

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32, 5TH
FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD, CHENNAI -600003
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.34.
And
2. Thiru KurinjiSelvaan V.S., M.Sc. (Agri.), M.B.A.,
Joint Commissioner (ST) / Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No.12/AAR/2020 Dated: 27.02.2020

GSTIN Number, if any / User id		33AACAT7744B1ZP
Legal Name of Applicant		S.607 Namakkal Agricultural Producers Co-operative Marketing Society Ltd., Namakkal
Trade Name of The applicant		Namakkal Co-operative Marketing Society Ltd
Registered Address / Address provided while obtaining user id		69, Tiruchengode Road , Namakkal-637001
Details of Application		Form GST ARA-001 Application No. 40 dated 11.10.2019
Concerned Officer		State : The Commercial Tax Officer (ST) Namakkal (Town) Assessment Centre : Salem Commissionerate Division: Salem II
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provision
B	Description (in brief)	The applicant is a society which acts as an agent or auctioneers arranging for merchandise auction for marketing of the agricultural produce of its member agriculturists to the best advantage
Issue/s on which advance ruling required		1. Classification of any goods or services or both 2. Applicability of a notification issued under the provisions of this Act. 3. Determination of the liability to pay tax on any goods or services or both.

Question(s) on which advance ruling is required	<ol style="list-style-type: none"> 1. Whether there is any purchase/sale involved in the process of auction of agricultural produce (cotton) conducted by the Namakkal Agricultural Producers Co-operative Marketing Society? 2. Whether our Society is liable to pay tax under Reverse Charge Mechanism in the capacity of being an auctioneer? 3. Whether service tax payable on receipt of Commission, Godown rent, Interest, in respect of service provided to agricultural produce? 4. Whether or not the merchants (Registered person) who directly purchase cotton from the agriculturist through auction conducted by the society is liable to pay tax on the basis of Reverse Charge Mechanism?
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Note: Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub Section (1) of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed 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.

S.607 The Namakkal Agricultural Producers Co-operative Marketing Society Ltd., Namakkal District, 637001 (hereinafter referred as 'Applicant' or 'Society') is registered as a cooperative society under the Tamilnadu Co-operative Societies Act and Rules, regulated and governed by the Department of Cooperation of the Government of Tamilnadu. They are registered under the GST Act 2017 vide GSTIN 33AACAT7744B1ZP. The applicant has sought Advance Ruling on the following questions:

- 1) Whether there is any purchase/sale involved in the process of auction of agricultural produce (cotton) conducted by the Namakkal Agricultural Producers Co-operative Marketing Society?
- 2) Whether our Society is liable to pay tax under Reverse Charge Mechanism in the capacity of being an auctioneer?
- 3) Whether service tax payable on receipt of Commission, Godown rent, Interest, in respect of service provided to agricultural produce?
- 4) Whether or not the merchants (Registered person) who directly purchase cotton from the agriculturist through auction conducted by the society is liable to pay tax on the basis of Reverse Charge Mechanism?

The Applicant has submitted the copy of application in Form GST ARA – 01 and submitted a 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 SGST Rules 2017.

2.1 The applicant has stated that their society is registered w.e.f. 20.05.1939 as a co-operative society under the Tamil Nadu Co-operative Societies Act and Rules regulated and governed by Cooperation Department of the Government of TamilNadu. The principal object of the society is to act as an agent or auctioneers arranging for merchandise auction for marketing of the agricultural produce of its member agriculturists to the best advantage. The nature of transaction undertaken by the applicant is as follows:

- The taxable goods involved in auction sale is agricultural produce i.e. cotton;
- The absolute ownership and title to goods is vested with the producers i.e. agriculturists, till it is delivered to the merchants;
- The said agricultural produce i.e., Cotton is usually brought to the society by the agriculturist to effect sale through auction; According to the societies by law definition 14(2) every member of the society shall be entitled to the services available to the member of the society and such service shall be rendered to him by the society;
- The society only plays the role of an auctioneer on commission basis and function on the lines of middlemen, not liable to collect or pay tax. The society does not issue any Tax Invoice, contemplated under the CGST/SGST Act 2017.

- They obtain no right of disposal over the goods, and the power to pass a valid title over the goods. They only play the role of bringing together the seller and the buyer (i.e., the supplier and the recipient) together and conduct bids. Hence the society is not liable for payment of tax on reverse charge mechanism for rendering service to the agricultural produce;
- The merchants, who are registered persons, directly purchase the goods(cotton) from the agriculturist through auction are liable for payment of tax under Reverse Charge Mechanism
- The society only reimburses the sale proceeds paid to the agriculturists from the merchants who directly purchases from farmers. The society collects godown rent, insurance, handling charges and interest from the merchants for delayed payments of sale proceeds and such collections are not to be considered as a sale consideration;
- The society is engaged in conducting auction on commission basis as stipulated in bylaw no. 44(1).

2.2 The applicant has stated that they act as an auctioneer and they neither buy nor sell cotton and therefore not liable to pay tax under Reverse Charge Mechanism. They have also contended that the value of taxable supply made by them is NIL and as the auction sale is related to supply of exempted service to agricultural produce, levy of tax on the basis Reverse Charge Mechanism, collection of commission, handling charges, godown rent, insurance and interest on late payment is also exempted at their hands as per the central and state notifications. They have claimed that they act as a pure agent as per Rule 33 of CGST Rules 2017. The applicant has also referred to the TamilNadu Government letter No.21542/CM1/99-3, Co-operation, Food and Consumer Protection Department dated 15.09.1999, The Principal Commissioner and Commissioner of Commercial Taxes in Letter No.D/Dis.Acts.cell III/73893/99 dated 16.08.2000, wherein it is clarified that Co-operative marketing societies do not come within the meaning of the term "dealer" under Section 2(g) of TNGST act 1959. They have also referred /relied on ratio of decisions in the following case laws to substantiate their contention

- T.C case Nos 102 to 104 of 1974 against orders of Sales Tax Appellate Tribunal dated 12.05.1972 in respect of the Tiruchengode Agricultural Producers Co-op. Marketing Society in Hon'ble High Court of Madras

➤ C.V. Ramasamy Goundar Sons Vs Commercial Tax Officer, Erode 77 STC 58 (Mad)

In view of the aforesaid facts, the applicant has contended that their service is exempted under Notification 12/2017 Central Tax (Rate) dated. 28.06.2017, and Notification No.11(2)CTRE/532(d-14)/2017 dated 29.06.2017.

3.1 The applicant was given an opportunity to be personally heard on 06.11.2019. The applicant appeared before the authority and stated that they are a commission agent for purchase and sale of cotton. They stated that Central GST officer has initiated an enquiry in this matter. The state GST officer appeared and gave a written submission stating that the services by the applicant is an auctioneering service as per CBIC Circular 31 dated 04/09/2018. The applicant requested another PH to submit linked sale & purchase documents, bye laws and APMC Act and the license granted by the local APMC by the applicant.

3.2 The State Jurisdictional Authority vide their letter Roc.No.1271/2019 A2 dated 05.11.2019 has furnished their comments in detail on the issues raised by the applicant has concluded that while the definition of agent includes commission agent, auctioneer among other things, the exemption in the notification has been provided only for commission agents and not auctioneers or agents in general; thus the society is neither an agent nor an APMC and may be classified as providing "Auctioneering Services" under SAC 9961.

3.3 The Central Jurisdictional Authority vide their letter dated 07.12.2019 submitted that the applicant receives raw cotton from agriculturalist and they are registered under GST, hence as per Notification No.04/2017 CT(rate) dated 28.06.2017 as amended they are liable for payment of GST under Reverse Charge Mechanism w.e.f 15.11.2017 and also the applicant are not coming under the definition of "Commission agent" for availing exemption under Sl.No.54(g) of Notification 12/2017 CT (Rate). They also submitted that the merchants are not liable to pay GST on reverse charge basis as the Notification No.04/2017 CT(rate) dated 28.06.2017 as amended is not applicable to them.

4.1 As per the Applicant's request, they were extended another personal hearing on 11.12.2019. The applicant appeared before the authority and stated that they are registrar is on the Agricultural Marketing Committee Board. However, they are

also commission agent for purchase and sale of cotton where the buyers and sellers are members of their society. They stated that they are not a principal but only an agent that is a commission agent. The Centre Jurisdiction officer gave a written submission giving comments about the question raised. However, they also stated that they have registered a case against the applicant under GST Act. The Central Officer stated that they will send details of the case in two days. The applicant was informed about the case and they stated that statements were recorded by the Central Tax authorities. However, they requested to issue a ruling on merit.

4.2 The central Jurisdictional authority vide their letter C.No.IV/16/08/2018 dated 12.12.2019 submitted that investigations are being taken on the applicant by the headquarters preventive unit and statements have been recorded from the authorised signatories of the above societies under Section 70 of CGST Act 2017 on 20.09.2019.

4.3 Since, the details specified in the above letter didn't evince the detailed particulars of investigation, a letter dated 28.01.2020 was addressed to the Commissioner, Salem Commissionerate requesting to clarify whether the investigations undertaken by them are on the issues raised in the ARA application. In response to the above, the Central Jurisdictional authority vide letter C.No.IV/06/95/2019-HPU dated 27.02.2020 submitted that investigation is being undertaken by them on the following issues mentioned by the applicant in their ARA application:

1. Purchase/Sale involved in the process of auction of agricultural produce (cotton)
2. Society is liable to pay tax under Reverse Charge Mechanism
3. Tax Payable on commission, Godown Rent, Interest in respect of service Provided to Agricultural Producers and
4. The merchants (Registered person) who directly purchase cotton from the society which is liable to tax

5.1 We have carefully examined the submissions of the applicant and the comments furnished by the State/Central Jurisdictional Officer. The applicant has filed this application seeking advance ruling on the following questions:

- 1) Whether there is any purchase/sale involved in the process of auction of agricultural produce (cotton) conducted by the Namakkal Agricultural Producers Co-operative Marketing Society?
- 2) Whether our Society is liable to pay tax under Reverse Charge Mechanism in the capacity of being an auctioneer?
- 3) Whether service tax payable on receipt of Commission, Godown rent, Interest, in respect of service provided to agricultural produce?
- 4) Whether or not the merchants (Registered person) who directly purchase cotton from the agriculturist through auction conducted by the society is liable to pay tax on the basis of Reverse Charge Mechanism?

5.2 It is seen from the comments furnished by Central Tax Officer vide letters dated 12.12.2019 & 27.02.2020, that proceedings has been initiated in respect of the applicant on the issues raised by them before this authority and statements have been recorded as per Section 70 of CGST Act 2017 on 20.09.2019. We find that the application is filed on 01.10.2019 i.e when the proceedings initiated under the provisions of the GST Act are pending.

5.3 Section 98(2) of the GST ACT 2017, states as follows:

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that 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:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

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 on the issues raised by the applicant before this authority, the Central Tax authorities have initiated proceedings and the same is pending before the Jurisdictional authority at the time of filing of this application. The applicant has also accepted

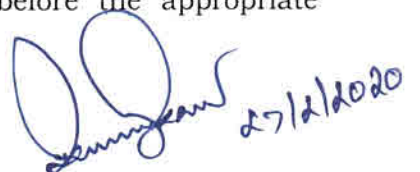
this fact during the personal hearing before us, though they have not mentioned the same in the application (Sl.No. 17). Therefore, the application cannot be admitted and is to be rejected without going into the merits of the issue.

6. Accordingly, we rule as under:

RULING

The application is not admitted and rejected under first proviso to Section 98(2) of the CGST/TNGST Act 2017, as the issues on 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 S.607 Namakkal Agriuctlural Producers Co-operative Marketing Society Ltd.,
69,Tiruchengode Road,
Namakkal - 637001

//By RPAD//



Copy submitted to :-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Gandhi Road, Nungambakkam, Chennai - 600 034.
2. The Principal Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Salem Commissionerate.
No.1, Foulkes Compound Anaimedu, Salem 636 001.
4. The Commercial Tax Officer (ST)
Namakkal (Town) Assessment Circle,
Old Court Building,Opp BSNL office,
Mohanur Road,Namakkal-637001.
5. Master File/ Spare - 2.