise, Chennai.
2. Thiru Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,  
Joint Commissioner (ST) / Member  
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

**ORDER No.37/AAR/2019 DATED 27 .08.2019**

GSTIN Number, if any / User id	33AAHFA0811C1ZD
Legal Name of Applicant	A.M. Abdul Rahman Rowther & Co
Trade Name of the Applicant	Nizam Tobacco Factory
Registered Address/Address provided while obtaining user id	No.4, Old Palace Building, Pudukkottai
Details of Application	GST ARA-01 Application No. 5 dated 06.02.2019.
Concerned Officer	State : The Assistant Commissioner (ST), Pudukkottai-1 Assessment Circle, Centre: Trichy Commissionerate Division: Thanjavur Division
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Manufacturing
B Description (in Brief)	
Issue/s on which advance ruling required	Unmanufactured Tobacco- Classification
Question(s) on which advance ruling is required	1. Classification of Goods 2. Application of Notification 01/2017-Comp.Cess(Rate)

**Note :** Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated. At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. A.M. Abdul Rahman Rowther & Co, manufactures of Chewing Tobacco, at No.4, Old Palace Building, Pudukottai622001, are registered under GST Act with Registration No. 33AAHFA0811C1ZD. The applicant has sought advance ruling on the

“Classification of the product “ Chewing Tobacco” manufactured by them and applicability of Notification No.01/2017-Compensation Cess-(Rate).”

The applicant has submitted the copy of application in Form GST ARA – 01 and also submitted copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and TNSGST Rules 2017.

2. The applicant has stated that they are the manufacturers of chewing tobacco under the registered brand of “Nizam Lady” and trade name of A.R. Abdul Rahman Rowther & Co; they are doing business for several years by paying appropriate Central and State Government taxes, duties, cess and other statutory dues as applicable for manufacture and sale of their produce; they are procuring raw tobacco from agriculturist and storing it after removing dust and particles; The tobacco usually undergoes the process of stalking and then such tobacco is sprayed with jaggery water in order to make it feasible for cutting and mincing; The minced form of tobacco is sold in small retail packets of various denominations; Their product is fully devoid of chemically flavoured substances; The chewing manufactured by them is handmade and hand pack and devoid of mechanical operations except for shredding of tobacco.

2.1 During the pre GST regime, the Central Excise Department have imposed mandatory levy of duty for chewing tobacco products through the introduction of

section 3A of the Central Excise Act taking into the consideration of chewing tobacco packed through FFS machine (Form Filling and Sealing Machine) bifurcating the packets under the category of “with lime tube” and “without lime tube”. Further it has framed certain rules and issued notification from time to time in relevance to the section. The chemically flavoured tobacco such as Khaini, filter Khaini and zarda tobacco are considered as machine pack tobacco. The wet form of chewing tobacco and pack through manual operation were levied central excise duty at central excise tariff prevailed from time to time. So central excise duty for machine pack tobacco and manual pack were subjected to following tariff:

**a). Machine Pack Tobacco Products**

1. Unmanufactured chewing tobacco (without lime tube) and unmanufactured chewing tobacco (with lime tube)-As per Central Excise Notification (N.T) 16/2010 amended from time to time.
2. Chewing tobacco (Without lime tube) and Chewing tobacco (with lime tube) – As per Central Excise Notification (N.T) 16/2010 amended from time to time.

**b). Manual Pack Tobacco Products:**

1. Unmanufactured tobacco : CSH 2401
2. Chewing tobacco. CSH 2403

During Pre-GST regime, they have adopted central excise tariff rate applicable for their product and paid duty based on the branding pattern of tobacco manufactured by them. The Central Excise Chapter and section adopted for their product during the pre GST regime are 2401 and 2403.

2.2 In GST regime, chewing tobacco is classified for levy of compensation cess under the serial No.5 & 6 as “unmanufactured chewing tobacco (Without lime tube)” & “unmanufactured chewing tobacco (with lime tube)” and serial No.26 & 27 as “Chewing tobacco (without lime tube)” & “Chewing tobacco (with lime tube)”. There is no GST compensation cess levy specified for manual form tobacco in the present GST compensation cess notification.

2.3 Their product of tobacco packets are traditionally called nattu tobacco and it is the customised practise and trade parlances that the product of nattu tobacco is always in wet form and sold in plain packets. It is at the consumers end that they sometime chew with admixture of lime or without lime. Hence the concept of attaching lime tube or without lime tube in tobacco packet is not at all in trade

practise for sale of product of wet form of nattu tobacco and whereas the same concept is followed for the product of chemically flavoured dry form of tobacco. They are selling chewing tobacco in such form of pack in small retail packs and they are paying GST at the rate of 28%. They are aware of the fact there is no GST compensation cess as per present GST compensation cess notification for wet form of tobacco packed through manual operation. Though they are not liable to pay GST compensation cess as per the present compensation cess, the members of Tamil Nadu based chewing tobacco manufacturers Association has adopted the uniform policy in classifying the product of wet form of nattu tobacco whether manufactured or unmanufactured under HSN code of 24039990 applicable for "Other tobacco products" and paying compensation cess at the rate of 96%.

2.4 Central and State GST authorities are insisting them in classifying their product of chewing tobacco under the umbrella of chemically flavoured tobacco such as khaini, chaini, tobacco, tobacco and zada tobacco and tried to apply the non-customised practice of adopting the lime tube concept in classifying their product. GST Authorities are now stating that the classification of tobacco product machine vs manual pack is done away with under the GST regime and our product has to be classified under the category of "tobacco without lime tube" for levy of compensation cess. Hence they are frequently issuing notice for paying GST compensation cess under the sub note or "without lime tube" category.

2.5 Their product is of such type with natural and original characteristics of tobacco and is sold in manual pack. It is at the customer end, they apply lime or without lime while chewing hence the concept of selling out form of chewing tobacco packets with lime pouch are not at all in usage right from the ancient days. As per the minutes of GST Council meeting, it is very clearly evident that the GST rates are being transformed with reference to the rates prescribed under Central Excise and Service Tax Act. Hence, while transforming Central Excise tariff rate into GST rate, the Authorities have considered only machine pack chemical tobacco for levy of GST compensation cess. They have exempted manual form of wet tobacco products like us under the ambit of the cess list. The contention of GST authorities in adopting our product under the umbrella of lime tube concept and classifying under the category of without lime tube product is highly arbitrary and against natural justice.

2.6 They are manufacturing tobacco products without adding any flavouring, essence and chemical substances. There is no clear cut definition for “manufactured tobacco” and “Unmanufactured tobacco” either in Central Excise Act and Rules. It is only in various judicial ruling, the differentiation of manufactured tobacco Vs. unmanufactured tobacco is quoted. There is no separate GST compensation levy determined for wet form of manual pack tobacco as per the GST compensation cess notification and hence our product shall be classified as nil rate of compensation cess.

3. The applicant was personally heard on 22.05.2019. The authorised representative of the applicant appeared before the authority for advance ruling and gave a written submission. They submitted manufacturing process in which manufactured tobacco is made by cut & dried tobacco leaves on which jaggery water is sprayed. After drying, the same is packed and sold as such with their brand. They stated that this is different from chewing tobacco which has further added chemicals, flavour, preservatives. They also stated that unmanufactured tobacco is not banned and the they will submit the latest GO in a week’s time. Further, they stated that the tariff in Central Excise for this was 24011020 and before 2017 also they were manufacturing chewing tobacco. They stated that their product is not covered under any of the Heading in Compensation Cess Notification 01/2017, also in Central Excise regime they were paying under Section 3 and not Section 3 A and GST has taken over from Central Excise under Section 3A. They informed that they will submit a sample excise return in one week.

4. The jurisdictional authority- Commissioner of Central GST & Central Excise, Trichy, vide their letter C.No. IV/16/33/2018- GST Pol dated 29.07.2019, has furnished the comments on the questions raised by the applicant. It is stated that an offence case has been registered for short payment of Compensation Cess by the taxpayer under O.R. No.17/2019-19 (DPU-GST) dated **09.01.2019** by the Divisional Preventive Unit, Thanjavur and a show Cause Notice No. 07/2019-GST dated 01.07.2019 dated 01. 07.2019 demanding to re-classify the chewing tobacco manufactured and cleared by the applicant under CTH 2403 9910 for the purposes of GST and demanding an amount of Rs. 5,61,498/- being the short payment of Compensation Cess for the period from **July, 2017 to March, 2019** under Section 73(1) of CGST Act 2017 readwith provisions of Section 11 of Central goods and Services (Compensation to States) Act 2017 along with interest and penalty

has been issued by the Assistant Commissioner of GST & Central Excise, Thanjavur and is pending adjudication.


5. We have carefully examined the submissions of the applicant and the comments furnished by the Jurisdictional Officer. The issue raised by the applicant is the classification of the product manufactured by them and the applicability of Notification No.01/2017 Comp.Cess (Rate). From the comments furnished by the Commissioner GST & Central Excise, Trichy, it is seen that the proceedings in respect of the applicant on the very issue raised by him before this authority has been initiated and an offence case booked vide O.R. No.17/2018-19(DPU-GST) dated 09.01.2019. We find that the application is filed on 06.02.2019 i.e after the proceedings initiated under the provisions of the GST Act.

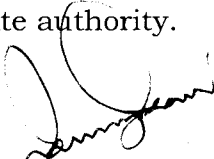
5.1 As per the first proviso to Section 98(2) of CGST/TNGST Act 2017 the authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act. In the case at hand, it is established that the issue raised by the applicant is pending before the Jurisdictional authority at the time of filing of this application. Therefore, the same cannot be admitted and is to be rejected without going into the merits of the issue.

6. Accordingly, we rule as under

#### **RULING**

The application is rejected under first proviso to Section 98(2) of the CGST/TNGST Act 2017, as the issue for which Advance Ruling is sought by the applicant is already pending before the appropriate authority.

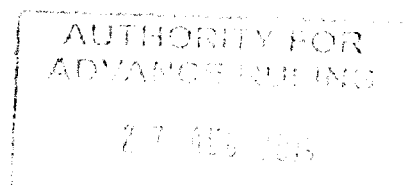
  
Ms. Manasa Gangotri Kata,  
Member, CGST

  
Shri Kurinji Selvaan V.S.,  
Member TNGST

To

M/s. A.M. Abdul Rahman Rowther & Co

No.4, Old Palace Building, Pudukkottai. // By Speed Post with Ack due//



Copy Submitted to:

1. The Additional Chief Secretary/Commissioner of Commercial Taxes, II Floor,  
Ezhilagam, Chepauk, Chennai-5.

2. The Principal Chief Commissioner of CGST & Central Excise,  
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Ch - 600 034

Copy to:

3. The Assistant Commissioner (ST),  
Pudukkottai-1 Assessment Circle,  
5893/3, Kattupudukkulam,  
Pudukkottai- 622 001.

4. The Commissioner of GST & Central Excise  
No.1, Williams Road, Cantonment, Trichy 620 001.

~~5.~~ Master file.

