

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.

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 Additional Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai.
and
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-3

ORDER No.16/AAR/2020 DATED 20.04.2020

GSTIN Number, if any / User id		33AABPA9979P3Z2
Legal Name of Applicant		ARUMUGAM
Trade Name of the Applicant		Kavi Cut Tobacco
Registered Address/Address provided while obtaining user id		No.2, RS No. 239 Abiramapuram, Thanjavur, 613007
Details of Application		GST ARA-01 Application No. 13 dated 21.03.2019.
Concerned Officer		State : The Assistant Commissioner(ST) Thanjavur -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.

Shri. Arumugam, (Prop: M/s. Kavi Cut Tobacco) No.2, RS No. 239 Abiramapuram, Thanjavur, 613007, are registered under GST Act with Registration No. 33AABPA9979P3Z2. The applicant has sought advance ruling on the

“Classification of the product intended for manufacture and applicable rate of Compensation Cess.”

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.

2.1 The applicant has stated that after introduction of compensation cess which varies for different products, it had become imperative to go into the nuances of the actual nature of the product before determining the correct classification; during the pre GST period the tax structure on chewing tobacco that was packed manually did not pose much problem in the marketing side as the tariff description was simply chewing tobacco and the variation in the tax structure was solely on the basis of machine packed chewing tobacco with or without lime tube. However in the GST Period after introduction of compensation cess department has gone to the conclusion that even manually packed chewing tobacco without lime tube is classifiable only under chapter 24039910. The presence or absence of lime tube was nowhere in the earlier tariff classification. Therefore tobacco manufacturers especially in South India, which manufactured chewing tobacco manually could not vie in the competitive market with the abnormally high tax structure. Therefore, there was necessity to switch over to marketing simple alternate tobacco products to cater to the demands of the lower sector in the market.

2.2 The applicant has stated that they intend to manufacture and supply the following product: Raw dried tobacco leaves are purchased from wholesale dealers/growers; Stems and dust particles are removed; then cured using jaggery water for the purpose preventing it from moulding or further decaying; after this it is cut into small pieces in a cutting machine, which is packed in pouches/pottalams for the purpose of retail sale in the shops and sold under the brand name Kulavi's Kavi cut tobacco.

2.3 The applicant has stated that the product which doesn't undergo any change in the essential character and remains in its original nature is claimed as rightly classifiable under Chapter sub heading 24012090("Unmanufactured tobacco partly or wholly stemmed or stripped -Others")

2.4 The applicant has claimed the above classification on the basis of the HSN chapter notes. They have stated that the product manufactured by them involves two activities that are referred in the Chapter Notes- First one is liquoring, the dried tobacco leaves are cured using jaggery water which is a preservative that prevents moulding/decaying of the tobacco leaves; Secondly, this is cut using a cutting machine to facilitate easy manual packing, this cutting to shape is also covered under the above chapter notes. They have further stated that the product is not one ready for smoking. The applicant has contended that their product therefore rightly falls within the ambit of the inclusive definition of unmanufactured tobacco of the HSN chapter notes to Chapter 2401 and since it is wholly stemmed and stripped they claim that it falls under Chapter 240120 and under the category "others" 24012090 as it is sold to the ultimate consumer for consumption as such.

2.5 The applicant has further contended that

- The fact that the resultant product is intended for chewing cannot be a basis for concluding it as chewing tobacco, when the end use is applicable equally to two different varieties of the same product. The term "Chewing tobacco" has not been explicitly defined in the Tariff. Chapter notes to Chapter 2403 states that it covers chewing tobacco usually highly fermented and liquored. Raw tobacco as such is also consumed by chewing without addition of any other material thereto. Raw unpacked tobacco is purchased from vendors by the consumers and is consumed for chewing

without any additives and at times in admixture with lime and other additives. The mixing of lime and tobacco is done by the individual consumer at the point of consumption and yet the raw tobacco un-mixed with any additives qualifies to be a chewing tobacco. Their product which is raw chewing tobacco without any additives catering to the demands of such consumers would therefore, qualify to be unmanufactured tobacco.

- Considering the technical details of the processes referred to in the chapter notes, the activities fermentation and liquoring finds a place in both headings 2401 as well as in 2403. The only difference noted is that of the usage of the phrase “Highly”. The conclusion to be arrived at is whether the liquoring activity of adding jaggery water in their product is for the purpose of prevention of moulding and decay as referred to in chapter 2401 or high fermentation and liquoring as referred to in chapter 2403.
- The consumers of this product are poor labourers and their product caters to their chewing needs and therefore unmanufactured tobacco leaves are sold to them as it is, by simply adding jaggery water to prevent it from any fungal / mould infection and cut into smaller sizes to facilitate easy manual packing
- The product do not undergo any change in its essential nature and character and the above activities are also specifically included in the inclusive definition to merit classification under CTH 2401

2.6 The applicant has relied on a catena of decisions on the issue and to emphasis that the definition in the statute takes precedence over the commercial understanding. They have contended that the term “Chewing tobacco” has not been explicitly defined in the Tariff. Chapter notes to Chapter 2403 states that it covers chewing tobacco usually highly fermented and liquored. Phrases Fermented and liquored are referred to in respect of unmanufactured tobacco as well as chewing tobacco. They claim that even after adding of jaggery water the essential character of the tobacco leaves do not undergo any change.

3.1 The applicant was extended an opportunity to be heard in person and heard on 18.06.2019. The authorized representative appeared and gave a written submission. They stated that their product is cured natural tobacco leaves which are cut/minced with jaggery water and no other chemicals/preservatives are added. They stated that the product should be classified under 2401 1020. It is

not manufactured tobacco. They submitted several case laws in this aspect. They submitted that their product is not a food item and does not get covered under Food Safety Act as per Madras H.C. They stated that they will submit photographs of the product, manufacturing process. They submitted invoices of purchase from agriculture market agency and sale to petty shops. The packaging is upto 20 gms. They undertook to submit a test report of their product.

3.2 In the written submissions, it is inter-alia stated that

- They are manufacturer of “Unmanufactured Chewing Tobacco Product” and own the brand “Kulavi Tobacco” for manufacture and sale of both manufactured and unmanufactured chewing tobacco products. Before the GST regime, they were manufacturing tobacco products with application of flavoring agents for chewing tobacco in the trade name of “Kulavi Tobacco Industries”.
- As the product of chewing tobacco is under the regulation of FSSA and COPTA, the State Government of Tamil Nadu issue periodical yearly notification enforcing manufacture and sale of tobacco products. Accordingly, the Govt. had issued notification on 23rd May 2017, banning the product of chewing tobacco with scented flavors along with the product of pan masala and gutkha. As a result of which the manufacturers and traders in Tamil Nadu had to restrict their trade of tobacco products by completely eliminating the chewing tobacco with flavoring contents.
- As the result of chewing tobacco notification by TN FSSA and coupled with GST compensation cess notification No. 1/2017(bifurcating the chewing tobacco products under the umbrella of two categories such as “tobacco with lime tube and tobacco without lime tube”) in the GST regime, the GST compensation cess for the product of scented chewing tobacco (HSN 2403) is comparatively high than that of unmanufactured chewing tobacco (HSN 2401), they were forced to close down the manufacture of chewing tobacco with application of flavoring contents.
- During the financial year 2018-19, they commenced a new concern in the trade name of Kavi cut tobacco for manufacture of chewing tobacco without application of flavoring agents namely “Unmanufactured chewing tobacco” in order to comply with the Tamil Nadu State Food Safety Authorities and beneficial product’s production cost advantage in order to compete through cut throat competition in the market.

- The basic differentiation of Manufactured and Unmanufactured Tobacco is not defined either in the Central Excise Act or Central Excise Rules. It is only through the Court citation, it is being observed that the tobacco product added with jaggery water either before or after cutting of tobacco leaves constitutes “Unmanufactured Tobacco” and such product being further added with flavoring essence, fragrances and foreign agents, it becomes the “Manufactured Chewing tobacco”. There are various court citations for determining the product of Unmanufactured Chewing Tobacco and the most appropriate court case being
 - A.V.Pachiappa Chettiar and Ors Vs. The State of Madras (22nd Sep 1961)-S.C.
 - Damodar .J. Malpani and Ors Vs. Collector of Central Excise (12th Sep’ 2002)-S.C.
 - Bell Mark Tobacco Vs. Government of Madras (1961) 12 S.T.C. 123
- Further, the product of chewing tobacco cultivated, harvested and processed in the State of TamilNadu being the wet form of tobacco and its usage is being entirely different from tobacco products in Northern part of India and it is called as dry of tobacco as per trade parlances.
- They manufacture wet form of “Unmanufactured Chewing tobacco” and the product is devoid of chemical contents
- Before implementation of GST, there were three rate of tariff applied for levy of duty for the product of “Unmanufactured Chewing Tobacco”. The first slab was applicable for wet form of tobacco products and packed through manual operation through labors and the second & third slab were being the rate of duty applicable for dry form of tobacco products and packed through mechanized operations. The intention of the Govt. is being the levy of differential rate of duty for varieties of tobacco manufacturers; Machine (SME sectors) vs Manual (Village and Cottage Industries). The central Excise duty for manual pack of tobacco products were levied comparatively lesser rate under Section 3 of Central Excise Act than that of machine pack of tobacco products levied under section 3A of Central Excise Act.
- The GST Act being comprising of various Indirect tax Acts and the Central Excise Act one among it, the provisions of the C.E. Tariff are being copied in fixing the GST rate. Further in the 14th GST Council Meeting, it is being categorically mentioned by the GST officials that the existing central excise

tariff are being followed in fixing up the GST Compensation cess rate for tobacco products

- In GST there is no difference between the rate of duty for all forms of tobacco products either being Unmanufactured or Manufactured (all are subjected to 28% GST) and it is only at the levy of compensation cess, it has been differentiated
- Since their product being Plain Unmanufactured tobacco (Wet form of nattu tobacco) and the concept of application of lime tube along with tobacco packets for manufacture and sale is not in usage as per the customs of trade and trade parlances, GST council has not determined any GST compensation cess.
- Under GST, the goods are being classified under the Customs Tariff Act as per the International HSN code, the product of unmanufactured chewing tobacco is assigned with the HSN code of 2401.
- As the GST Council has not assigned compensation cess for applicant's varieties of tobacco product, they apply GST compensation cess rate applicable for "Unmanufactured tobacco without lime tube" category and paying cess at the rate of 71% on the value of product under self assessment basis.

3.3 The applicant vides their letter received on 05.07.2019 furnished the test report of the raw material and the finished product from Enviro Care India Private Limited, a NABL certified lab and also photographs of the manufacturing process as undertook by them during the hearing. The test report for the sample marked 'Chewing Tobacco before processing' and 'Chewing Tobacco after processing' are furnished. On perusal of the reports it is seen that the chemical parameters in both consists of Moisture, Total Ash, Acid Insoluble Ash and Nicotine. While the Nicotine content remains unchanged, the Moisture content is more than doubles and the content of Total Ash and Acid insoluble Ash are reduced. The photographs of the process undertaken shows the following process

1. Raw Tobacco Leaves Stocked;
2. Spread Out tobacco leaves sprayed with Water and Wet;
3. Tobacco leaves sprinkled with water fed into cutting machine to be cut into desired shape;
4. Cut tobacco out from the cutting machine;
5. Cut tobacco is then dried in the sun to remove moisture content; and

6. Dried tobacco is manually packed and sealed.

3.4 The Authorised representative made a further submission on 12.02.2020. They had enclosed an order from Madras High Court (Madurai Bench) in relation to classification of Tobacco Products-UNMANUFACTURED TOBACCO and claimed that their subject matter squarely falls under the said judgment and had requested to consider this aspect. They had also furnished the Advance Ruling rendered by Karnataka Authority for Advance Ruling in the case of M/s. Sringeri Yogis Pai; Kerala Authority for Advance Ruling in the case of M/s. Govind Traders and Delhi Authority for Advance Ruling in the case of Shri. Shalesh Kumar Singh.

4.1 The applicant is under the administrative jurisdiction of Central Tax Authorities. The Commissioner of GST & Central Excise, Tiruchirapalli, the jurisdictional authority furnished the following:

- In respect shri. Arumugam (M/s Kavi Cut Tobacco), correspondences have been made calling for particulars. However, as they claimed that effective from January 2018, they have changed their final products from chewing tobacco to 'preparations containing chewing tobacco' classifiable under heading 24039920, which contains various other ingredients like, lime, chilly, kasikatti, arisithippili, clove oil and menthol etc. the facts are being verified at this office. Now, as reported by the applicant, w.e.f. from November 2018, they have started manufacturing and clearing the preparation as mentioned in the AR application classifying the same under 24012090.
- It is also informed that
 - (i) the taxpayer vide letter dated Nil received on 12.11.2018, stated that they had supplied branded chewing tobacco classifying it under Chapter sub-heading 24039910 paying GST Compensation Cess @ 160% in terms of Notification No.1/2017-Compensatin Cess (Rate) New Delhi dated 28.06.2017. From Jan,2018 to May, 2018 Cess has paid at the rate of 160%.
 - (ii) From June 2018 to September 2018 Cess has been paid at the rate of 72% and Chapter Head mentioned is 24039920 as per enclosure to the above letter.

(iii) The taxpayer vide letter dated 14.03.2019, has reiterated the classification as 24039920 (for June,2018 to Oct,2018) and have paid Cess @ 72%; further the taxpayer has stated that NCCD has been paid in terms of Section 4A of Central Excise Act @ 10% on 45% of MRP; further it has been stated that from Nov,2018 onwards, they had changed the product manufactured from 24039920 to 24012090, stating that they were not required to pay NCCD under Central Excise Act and hence ER 1 Returns not filed; that however, GST returns filed with CGST, SGST and Cess.

- Now the applicant has requested for an advance ruling as to whether their product intended to be manufactured and supplied by them is rightly classifiable under Chapter heading 24012090 (Unmanufactured tobacco partly or wholly stemmed or tripped "others") attracting 28% GST and 71% Compensation Cess. Under the above circumstances, it is opined that the product of the applicant, which is intended to be manufactured is not to be classified under 24012090 but only under 24039910.

4.2 The Central Tax authority on being asked specifically to furnish the details of action, if any initiated on the issue raised by the applicant, informed that:

- (i) from the correspondences made by the applicant with the Superintendent of Central Excise, Thanjavur-I Range it is observed that the applicant seeks to classify their final product to HSN 24012090 only with effect from November 2018;
- (ii) no action has either been initiated or pending for the period effective from November, 2018, as the assessee had already filed the Advance Ruling Application; and
- (iii) verification is still pending in respect of the prior period.

It was further informed that no AE-II has been issued relating to subject verification.

5. We have carefully examined the submissions of the applicant, the comments furnished by the Jurisdictional Officer and the related statutory provisions. The issue raised by the applicant is the classification of the product manufactured by them and the applicable Rate of Compensation cess.

6.1 The applicant is a proprietary concern engaged in the manufacture and supply of tobacco products with the brand name "Kavi cut tobacco". From the submissions of the applicant, it is seen that the applicant during the financial year 2018-19, has commenced manufacture of chewing tobacco without application of flavoring agents namely "unmanufactured chewing tobacco" in order to comply with the Tamil Nadu State Food Safety Authorities. The manufacturing process of the applicant as elaborated in their application is that (i) they procure dried tobacco leaves; (ii) remove stems and dust particles; (iii) cure the same in jaggery water; (iv) the cured leaves are cut into small pieces in cutting machine; and (v) then the cut tobacco is packed in small pouches for the purpose of retail sale in the shops.

6.2 Under GST, the applicable rates of CGST are notified by Notification No. 01/2017-C.T.(Rate) dated 28.06.2017 and in terms of explanation (iii) and (iv) to the said Notification,

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Thus for the purposes of classification under GST, the First Schedule to Customs Tariff Act is only applicable. Further the first schedule to the Customs Tariff Act, 1975, and the Rules of interpretation therein are to be followed for classifying a product, in terms of Explanation 1 and 2 to Notification No. 1/2017- Compensation Cess (Rate) dated 28.06.2017.

6.3 HSN Explanatory Notes to Chapter 24 states:

It is seen from the above that tobacco leaves after harvesting are cured in different ways either in open air (sun curing), air curing (in closed sheds with free circulation of air), flue curing (in hot air flues) or fire curing (with open fires).

The purpose of curing tobacco leaves can be understood by referring to information given for farmers by **ICAR-CTRI Central Tobacco Research Institute** available on their website https://ctri.icar.gov.in/for_curing.php

TOBACCO CURING

Curing is a process by which the harvested tobacco leaf is made ready for the market. It is a well standardized process especially in FCV tobacco to achieve the desirable qualities in the cured leaf along with the removal of moisture. The process of curing has an intimate bearing on the quality of cured leaf. A good quality leaf from the field can be made poor by an improper curing. The curing operations followed in India are dependent on type of tobacco, the mode of consumption, local preference, convenience, market value and production economics. Depending on the type of the tobacco principal methods of curing can be distinguished as i) flue-curing, ii) air-curing, iii) fire-curing and iv) sun-curing.

GENERAL

Tobacco is obtained from various cultivated varieties of the genus *Nicotiana* of the *Solanaceae* family. The size and shape of the leaves differ from one variety to another.

The harvesting method and curing process depend on the variety (type) of tobacco. The plant may be cut whole, at average maturity (stalk cutting), or the leaves may be picked separately, according to their state of maturity (priming). Thus, tobacco may be cured either as whole plants (on the stalk) or as separate leaves.

The various methods of curing are sun curing (in the open air), air curing (in closed sheds with free circulation of air), flue curing (in hot air flues), or fire curing (with open fires)

Before packing for shipment, the dried leaves are treated in order to ensure their preservation. This may be done by controlled natural fermentation (Java, Sumatra, Havana, Brazil, Orient, etc.) or by artificial re-drying. This treatment, and the curing, affect the flavour and aroma of tobacco, which undergoes spontaneous ageing after packing.

Tobacco so treated is packed in bundles, bales (of various shapes), in hogsheads or in crates. When so packed, the leaves are either aligned (Orient) or tied in hands (several leaves tied together with a band or with another tobacco leaf), or simply left as loose leaves. They are always tightly compressed in order to ensure preservation.

In some cases, in addition to (or instead of) fermentation, flavouring or moistening substances are added (casing) in order to improve the aroma or keeping qualities.

This Chapter covers not only unmanufactured and manufactured tobacco but also manufactured tobacco substitutes which do not contain tobacco.

It is seen that curing is a process of drying of the harvested leaves through various methods. Farmers do not sell green tobacco leaves but dried leaves or stalks. Curing happens at the farm level itself after harvest, before they are sold by the farmers in the market. It is seen from the applicant's submissions that they buy dried tobacco leaves. This means that the tobacco procured by the applicant is already cured by any of the above methods. Further, as seen in the general notes above, before packing for shipment, the leaves can also be treated by natural

fermentation. Thus, the claim of the applicant that the addition of jaggery water is for curing or for fermentation is not valid as the treatment process if any is a natural form of fermentation and not by addition of any liquids. Further, the curing and treatment process are carried out at the farm level before being sold in market. Only after these processes, the leaves are packed in bulk and sold. It is seen the product in question is not merely cured or treated tobacco.

Further , the website of **ICAR-CTRI Central Tobacco Research Institute** available at https://ctri.icar.gov.in/for_curing.php also gives the following information:

JAFFNA TOBACCO OF CEYLON AND CHEWING TOBACCO OF TAMIL NADU

Fire-curing: (Smoke curing)

Important type of tobacco that is fire-cured is Jaffna tobacco of Ceylon and Tamil Nadu used for chewing purpose. The leaf is harvested by either priming or stalk-cutting each leaf together with a portion of the stem.

The leaves are wilted for four hours in the field, tied into bundles and hung of laths in smoke huts. They are then smoked for 12 hours by burning coconut husks, leaf stalks and palmyrah nuts, stacked for 3 days and again smoked. Alteration of firing and stacking at an interval of few days helps in making the colour of leaf even. During smoke treatment the creosotic substances are deposited on leaf surface which gives it a peculiar taste. After smoking the leaves are bulked for 3-4 weeks and than given salt water/jaggery treatment prior to sale.

It is seen from the above that chewing tobacco is the tobacco which has been cured by smoking , stored and given jaggery water / salt water treatment. This is similar to the process described by the applicant in his production process. The product is universally known as Chewing Tobacco as acknowledged by the **ICAR-CTRI Central Tobacco Research Institute** . The final product sold by the applicant are in retail packets of up to 20 gms with brand name of the applicant. The purpose of the product is for the buyer to use it directly for chewing purpose. Therefore, it is seen that the product of the applicant is 'Chewing Tobacco' as universally understood and as it is being supplied.

6.4. The Customs Tariff Classification in respect of chapter 2401 are reproduced below for reference

24.01 - Unmanufactured tobacco; tobacco refuse.

2401.10 - Tobacco, not stemmed/stripped

2401.20 - Tobacco, partly or wholly stemmed/stripped

2401.30 - Tobacco refuse

This heading covers :

- (1) **Unmanufactured tobacco** in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but **not** tobacco ready for smoking).

Tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour are also covered in this heading.

			2401 20 10
			2401 20 20
			2401 20 30
			2401 20 40
			2401 20 50
			2401 20 60
			2401 20 70
2401	UNMANUFACTURED TOBACCO; TOBACCO REFUSE		
2401 10	- Tobacco, not stemmed or stripped		2401 20 80
2401 10 10	--- Flue cured virginia tobacco		
2401 10 20	--- Sun cured country (natu) tobacco		2401 20 90
2401 10 30	--- Sun cured virginia tobacco		
2401 10 40	--- Burley tobacco		2401 30 00
2401 10 50	--- Tobacco for manufacture of biris, not stemmed		
2401 10 60	--- Tobacco for manufacture of chewing tobacco		
2401 10 70	--- Tobacco for manufacture of cigar and cheroot	Exp	
2401 10 80	--- Tobacco for manufacture of hookah tobacco	lan	
2401 10 90	--- Other	ato	
2401 20	- Tobacco, partly or wholly stemmed or stripped	ry	

Notes to HSN 2401 is given as under:

From the above, it is evident that CTH 2401 covers unmanufactured tobacco. CTH 240110 covers 'Tobacco, not stemmed or stripped' and CTH 240120 covers 'Tobacco, partly or wholly stemmed or stripped'.

The product is stated to be 'wet form of tobacco' and the applicant have stated in their submissions that the same is different from dry form of tobacco (with or without lime tube content) used in Northern Part of India called as dry of tobacco as per trade parlances. The applicant has furnished the manufacturing process of these two different types (as per their version and not substantiated through any literature/manual) and detailed the differences (again not substantiated with any test reports/ literature/ legal citations). The applicant's argument for classifying the product under CTH 2401 is based on the HSN Chapter Notes for Heading 2401.

The applicants are of the view their process involves two activities that are referred to in the above notes, namely, (i) liquoring (soaking in jaggery water); and (ii) cutting (mincing into fine pieces) and therefore covered under this heading. On a

2403	OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES; "HOMOGENISED" OR "RECONSTITUTED" TOBACCO; TOBACCO EXTRACTS AND ESSENCES
	- Smoking tobacco, whether or not containing tobacco substitutes in any proportion :
2403 11	-- Water pipe tobacco specified in Sub-heading Note to this Chapter:
2403 11 10	--- Hookah or gudaku tobacco
2403 11 90	--- Other
2403 19	-- Other:
2403 19 10	--- Smoking mixtures for pipes and cigarettes
	--- Bins:
2403 19 21	---- Other than paper rolled bins, manufactured without the aid of machine
2403 19 29	---- Other
2403 19 90	--- Other
	- Other :
2403 91 00	-- "Homogenised" or "reconstituted" tobacco
2403 99	-- Other :
2403 99 10	--- Chewing tobacco
2403 99 20	--- Preparations containing chewing tobacco
2403 99 30	--- Jarda scented tobacco
2403 99 40	--- Snuff
2403 99 50	--- Preparations containing snuff
2403 99 60	--- Tobacco extracts and essence
2403 99 70	--- Cut-tobacco
2403 99 90	--- Other

fine reading of the above, it is evident that the cutting process prescribed in this note is along with the remarks 'but not tobacco ready for smoking'. This explanation of HSN clearly brings out the classification in the Customs tariff at 240120, which covers tobacco products for further manufacture and not for consumption as such as in the case of the applicant. From the explanation given by **ICAR-CTRI Central Tobacco Research Institute** and Explanatory General notes to chapter 24, it is seen that only tobacco which is cured at farm level for before supply to market would fall under this classification as 'Unmanufactured tobacco'. The fermentation that the applicant claims is by adding jaggery water does not get covered under this. As seen in the the Explanatory General notes to chapter 24, only natural fermentation is covered. Therefore, the product of the applicant doesnot fall under CTH 2401.

6.5. CTH 2403 covers "Other manufactured tobacco and Manufactured Tobacco substitutes; "Homogenised" or "Reconstituted" Tobacco; Tobacco Extracts and Essences". CTH 24039910- covers 'Chewing Tobacco'.

Explanatory Notes to HSN 2403 is as below:

24.03 - Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences (+).

- Smoking tobacco, whether or not containing tobacco substitutes in any proportion :

2403.11 -- Water pipe tobacco specified in Subheading Note 1 to this Chapter

2403.19 -- Other

- Other :

2403.91 -- "Homogenised" or "reconstituted" tobacco

2403.99 -- Other

This heading covers :

- (1) **Smoking tobacco, whether or not containing tobacco substitutes in any proportion**, for example, manufactured tobacco for use in pipes or for making cigarettes.
- (2) **Chewing tobacco**, usually highly fermented and liquored.

As per the Explanatory notes, 'Chewing tobacco' falls under CTH 2403. It is seen from the information available on ICAR- **CTRI Central Tobacco Research Institute website** above that chewing tobacco is the tobacco which has been cured by smoking, stored and given jaggery water / salt water treatment. This is similar to the process described by the applicant in his production process. The product is universally known as Chewing Tobacco as acknowledged by the applicant. The final product sold by the applicant are in retail packets of up to 20 gms with brand name of the applicant. The purpose of the product is for the buyer to use it directly for chewing purpose. Hence, the product in question is 'Chewing tobacco'.

The applicant relying on the Explanatory HSN, has stated that Chewing tobacco covered under 2403 is to highly fermented and liquored and theirs done only to a small extent. The notes above states that the heading covers 'Chewing tobacco, usually highly fermented and liquored'. It doesn't exclude the chewing tobacco which is not highly fermented and liquored. In other words, the degree of fermentation or liquoring is not the deciding factor to determine whether the product is "Chewing Tobacco" or not. Thus, going by the Explanation in HSN and the Customs Tariff Headings, it is evident that chewing tobacco supplied for consumption as 'chewing tobacco' merits to be classified under the specific heading under CTH 24039910.

The product in question is a processed one in as much as the same is cured in jaggery water, undergoes the process of stalking and semi-drying, then cut into small pieces in minced form which is stored in a separate area for a few

hours/days on which some natural/agricultural preservatives for maintaining the product in wet form is applied, packed in pouches/pottlams for supply. Also, the test reports of the chewing tobacco- before processing and after processing furnished by the applicant shows that the chemical parameters Moisture, total ash and acid insoluble ash are different in % content, indicating the product has been subjected to processing. Therefore, the product of the applicant does not merit classification as "unmanufactured tobacco" under CTH 2401 but rightly classifiable under CTH 2403 9910 as "Chewing tobacco".

6.6 The applicant has relied on various case laws pertaining to Sales Tax and Central Excise levy. In the case of A.V. Pachiappa Chettiar and... Vs. the State of Madras, the question raised is, whether the goods sold by the assessee, which is described as tendu tobacco is "Chewing tobacco" and assessable as a manufactured product and do not have any relevance in the case at hand seeking classification of the product sold as "Chewing Tobacco". In the case of State of Madras Vs. Bell Mark Tobacco company, the question answered by the Hon'ble supreme court is 'Whether a dealer who pays excise duty on raw tobacco purchased by him is entitled to rebate of that duty in the computation of taxable turnover from the sale of chewing tobacco' and therefore do not have application in the present case. In the central excise case referred though the issue raised is classification of chewing tobacco, the Hon'ble Supreme Court has remanded the case and the final classification is not spelt out and therefore has no application.

6.7 Further, the decision of the Madras High Court (Madurai Bench) said to squarely cover the issue at hand and relied upon by the applicant was perused. In the said case, the core issue involved whether purchasing minced tobacco in bulk quantity and re-packing the same with added flavour in small packs involve manufacturing process or not and the Hon'ble Court has held that there is no manufacturing process involved in the activities of the petitioners, in that case. As discussed in para supra, the product in hand has undergone processing other than that specified for the one to be classified under CTH 2401 and are also not used for further manufacture to merit classification under CTH 2401; is marketed as 'Chewing Tobacco' for the chewing needs of the customers; chewing tobacco finds a specific entry in the customs Tariff and specific entry is to be preferred; therefore we hold that the ratio of the judgment of the Hon'ble High Court of Madras(Madurai Bench) relied upon by the applicant do not find application in the case at hand.


6.8 The applicant has also relied on the Advance Ruling rendered by Authority for Advance Ruling, Karnataka, Kerala and Delhi on the applications filed by M/s Sringeri Yogis Pai, M/s. Govind Traders, and Shri. Shalesh Kumar Sing respectively. As per Section 103 of the Act, the Advance Ruling applies only to the applicant who sought the ruling, the jurisdictional Authority or the Concerned Authority and do not find application in other cases and therefore the applicability of the same is not dealt with.

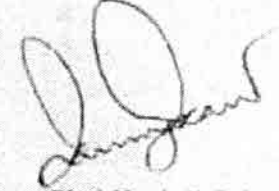
7. The next question raised is on the rate of Compensation cess applicable to the product. The rate of Compensation cess is provided vide Notification no. 01/2017-Compensation Cess(rate) dated 28.06.2017 and Sl.No. 26 provides the Compensation Cess Rate as 160% for the product "chewing tobacco" which is supplied "without lime tube".

8. In view of the above, we rule as under:

RULING

1. The product intended to be manufactured by the applicant and supplied as 'Chewing tobacco' with the brand name 'Kavi cut tobacco' is classifiable under CTH 2403 9910- Chewing Tobacco.
2. The applicable rate of Compensation Cess is provided under Sl.No. 26 of the Notification No. 01/2017-Compensation cess dated 28.06.2017 @ 160%


Ms. Manasa Gangotri Kata,
Member, CGST


Shri Kuringi Selvaan V.S.,
Member, TNGST

To
Shri. Arumugam /By Speed Post/
(Prop: Kavi Cut Tobacco)
No.2, RS No. 239, Abiramapuram,
Thanjavur- 613007

Copy submitted to: -

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

Chennai – 600 034.

2. The Additional Chief Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Trichy Commissionerate,
No.1, Williams Road, Cantonment, Trichy 520 001.
4. The Assistant Commissioner (ST),
Thanjavur -1 Assessment Circle,
Commercial Taxes Building,
#20/3, Sachidananda Mooppanar Road,
Thanjavur – 613 001.
5. Master File / spare – 1.