	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING **GOODS AND SERVICES TAX** **NCR BUILDING, STATUE CIRCLE, C-SCHEME** **JAIPUR – 302005 (RAJASTHAN)** **Email : aaarjpr@gmail.com**	

Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Mahendra Ranga, Member (Central Tax)
2. Dr. Ravi Kumar Surpur, Member (State Tax)

ORDER NO. RAJ/AAAR/02/2023-24 DATED 22.11.2023

Name and address of the Appellant	:	Additional Commissioner, CGST & CE/ST, Commissionerate, Udaipur 142 B Hiran Magri, Sector-11, Udaipur-313001
GSTIN/ UID of the appellant	:	08AAHCG3822A1Z1
Issues under Appeal	:	Classification of any goods or services or both
Date of Personal Hearing	:	17.11.2023
Present for the appellant	:	Sh. Jasveer Khichar, Joint Commissioner, CGST Udaipur
Present for the respondent		Sh. Sanjay Jhanwar, Senior Advocate Sh. Keshav Maloo, CA Sh. Rahul Lakhwani, Advocate
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/03/2023-24 against Letter No. 01/Letter/AAR/State/2023-24 dated 11.07.2023 issued by the Authority for Advance Ruling, Rajasthan

Rajasthan Appellate Authority For Advance Ruling * GST * Jaipur

(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)

At the outset, we note that the provisions of both the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017 are same barring a few exceptions. Therefore, unless a mention is specifically made of such dissimilar provisions, a reference to the Central GST Act, 2017 should be treated as a reference to the corresponding provisions under the Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan Goods and Services Tax Act, 2017(hereinafter also referred to as 'the RGST Act') by the Additional Commissioner, CGST & Central Excise / Service Tax, Commissionerate, Udaipur (hereinafter also referred to as 'the appellant') against letter No. 01/Letter/AAR/State/2023-24 dated 11.07.2023 issued by the AAR, Rajasthan issued in respect of M/s Gyankeer Tobacco Products Pvt Ltd (M/s GTPPL, earlier known as M/s Gyankeer Products Pvt Ltd) 00, Factory premises, NH08, Miraj Campus, Nathdwara, Rajsamand, Rajasthan-313301.

BRIEF FACTS OF THE CASE

3.1 M/s Gyankeer Tobacco Products Pvt Ltd (M/s GTPP), earlier known as M/s Gyankeer Products Pvt Ltd) (hereinafter referred to as 'the taxpayer' and also as 'the respondent') 00, Factory premises, NH08, Miraj Campus, Nathdwara, Rajsamand, Rajasthan-313301, hold the GST Registration No. 08AAHCG3822A1Z1. They are manufacturer of tobacco products. They filed an application before the AAR, Rajasthan to seek advance uling for classification of their product "Keer Kokil" – tobacco premixed with lime to be classified as "unmanufactured tobacco without lime tube" falling under Chapter 2401. The taxpayer had declared the following manufacturing process at the time of filing the application for advance ruling :

A. Lime paste is mixed with raw cut tobacco and dried in auto plant to remove water during drying process.

B. The lime mixed tobacco is processed through vibrators to segregate uneven leaves and dust.

C. Storage in fabric covered steel silos followed by addition of little aroma and menthol.

3.2 After personal hearing dated 29.03.2022 and 11.05.2022, the applicant/taxpayer supplied the following revised production process vide their submission dated 16.05.2022:

कीर कोकिल छाप

चूना मिश्रित तम्बाकू निर्माण विधि

1. कच्ची तंबाकू को एक बड़े से तगारे में डाला जाएगा|

↓

2. फिर उसमे लाइम पेस्ट डाला जाएगा|

↓

3. दोनों हाथो से अच्छी तरह मिलाया जाएगा|

↓

.4फिर इस को सुखाया जाएगा|

↓

.5तदुपरांत नमी व ताज़गी बनी रहे इसके लिए इसे मोस्चुराइज किया जाएगा |

↓

.6फिर पाउच पैकिंग मशीन द्वारा विभिन्न ग्रामेज में पाउच पैक किए जाएंगे|

↓

.7जिनका रू 5 .या रू 10 .आदि स्वरूप में बाज़ार की मांग के अनुसार30 ,15,20 पाउच के पैकेट बनाये जाएंगे|

↓

.8फिर बाज़ार में बिक्री के लिए भेजा जाएगा|

3.3 After furnishing of the revised manufacturing process dated 16.05.2022 by the taxpayer, the AAR vide Ruling No. RAJ/AAR/2022-23/07 dated 01.06.2022 classified the product Keer Kokil as "unmanufactured tobacco" under CTH 24012090 – others attracting GST @ 28% and Compensation Cess @71% as mentioned at Sr. No. 5 of Notification No 1/2017 – Comp Cess dated 28.06.2017

3.4 An intelligence was reportedly gathered by Anti- Evasion Branch, CGST Commissionerate Udaipur that M/s GTPPL, is misusing the above-mentioned Ruling and manufacture of the product is done by the taxpayer using machines. The product should fall under the category of manufactured tobacco product involving mechanical process. In other words, the product is different than what was the subject matter of the Ruling pronounced by AAR vide Ruling No RAJ/AAR/2022-23/07 dated 01.06.2022.

3.5 In order to verify the manufacturing process & ingredients used therein, a search was conducted by the officers of CGST Udaipur at the premises of the taxpayer, during which it was observed that process followed by the taxpayer to manufacture their tobacco product "Keer Kokil" differed from the production process submitted by them before AAR, Rajasthan on 16.05.2022. According to CGST Udaipur, the process submitted by the taxpayer before AAR, Rajasthan, involved use of manpower to mix lime in raw tobacco and prepare their tobacco product but apparently, they were using machines. Additional ingredient such as "Nut Meg Aroma" and "Mentha Oil", which were not disclosed/mentioned in their submission made before AAR Rajasthan on 16.05.2022. The actual production process and the ingredients used for manufacturing the tobacco product "Keer Kokil" were found by them in variance with those mentioned in the ruling pronounced by the AAR, Rajasthan vide their ruling No. Raj/AAR/2022-23/07 dated 01.06.2022.

3.6 The quality control manager and the directors of M/s GTPPL, in their statement recorded before the Anti Evasion Branch, reportedly admitted that: they were using machines instead of manpower in manufacturing their tobacco product "Keer Kokil" subject matter of the AAR Ruling; that they were using additional raw ingredients "Nut Meg Aroma" and "Mentha Oil" in their product "Keer Kokil", which were not pronounced in the AAR Ruling; that they also reportedly admitted that initially they manufactured their product as per the process allowed by the AAR Ruling and after their product didn't garner much success, they adopted a new process involving use of machines and mixing of ingredients which was not covered by the Ruling and is different from the one approved in the Ruling.

3.7 In the process observed during the search, reportedly, a paste of lime and raw tobacco is prepared with a machine and transmitted through a pipeline and conveyer belt to the 'Mixing Machine' where raw tobacco and lime paste are mixed by a rotation blade mechanism. After the mixing process, the mixture is put into storage hoppers on tractors through conveyer belts to place the mixture in an open space for drying. After drying, the mixture is strained/sorted with a strainer machine and stored. This stored mixture is transferred to the 'Coating Plant', where 'Lacquering' is done with 'Nut Mug Aroma', Menthol/Peppermint oil and water solution. The ingredients are then mixed together in the coating plant. After mixing, the mixture is sent to 'Steel Tanks' through conveyer belts from where it goes to the packing plant for packing in various quantities.

3.8 Based on above evidence, it was observed by CGST Udaipur that M/s GTPPL have obtained the Ruling No. Raj/AAR/2022-23/07 dated 01.06.2022 by misrepresenting the facts before the Authority for Advance Ruling; that M/s GTPPL appeared to have violated the ruling pronounced by the Authority For Advance Ruling, Rajasthan for Goods & Service Tax vide Advance Ruling No. Raj/AAR/2022-23/07 dated 01.06.2022 by manufacturing product by different process and by using different ingredients than declared before the AAR. Therefore, the Addl. Commissioner, (A.E.) CGST, Udaipur, approached the AAR Rajasthan vide letter F. No. V(15)80/AE/Gr-IV/UDR/2023/745 dated 04.05.2023 to review the Order No. Raj/AAR/2022-23/07 dated 01.06.2022 passed by the authority for Advance Ruling, Rajasthan under Section 104 of the CGST Act, 2017 read with RGST Act,2017.

3.9 The AAR vide letter no. 01/Letter/AAR/State/2023-24/45 dated 16.06.2023 asked M/s GTPPL to submit facts and their version if any and informed them of the allegations levelled against them by Addl. Commissioner, (A.E.) CGST, Udaipur.

3.10 M/s GTPPL replied vide their letter dated 21.06.2023 that the advance ruling has not been obtained by them by any fraud or suppression of material fact or mis-representation of fact and therefore such ruling is not liable to be declared void *ab-initio* in terms of section 104 of CGST Act; that they have followed the procedure of manufacturing as well as the ingredients used in manufacturer of product as declared before the AAR Rajasthan for obtaining the said advance ruling dated 01.06.2022; that there is no change in their product "tobacco pre-mixed with lime; a flow chart of the production process which is reproduced in the ruling and it was also submitted that a little aroma and menthol will also be used in the product, which appeared in third para of point 1 on page 3 of the Advance Ruling.

3.11 Considering the submissions made from both sides, AAR vide letter dated 11.07.2023 held as under:

"that on the basis of documents submitted before AAR, it revealed that applicant has submitted that Lime paste is mixed with Raw cut Tobacco and dried in Auto Plant where water gets evaporated during drying process; after drying in auto plant, the lime mixed tobacco is processed through vibrators to segregate uneven leaves and dust; the resulting semi-finished product is then stored in Jute fabric covered steel Silos; such semi-finished product is then processed in coating plant to add aroma, menthol and moisturizing which becomes final product i.e. "Tobacco pre-mixed with lime" for packing in pouches and dispatch. The applicant further submitted a process which stated that the process will be carried out manually and submitted the manual process of manufacturing of tobacco pre- mixed with lime' on dated 16.05.2022. All the relevant facts are on the record and discussed in advance ruling order.

Advance ruling was pronounced on the classification of '*tobacco pre-mixed with lime*' with addition of volatile flavours. "Keer Kokil" is brand name being used by applicant.

It is necessary to mention that order No. RAJ/AAR/2022-23/07 dated 01/06/2022 pronounced in respect of classification of 'tobacco pre-mixed with lime', not any brand name.

Accordingly, it may be concluded that in the light of above discussion the advance ruling made by Order No. RAJ/AAR/2022-23/07 dated 01/06/2022 is made about the product on the basis of facts submitted in the application of the applicant. Based on facts submitted before AAR and available on record, it is difficult to establish that M/s Gyankeer Tobacco Products Pvt Ltd has obtained order No. RAJ/AAR/2022-23/07 dated 01/06/2022 by fraud or suppression of material facts or misrepresentation of facts. Thus, the submitted letter C. No. V(15)80/AE/Gr IV/UDR/2023 dated 04.05.2023 and subsequent letter dated 19.05.2023 is not sustainable to consider under Section 104 of CGST/RGST Act, 2017. A mechanism for redressal of order by AAR is also available in the provisions of CGST/RGST Act, 2017.

On the basis of facts and available records, we don't find substantial ground to be void above said order under Sec 104 of Act."

GROUNDS OF APPEAL

4.1 The appellant has now filed an appeal against the AAR letter dated 11.07.2023 on the following grounds:

4.2 That the act of the taxpayer regarding misuse of Advance Ruling before the AAR is in violation of Section 104 of the CGST Act, 2017. The provisions of Section 104 of the CGST Act, 2017 is reproduced below for ready reference please –

"Section 104. Advance ruling to be void in certain circumstances.-

(1) Where the Authority or the Appellate Authority 1[or the National Appellate Authority] finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 2[or under section 101C] has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made there under shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.-The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

4.3 That during the search conducted at premises of M/s GTPPL, it was observed that the taxpayer is following a process to manufacture their tobacco product "Keer Kokil" which differs from the manufacturing process declared by them to AAR, Rajasthan on 16.05.2022. based on which the ruling was pronounced by the AAR, Rajasthan vide their ruling no Raj/AAR/2022-23/07 dated 01.06.2022.

4.4 That the quality control manager and the directors of M/s GTPPL, in their statement recorded before the Anti Evasion Udaipur, admitted the fact that they are using machines instead of manpower in manufacturing their tobacco product "Keer Kokil" and also using additional raw ingredients "Nut Meg Aroma" and "Mentha Oil" in their product "Keer Kokil".

4.5 That the directors of M/s GTPPL in their recorded statement also admitted that initially they manufactured their product as per the process allowed by the AAR in their ruling and only after their product didn't garner much success they adopted a new process involving use of machines and mixed extra ingredients which was not allowed in the ruling and is different from the one approved in the ruling by the AAR, Rajasthan.

4.6 That the findings of the investigation were reported to the AAR, Rajasthan by Anti Evasion Udaipur vide their letter C. No. V(15)80/AE/Gr IV/UDR/2023 dated 04.05.2023 and subsequently a request was made before the AAR vide their office letter dated 19.05.2023 to put forth the documentary evidence/records for their perusal. However, while deciding the matter the principles of natural justice were not followed and the appellant department was not given an opportunity to produce the records to the authority. The AAR, Rajasthan erred while issue this letter/order to not examine the material facts and investigation report to take necessary action under Section 104 of the CGST Act, 2017 as well as RGST Act, 2017.

5. Comments on the appeal were sought from the respondent, these were received vide their letter dated 28.08.2023. The comments are reproduced as under :

Preliminary Objections

That, without prejudice to any other right available to the notice, following preliminary objections are filed against the appeal submitted by the Appellant department, which are without prejudice to each other-

1. **Non-maintainability of the Appeal as Order is Not Appealable**:

That with the perusal of column 1 and 2 of the Appeal Form it transpires that the Appellant Department has filed the present appeal against communication of AAR-Raj made vide letter number F. 01/Letter/AAR/State/2023-24 dated 10.07.2023. The Appellant Department has filed the present appeal u/s 100 of the CGST/RGST Act. With the perusal of said Section 100 of the CGST/RGST Act, it is apparent that under said section the aggrieved Jurisdictional Officer can file an Appeal only against an Advance Ruling pronounced u/s 98(4) of the CGST/RGST Act. As per the facts of the present case, the impugned letter/communication is not a ruling pronounced u/s 98(4) of the CGST Act, hence the present appeal is not maintainable. Further, it is a settled principle of law that a right of appeal is not natural or inherent right but a statutory right/remedy which must be governed by the statute that grants it. In the present case, the provision to appeal granted under Section 100 only covers appeal against ruling pronounced u/s 98(4) of CGST/RGST Act. The Letter/Communication dated 10.07.2023 is not appealable u/s 100 as it does not fall under the ambit of an Advance Ruling pronounced u/s 98 of the

CGST/RGST Act. Therefore, the appeal is not maintainable u/s 100 of the Act. Section 100 has been reproduced here under for your ready reference-

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling **pronounced under subsection (4) of section 98, may appeal to the Appellate Authority.**

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant: Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be

2. **Mischievous Attempt to challenge the Advance Ruling:**

That the Appellant Department has filed the present appeal with a malicious intent to challenge the order of Advance Ruling dated 01.06.2022, the appeal against which is otherwise barred by limitation under Section 100 of CGST/RGST Act. It is humbly submitted that the present Appeal is a mischievous attempt of the Appellant Department to challenge the Advance Ruling dated 01.06:2022 under the garb of challenging the letter dated 10.07.2023. That the Appellant Department is aware of the fact, that the period of 60 days (30 days + additional 30 days at the discretion of the Appellate Authority) for filing an appeal against an Advance Ruling pronounced under Section 98 had lapsed and that they cannot challenge the Advance Ruling dated 01.06.2022 owing to such lapse. It is clear from the acts of the Appellant Department that, to avoid the question of limitation, they have challenged Advance Ruling dated 01.06.2022 under the veil of filing an against the letter dated 10.07.2023.

3. **Appeal against the Advance Ruling is time-barred.**

Without prejudice to the submissions made in the above paragraphs it is submitted that with perusal of letter dated 14.08.2022, it appears that the present appeal has been filed against advance ruling having number RAJ/AAR/2022-23/07 dated 01.06.2022. It is further submitted that an appeal against the Advance Ruling dated 01.06.2023 is barred by limitation, as the provisions of Section 100(2) of the CGST/RGST Act provides that any appeal against an Advance Ruling must be filed within 30 days from the date of communication. It further provides for an additional period of 30 days for filing an appeal at the discretion of the Appellate Authority, if it is satisfied that the Appellant was prevented by sufficient cause to file the appeal within the time limit. However, in the present case the said period for filing an appeal had lapsed way before the present appeal has been preferred by the Appellant Department. Therefore, the present appeal filed by the Appellant Department is barred by limitation.

6. The Anti Evasion Branch, CGST Udaipur vide their letter dated 08.11.2023 have furnished following additional grounds in continuation of their appeal dated 11.08.2023:

6.1 M/s Gyankeer Tobacco Products Pvt Ltd (M/s GTPPL, earlier known as M/s Gyankeer Products Pvt Ltd) (hereinafter referred to as the 'taxpayer' or as the "respondent"), 00, Factory premises, NH 08, Miraj Campus, Nathdwara, Rajsamand, Rajasthan-313301, holder of GST Registration No. 08AAHCG3822A1ZL are a manufacturer of tobacco products.

6.2 That the taxpayer filed an application before AAR, Rajasthan to pronounce advance ruling as it falls under the ambit of Section 97(2)(a) for classification of any goods or services or both and for seeking clarification on their product "Keer Kokil tobacco premixed with lime to be classified as "unmanufactured tobacco without lime tube" falling under Chapter 2401. That the Taxpayer at the time of filing of application for Advance Ruling before AAR Rajasthan dated 04.01.2022 submitted a process flow chart to manufacture their tobacco product "Keer Kokil" (Tobacco premix with lime). Thereafter the taxpayer submitted a revised process before the AAR Rajasthan vide their letter dated 16.05.2022.

6.3 That the process first submitted by M/s GTPPL included use of machines for mixing, auto plant for drying, conveyors and hoppers, coating plant, adding additional substances such as Mentha Oil and Nutmeg Aroma. However, in their revised submissions dated 16.05.2022, they submitted a process in which neither any use of machines is shown until the stage of packaging nor addition of Mentha Oil and Nutmeg Aroma is mentioned. The taxpayer submitted that raw tobacco will be mixed with lime with hands, afterwards it will be dried and then moisture will be added and then it will be packaged in various sizes. Nowhere in this process did they mention that the machines for mixing, conveying, drying and again adding moisture will be used. Further they did not mention in the new process that Mentha Oil and Nutmeg Aroma will be added. Various machines like mixing plant of lime and raw tobacco, conveyor belts, hoppers (used to transport tobacco at various stages of manufacturing) coating plant where lacquering is being done, were used in the manufacturing process. The process was video-graphed during the search conducted at the premises of M/s GTPPL by Anti Evasion Branch, CGST Udaipur in April, 2023.

Statements of Directors and Quality Manager

6.4 Statement dated 25.04.2023 of Arjun Singh Kitawat, Quality Manager, M/s GTPPL were recorded under Section 70 of the CGST Act, wherein he inter alia stated that he looks after the work of moisturizing the dried lime-mixed tobacco. He stated that he receives dried lime mixed tobacco in the coating plant where Mentha/Peppermint Oil (with help of pumping motor), Nutmeg Aroma and water are added to the dried tobacco and a process called lacquering is done in the coating plant. Afterwards, the mixture is sent to steel silos on conveyor belts where it is stored and eventually sent to the packing plant.

6.5 Ashok Kumar Saini, Director, M/s GTPPL in his statement dated 26.04.2023 stated that he looks after the mixing of lime in tobacco. He stated that dry lime is submerged in water in pits till it is dissolved, after which a paste is made out of it using a machine. The lime paste is transported to the first floor where it is mixed with raw tobacco in a mixing machine. The mixture is then transported on conveyor belts to tractors which transport it to an open area and lay it on the ground for drying. The dried mixture is then sieved, stored and sent to coating plant. The process at the coating plant is supervised by Arjun Singh Kitawat, Quality Manager.

6.6 Gyan Singh Jhala, Director, M/s GTPPL also corroborated that facts admitted by Ashok Kumar Saini and Arjun Singh Kitawat and narrated the whole process used in the manufacturing of their product Keer Kokil in his statement dated 26.04.2023. He admittedly used the word **Manufactured Tobacco Product** for their product. He also admitted that when they initially submitted their manufacturing process before AAR in which Mentha Oil and Nutmeg aroma was proposed be added, he came to realize during the hearings that this process will lead to classification of their product as "manufactured tobacco". They then re-submitted on 16.05.2023, a process which did not mention the use of machines or addition of Nutmeg Aroma and Mentha Oil. The same has been mentioned in the brief facts as well.

6.6.1 He further stated that the process submitted was to be undertaken by hand, it involved manual labor, with no use of machines, or addition of any other substances. They reportedly also submitted an undertaking in respect of this process. He further admitted that initially they adopted the process involving manual labor and did not add Nutmeg Aroma and Mentha Oil for production of their lime mixed tobacco product "Keer Kokil"(unmanufactured tobacco without lime tube" at their premises situated at Village Thamla, Tehsil Mawli, Distt Udaipur. The product however did not garner any success and due to very low sales did not generate enough revenue.

6.6.2 He then came in contact with Vinod Kumar Jat, Director, M/s Mirage Developers Group, who suggested that M/s GPPL(now M/s GTPPL) can rent their plant at Jhar, Saadri to manufacture their tobacco product "Keer Kokil". Gyan Singh Jhala also stated that they came in contact with a firm M/s Mirage Realcon which agreed to provide their machines (already setup at the Jhar Saadri plant) on rent for the production of the product "Keer Kokil". He inter alia stated that M/s Mirage Sales and Marketing agreed to provide sales and marketing support to promote and sell "Keer Koki" using their own market base.

6.6.3 Gyan Singh Jhala admitted that the product manufactured at Village Thamla, Tehsil Mawli, Distt Udaipur was different from the product manufactured at their plant at Jhar, Saadri. The former did not involve use of machines and Nutmeg Aroma and Mentha

Oil and the process involved in its production was submitted before AAR in respect of which Ruling was pronounced. The latter, however, involved use of machines and additional substances, which was not approved by the **AAR** Ruling in question.

6.7 Another Director of M/s GTPPL, Gagandeep Singh, in his statement dated 26.04.2023 admitted that the manufacturing process approved by the Ruling pronounced by AAR Rajasthan is not being used by them. Instead of manual labour and only lime mixed tobacco, they are using machines for various processes of the manufacturing and additional substances Nutmeg Aroma and Mentha Oil are also being added. He admitted that the process submitted by them in their revised submissions dated 16.05.22 and was approved by the AAR is different from the process they are using now. He stated that he agrees with and is satisfied with the videography of the manufacturing process done by the Anti Evasion Branch, CGST Udaipur during the search conducted at the premises of M/s GTPPL on 25.04.2023.

6.8 Furthermore, Suresh Kumar Keer, the fourth director of M/s GTPPL in his statement dated 26.04.2023 corroborated the process undertaken by them for manufacture of their product "Keer Kokil". It was same as narrated by the other director. He also corroborated the facts about the process used in their previously manufactured product; how it is different from their current product and how they came to adopt this process. This was also admitted by Gyan Singh Jhala, one of the Directors in M/s GTPPL in his statement summarized above.

6.9 Subsequently, on perusal of the pouches of their product Keer Kokil previously manufactured at their village Thamla, Mawli premises and of the one manufactured at their present, rented premise at Jhar, Saadri, it is observed that in the latter there is a clear and imposing mention of "mktd by Mirage Sales and Marketing LLP" above the brand name "Keer Kokil" which was not present in the former pouch.

<u>Corroboratory Evidence during Investigation against M/s SPPL</u>

6.10 It was gathered during the investigation by the AE branch Udaipur that Gagandeep Singh, Director, M/s GTPPL was also a Director in another company named M/s Samanway Packmark Private Limited (SPPL) **(not a party to the advance ruling)** (GSTIN 08ABICS6064N2ZM), having their principal place of business at Unnamed Road, Hotel Gokul RTDC, Bhalawato Ka Kheda, Kalan Kheri Khara, Rajsamand, Rajasthan, 313301. M/s SPPL are also a manufacturer of tobacco product and is currently operating from their additional place of business at Khasra No. 1199-1202, Rabcha, Tehsil Delwara, Rajsamand- 313301. M/s SPPL are also manufacturing a tobacco product under the brand name "**Turant**" which has similar packaging as "Keer Kokil" along with "mktd by Mirage Sales and Marketing LLP" mentioned above their brand name.

6.11 M/s SPPL which was incorporated in May-2022 having three directors including Gagandeep Singh, had also filed an application before the AAR, Rajasthan seeking a Ruling in respect of classification of their tobacco product and to determine the applicable rate of GST & Compensation Cess. The AAR, Rajasthan vide their order No RAJ/AAR/2022-23/16 dated 20.10.2022 pronounced a ruling that the product manufactured by M/s SPPL falls under the category of unmanufactured tobacco and therefore falls under CTH 2401 20 90 "Others" and the product attracts GST @ 28% and Compensation Cess as 71%.

6.12 Consequently, the AE Branch, CGST Udaipur conducted a search at the premises of M/s SPPL and during their investigation, it was found that a manufacturing process adopted by them was similar to that of M/s GTPPL. It was found that presently there are three Directors in the company. Statements of all three directors namely Indarlal Shrimali dated 03.08.2023, Sohan Singh Panwar dated 27.09.2032 and Tulja Shankar Shrimali dated 27.09.2023 were recorded. It was found that the manufacturing process adopted by M/s SPPL as stated by them is similar to the one adopted by M/s GTPPL.

CRCL Report of the samples collected at both M/s GTPPL and M/s SPPL

6.13. The samples of mixture from both M/s GTPPL and M/s SPPL were sent to the CRCL, New Delhi for analysis on 04.07.2023 and 03.08.2023 respectively. In the case of M/s GTPPL, the CRCL reported on 16.08.2023 that their sample contained nicotine, silicate residues, moisture content and dry ash along with menthol and lime. In case of M/s SPPL, the CRCL vide their report dated 27.09.2023 declared that the sample contained same ingredients as the those present in the sample from M/s GTPPL along with an outright statement that the **sample has characteristics of manufactured tobacco.** It is to be noted that the reports of the CRCL, New Delhi on the samples from both M/s GTPPL and M/s SPPL have been declared after the filing of the appeal by the department, against the letter dated 11.07.2023 of the AAR.

7. In view of the above, the department has submitted the following additional grounds:

- The correlation of the report of CRCL of samples collected from both M/s GTPPL and M/s SPPL that when latter is declared as manufactured tobacco, the former is also to be considered as manufactured tobacco.
- The statements of the Directors of both the firms (who have admitted to following a mechanized process and adding other substances in the tobacco, both

of the things were not approved in the impugned ruling pronounced by the AAR, Rajasthan) corroborated by videography done during the search proceedings.

- The department contended that M/s GTPPL has fraudulently obtained the ruling from RAAR by declaring a false process in which manual labor is involved and no additional substances are added in the tobacco. While in actual practice they are using machines and other substances in manufacturing their product, making their product liable to be classified as manufactured tobacco under HSN 2403.

7.1 The additional submissions dated 08.11.2023 also contained pen drive containing the videos of the manufacturing process adopted by M/s GTPPL with use of machines, videographed during the proceedings of search conducted on 25.04.2023

RECORDS OF PERSONAL HEARING

8. Personal hearing was scheduled in the matter on 09.11.2023. However, the respondent requested an adjournment of the same vide their email dated 09.11.2023. Consequently, the personal hearing was re-scheduled on 17.11.2023 which was attended by the appellant as well as the respondent. Sh. Jasveer Khichar, Joint Commissioner, CGST Udaipur appeared on behalf of the Revenue and Sh. Sanjay Jhanwar, Sr. Adv., Sh. Keshav Maloo, CA, and Sh. Rahul Lakhwani, Adv attended the hearing on behalf of the taxpayer.

8.1 The Joint Commissioner contended that the original Ruling was pronounced after the lapse of 90 (ninety) days. As such, it is void *ab-initio*. He iterated the written submissions dated 08.11.2023 on merits.

8.2 The counsel for the taxpayer raised following three preliminary objections:

(i) An Appeal under Section 100 of the CGST Act 2017 before AAAR can be filed only against order under Section 98(4) whereas this appeal has been filed against letter under Section 104 dated 10.07.2023.

(ii) An Order under Section 98(4) was passed on 01.06.2022. Therefore, appeal against the order is time barred.

(iii) Arguments in the appeal are against the original order & not against the order dated 11.07.2023. The relied upon judgment in the case of Singh Enterprises v CCE (Jamshedpur Manu/SC/0015/2008).

9. The AAAR adjourned the matter to first decide the maintainability of the appeal.

DISCUSSION AND FINDINGS

10. This authority has considered all the available facts and material on record. Revenue have challenged the letter dated 11.07.2023 of the AAR, Rajasthan. This letter contains their findings under Section 104 of the CGST Act, 2017, in response to the

challenge raised by CGST, Udaipur claiming that the Advance Ruling was obtained by the taxpayer by fraud or suppression of material facts, or misrepresentation of facts. The taxpayer on the other hand has raised preliminary objections on the maintainability of the instant appeal.

11. We have considered the rivals contentions. As maintainability of this appeal/petition has been questioned, this issue needs to be decided before any further consideration of the matter.

12. The authority finds that it has only two roles under the statutes viz. CGST Act, 2017 & RGST Act, 2017.

(i) to pronounce a Ruling on an appeal under Section 100 of the CGST Act, 2017 against an order of the AAR under Section 98(4) or 98(5) of the CGST Act, 2017.

(ii) to declare any Ruling void *ab initio* under Section 104 of the CGST Act, 2017 in case the Ruling under Section 101 of the CGST Act, 2017 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts.

13. Therefore, it follows that the second role can come into play only when a Ruling in Appeal has been passed by this authority. Further, this Authority (AAAR) does not sit in judgment over orders of the AAR passed under Section 104 of the CGST Act, 2017.

14. In the instant case, this Authority finds that this appeal has been filed against the decision of the AAR, Rajasthan under Section 104 of the CGST Act, 2017. We note that no remedy lies before this authority against this decision. The revenue have also raised contentions against AAR, Rajasthan Ruling dated 01.06.2022. We note that no appeal was filed against the AAR Order dated 01.06.2022. The instant petition cannot be treated as an appeal by default; that will be time-barred too. We note that the instant appeal is not an appeal under Section 100 against the order passed under Section 98(4) or 98(5) of the CGST Act, 2017. Thus, it is outside the purview of the domain of this Authority. As a statutory authority with a specified statutory role, this authority cannot venture into any other area beyond what is prescribed in law.

In light of the discussion and findings above, we hold as under:-

ORDER

The instant appeal filed by CGST, Udaipur before AAAR against the letter dated 11.07.2023 issued by AAR, Rajasthan is not maintainable. It is disposed of accordingly.

22-11-23

(Mahendra Ranga)
Member (Central Tax)
(Mahendra Ranga)
Member, AAAR (Central Tax)

22/11

(Dr. Ravi Kumar Surpur)
Member (State Tax)
(Dr. Ravi Kumar Surpur)
Member, AAAR (State Tax)

SPEED POST

To
M/s Gyankeer Tobacco Products Pvt Ltd
C/o M/s Keshav Maloo & Associates
2-A, Second Floor, Tilak Bhawan, Tilak Marg,
Opposite Udyog Bhawan, C Scheme,
Ashok Nagar, Jaipur, Rajasthan 302005

F. No. IV (16)13/AAAR/RAJ/2021-22/ 3431 Date. 22-11.2023

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Udaipur.
4. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
5. The Deputy /Assistant Commissioner, CGST Division-D-Kankroli
6. The Assistant Commissioner, CTO Ward – Circle B, Rajsamand, Zone - Bhilwara
7. M/s Gyankeer Tobacco Products Pvt Ltd (M/s GTPPL, earlier known as M/s Gyankeer Products Pvt Ltd) 00, Factory premises, NH08, Miraj Campus, Nathdwara, Rajsamand, Rajasthan-313301
8. The webmanager – www.gstcouncil.gov.in
9. Guard File.

Rajasthan Appellate Authority For Advance Ruling * GST * India