

DELHI AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
DEPARTMENT OF STATE TAXES
7TH FLOOR, VYAPAR BHAWAN, IP ESTATE, NEW DELHI - 110002

ADVANCE RULING NO. 04/DAAR/2018 dated 06.04.2018

(In Application No: 04/DAAR/2018 dated 09.01.2018)

Name and Address of the Applicant	: Shri Shalesh Kumar Singh, 596, Ground Floor, Opp. Taxi Stand, New Rajinder Nagar, New Delhi-110060
GSTIN of the Applicant	: Not Registered
Date of Application	: 09.01.2018
Clause(s) of Section 97(2) of CGST/DGST Act, 2017, under which the question raised	: (a) Classification of any goods or services or both (c) Determination of the liability to pay tax on any goods or services or both.
Date of hearing(s) for admission	: 19.01.2018
Date of Final Hearing(s)	: 23.02.2018, 16.03.2018
Date of receipt of written submissions from applicant	: 16.03.2018
Date of receipt of comments from (Centre)	: 22.02.2018
Date of receipt of comments from (State)	: Not received
Present for the Applicant	: Shri Prafull Gupta, C.A.
Present for the Revenue (Centre)	: Shri Raj Kumar, Assistant Commissioner, Karol Bagh Division, CGST North, New Delhi
Present for the Revenue (State)	: Shri Shamsher Singh, Assistant Commissioner, DGST (W 44)

Despatch :- 192/DAAR/2018/06.04.2018

Statement of Facts as per the Applicant:

The applicant is interested in trading of 'Dried Tobacco Leaves' which would be purchased from registered dealer who in return purchases such Tobacco Leaves from Agriculturist / Farmers. Such registered dealer after purchasing it from Agriculturist / Farmers will sell the same to Applicant as it is without any further change in its form.

2. Applicant after cleaning and removal of unwanted particles (Bhusa, Dust etc.) will further sell such 'Dried Tobacco Leaves' in wholesale market. During the above explained activity of cleaning and removal of unwanted particles (Bhusa, Dust etc), no essence or foreign particle will be added to the 'Dried Tobacco Leaves'. Such dried tobacco leaves will be sold in wholesale market without any branding on it. It is also clarified that such 'Dried Tobacco Leaves' are not fit for direct human consumption in any way. A flow chart of the entire agricultural activity on tobacco is also given as follows:

Flowchart of Entire Agricultural Activity on Tobacco.

Step 1:

Harvesting of tobacco

Step 2:

After purchasing Tobacco Leaves - Pre - curing through the following methods.

Sun Dry

Air Dry

Step 3 & 4:

Removal of dust particles, straw (bhusa) and other unwanted particles.

Step 5:

These Dried Tobacco leaves will then be sold.

The whole procedure explained above will purely be an agricultural activity and form of the product will not change during the above activity. Further, such form of dried tobacco leaves are not fit for direct human consumption.



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Details of Question on which Advance Ruling is requested:

3. **Classification of goods and/ or services or both;**

As per HSN Code List Chapter No. 24 Tariff Item 2401 and Notification No. 01/2017-Central Tax (Rate), dated 28.06.2017, GST on Tobacco Leaves is 5% and 28% on all goods not specified elsewhere. In this background, whether 'Dried Tobacco Leaves' on which cleaning and removal of unwanted particles (Bhusa, Dust etc.) has been done would be classified under 'Tobacco Leaves' or not, if the form and nature of same has still not undergone any change. Whether 'Dried Tobacco Leaves' on which cleaning and removal of unwanted particles has been done would be classified under Tariff Item/Heading 2401 as 'Tobacco Leaves' or 'All goods not specified elsewhere' as mentioned in Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017.

4. **Determination of the liability to pay tax on goods or services or both;**

Whether GST on such 'Dried Tobacco Leaves' on which cleaning and removal of unwanted particles (Bhusa, Dust etc.) has been done without any addition of foreign particles, would be levied @ 5% or 28% under Chapter No. 24 Tariff Item 2401 under Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017.

Views of The Applicant:

5. Product to be traded by the applicant is 'Dried Tobacco Leaves' as such and no processing/ modification shall be done by the applicant so the same shall be classifiable under 'Tobacco Leaves' and GST @ 5% shall be levied on such 'Dried Tobacco Leaves' as per the interpretation of Law and common parlance by the applicant under Chapter No. 24 Tariff Item 2401.

6. Further, as per the FAQ's released by CBEC F. No. 332/2/2017- TRU, it is further clarified in S. No. 42 that "For GST Rate of 5%, tobacco leaves means, leaves of tobacco as such or broken tobacco leaves or tobacco leaves stem."

7. As per the above explanation, dried tobacco leaves shall be covered under 'Tobacco Leaves' as per HSN Code List Chapter No. 24 Tariff Item 2401 and Notification No. 01/2017-Central Tax (Rate), dated 28.06.2017.

Comments of Jurisdictional Officer (CGST):

8. It appears that in broad categorization the tobacco has been categorised as 'unmanufactured tobacco' and 'manufactured tobacco'. Tobacco leaves being agricultural



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produce in raw form appears to be in state of unmanufactured tobacco, but they cannot be classified other than tobacco leaves.

9. Since, ingredients of tobacco patti and its extract represent the same substance for all purposes, the application of latter to former does not lead to any mixture or compound of two. It was submitted that the issue has now been finally decided by the CESTAT in the case of Yogesh Associates V/s Commissioner of Central Excise, Surat-II wherein it was held that raw leaf of tobacco treated with tobacco solution quimam and other flavours including saffron water – raw tobacco leaf not undergone any irreversible change and remains raw leaf tobacco unmanufactured – mixture too concentrated for comfortable consumption by human beings and fails to meet test of marketability of product as 'chewing tobacco' – classification under Sub-heading 2401.10 of Central Excise Tariff appropriate. In view of this it was submitted that the Commissioner's Order was incorrect and should be set aside.

10. Board vide its Circular No. 37/90-CX. 3, dated 17.07.1990, in case of flavours/scents added in preparation of scented snuff held the view that Snuff Tobacco even after addition of "Perfumes, Scents and Mouthol" remain Tobacco. Therefore, the explanatory notes of HSN bringing in the leaf treated with tobacco solution Quimam herein and thereafter with flavouring perfumes agents cannot transform Raw leaf tobacco unmanufactured to manufactured tobacco. The addition of these volatile flavours will not amount to unmanufactured tobacco to manufactured tobacco following the settled position that process of treatment Raw leaf of tobacco by effecting various processes, e.g. sieving etc. would keep the tobacco as unmanufactured. See 1997 (96) E.L.T. 712; 2002 (147) E.L.T. 1184 and classification under heading 2401 cannot be disturbed and Board Circular 81/5/87-CX. 3, dated 23.06.1987 upholds the view.

RELEVANT PROVISIONS:

11. S.No. 28 of FAQs on GST Rate-II dated 03.08.2017 and S.No. 42 of CBEC Circular F.No. 332/2/2017-TRU dated December 2017;

S.No.	Question	Answer
28./42.	Tobacco leaves falling under heading 2401 attracts 5% GST on reverse charge basis in respect of supply by an agriculturist. What is the meaning of tobacco leaves?	For GST rate of 5%, tobacco leaves means leaves of tobacco as such or broken tobacco leaves or tobacco leaves stems.

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12. Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017:

Schedule 1-2.5%

S.No.	Chapter/Heading/Sub-heading/Tariff Item	Description of Goods
(1)	(2)	(3)
109.	2401	Tobacco leaves

Schedule IV-14%

S.No.	Chapter/Heading/Sub-heading/Tariff Item	Description of Goods
(1)	(2)	(3)
13.	2401	Unmanufactured tobacco; tobacco refuse (other than tobacco leaves)

13. Chapter 24 of HSN: Tobacco and manufactured tobacco substitutes

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-dyeing. 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, boles (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.

14. **HSN Notes for heading 24.01:**

24.01- Unmanufactured tobacco; tobacco refuse.

2401.10 - Tobacco, not stemmed/stripped

2401.20 - Tobacco, partly or wholly stemmed/stripped

2403.30 - 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" ("sauved" 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.
- (2) **Tobacco refuse**, e.g., waste resulting from the manipulation of tobacco leaves, or from the manufacture of tobacco products (stalks, stems, midribs, trimmings, dust etc).

15. **HSN Notes for heading 24.03:**

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.
- (3) **Snuff**, more or less flavoured
- (4) **Tobacco compressed or liquored for making snuff.**



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- (5) **Manufactured tobacco substitutes**, for example, smoking mixtures not containing tobacco. However, products such as cannabis are excluded (heading 12.11).
- (6) **"Homogenised" or "reconstituted" tobacco** made by agglomerating finely divided tobacco from tobacco leaves, tobacco refuse or dust, whether or not on a backing (e.g., sheet of cellulose from tobacco stems), generally put up in the form of rectangular sheets or strip. It can be either used in the sheet form (as a wrapper) or shredded/chopped (as a filler).
- (7) **Tobacco extracts and essences**. These are liquids extracted from moist leaves by pressure or prepared by boiling waste tobacco in water. They are used mainly for the manufacture of insecticides and parasiticides.

Discussion:

16. The proposed activity of the applicant is to purchase 'Dried Tobacco Leaves' and after cleaning and removal of unwanted particles, to supply the same in the wholesale market without addition of any essence or foreign particle and without any branding. Such 'Dried Tobacco Leaves' are not fit for direct human consumption.

17. The goods to be supplied by the applicant are explained to be 'Dried Tobacco Leaves' which have been harvested and then undergone the process of curing by the process of Sun-dry or Air-dry, removal of dust particles, straw/bhusa and other unwanted particles.

18. The issue for decision is whether such 'Dried Tobacco Leaves' will be classified under Heading 2401 of HSN or the same may be classified in Heading 2403 of HSN or in any other Heading of HSN. Further, if the same are classified under Heading 2401, whether the same will be covered in S. No. 109 of Schedule-I of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017, being 'tobacco leaves' or the same will be covered under S. No. 13 of Schedule-IV of the said Notification which covers 'Unmanufactured Tobacco and Tobacco Refuse (other than tobacco leaves)'.

19. To understand the goods proposed to be supplied, and applicable rate of GST, the process of harvesting, curing, fermentation etc. of tobacco leaves and meaning of various terms used in the HSN, relevant Notification and Circular issued by CBEC have been discussed as under:

20. **Harvesting of tobacco:** Harvesting is the process of collecting tobacco leaves from the field at the time when leaf maturity has reached its desired stage. Harvesting can be done by either manual or mechanical means. Tobacco can be harvested in several ways. If the entire plant is harvested at once by cutting off the stalk at the ground with a sickle it is called "stalk cutting" and if the tobacco is harvested by removing the individual leaves off the stalk as they ripened, it is called "cropping", "pulling" or "priming". The recently harvested tobacco that has not yet entered the curing phase is called "**Raw Tobacco.**"



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21. **Curing of tobacco:** It is necessary to cure tobacco after harvesting and before it can be consumed. Tobacco is cured to remove all of the natural sap from the leaves so that it can be further processed and/ or manufactured. The four primary methods of curing are as follows:

(i) **Air curing:** One of four main methods of curing, which involves removing all of the natural sap and moisture from tobacco leaves. Air-curing is a natural drying process in which harvested tobacco leaves are hung to dry in an air-curing barn. The barn is a wooden structure that can be either closed completely or ventilated, depending on weather conditions. The barn is closed to conserve moisture in dry conditions; in wet conditions, moisture is removed by opening vents in the roof and/or opening side walls that are specially constructed for this purpose. For the most part, air-cured tobacco is dried with natural heat; however, humid weather conditions may require a limited amount of artificial heat. Tobacco that has been air-cured is typically brown in colour.

(ii) **Fire-curing:** A method of curing, which involves removing all of the natural sap and moisture from tobacco leaves. As its name suggests, this particular method of curing involves exposing tobacco to the heat and smoke of open fires; doing so allows the leaves to absorb the aromatic substances in the smoke, which will in turn affect the tobacco's taste. The type and age of the wood, as well as the duration of the tobacco's exposure to the smoke, all affect the tobacco's taste, which is why these factors vary depending on the end-product that is desired.

(iii) **Flue-curing:** A method of curing, which involves removing of the natural sap and moisture from tobacco leaves. This method of curing uses only artificial heat, such as that provided by oil or petroleum. Flue-curing barns are outfitted with pipes that supply the heat and fans that circulate the heat for even distribution.

(iv) **Sun-curing:** One of four main methods of curing, which involves removing all of the natural sap and moisture from tobacco leaves. This method of curing involves exposing tobacco leaves to full sunlight, thereby drying the leaves completely.

22. Tobacco curing is also known as colour curing, because leaves are cured with the intention of changing their colour and reducing their chlorophyll content. Curing tobacco has always been a process necessary to prepare the leaf for consumption because, in its raw, freshly picked state, the green tobacco leaf is too wet to ignite and be smoked.

23. **Fermentation:** Some tobaccos are subjected to a second stage of curing known as fermenting or sweating. There are primarily two types of fermentation, natural fermentation and forced fermentation, with the duration of the process ranging from two days to two months or more. Natural fermentation, sometimes known as aging, is a chemical reaction caused by moisture and warm temperatures; it occurs when tobacco is



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packaged in bales or hogsheads. Natural fermentation generally gives tobacco a more uniform colour and a milder taste. Forced fermentation involves placing tobacco in huge stacks so that the chemical reaction caused by the moisture and warm temperatures is intensified by the pressure the tobacco is under. Forced fermentation generally gives tobacco a more uniform colour, as well as a smoother aroma and taste.

24. **Aging:** Curing and subsequent aging allow for the slow oxidation and degradation of carotenoids in the tobacco leaf. This produces various compounds in the tobacco leaves that give cured tobacco its sweet hay, tea, rose oil, or fruity aromatic flavour that contributes to the "smoothness" of the consumed product. Non-aged or low quality tobacco is often artificially flavoured with these otherwise naturally occurring compounds. The aging process continues for a period of months.

25. After tobacco is cured, it is moved from the curing barn into a storage area for processing. If whole plants were cut, the leaves are removed from the tobacco stalks in a process called stripping. For both cut and pulled tobacco, the leaves are then sorted into different grades. The tobacco is then packed for transportation.

26. **Whole leaf:** This term refers to a tobacco leaf in its entirety, including both the blade and stem of the leaf. In contrast, the terms blade, lamina, and web refer only to the blade of the leaf and do not include the stem.

27. **Broken leaf and scrap:** Broken leaf is unprocessed tobacco in which some of the leaf has been lost because of excessive handling. Broken leaf is different from scrap, which is leaf that is broken into small pieces during the processing or manufacturing stages. The scrap results from handling tobacco during processing or during manufacturing, whereas, broken leaf results from handling that occurs prior to processing.

28. **Stalk:** The primary stem of an entire tobacco plant.

29. **Stem:** A side shoot that extends from the tobacco plant's primary stalk and divides each leaf from its base to its tip. In larger tobacco leaves, the stem must be removed prior to processing. Also known as the midrib.

30. **Stemming:** The process of removing stems from tobacco leaves. Also known as stripping.

31. The applicant has claimed that 'Dried Tobacco Leaves' proposed to be supplied by them are covered under HSN code 2401. It is observed that the heading 2401 of HSN covers Tobacco Leaves and Unmanufactured Tobacco. However, heading 2403 covers 'Manufactured Tobacco'. Hence, to determine the correct classification under HSN, it has to be first ascertained whether the goods proposed to be supplied are unmanufactured tobacco or the same can be considered as manufactured tobacco. It is observed that HSN notes for heading 2401 specifically mention that the said heading covers whole plants or



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leaves in the natural state and also cured or fermented leaves. Hence, even after the process of curing or fermenting of Tobacco Leaves, they remain covered under heading 24.01.

32. As far as rate of GST under Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017 is concerned, it is observed that 'Tobacco Leaves' attract 2.5% (CGST) and 2.5% (SGST) or 5% (IGST) under S. No. 109 of Schedule 1 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017. Whereas, 'unmanufactured tobacco (other than tobacco leaves)' attract 14% (CGST) and 14% (SGST) or 18% (IGST) under S.No. 13 of Schedule-IV of the said Notification. It has been clarified by the CBEC vide Circular F.No. 332/2/2017-IRU dated December 2017 that the said rate of 5% is applicable only on the following three categories of goods.

- (i) Leaves of Tobacco as such;
- (ii) Broken Tobacco Leaves;
- (iii) Tobacco Leaves Stems;

33. To ascertain whether the 'Dried Tobacco Leaves' after the process of curing are covered in any of the abovementioned three categories of goods, the process of harvesting, curing and meaning of various relevant terms as discussed above have been considered.

34. It appears that the term 'Leaves of Tobacco as such' would mean leaves obtained by the removal of individual leaves from the stalk by cropping, pulling or priming. However, if any process e.g. curing has been done on the said tobacco leaves, the said leaves would not be covered in this category.

35. The term 'Broken Leaves' covers only such leaves which are broken during handling before any process like curing is done. However, if leaves are broken during curing or during any other process or during manufacturing, they will not be called Broken Leaves but will be termed as scrap.

36. The term 'Tobacco Leaves Stems' covers tobacco leaves obtain by stalk cuttings i.e. when entire plant is harvested along with the stalk, stem and the leaves. It is not the claim of the applicant that goods proposed to be supplied by them are covered in this category.

37. All the above mentioned three categories which are covered as 'Tobacco Leaves' in S.No. 109 of Schedule-1 of Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017 as per CBEC Circular F.No. 332/2/2017-IRU dated December 2017, covers only those Tobacco Leaves which have not undergone any processing like curing, fermentation etc. Since the goods proposed to be supplied by the applicant are admittedly undergone curing by Sun-dry/ Air-dry processes, the same cannot be called 'Tobacco Leaves' and would be covered as 'unmanufactured tobacco (other than tobacco leaves)'



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38. Regarding Circular No. 81/5/87 CX-3 dated 23.06.1987 issued by the Ministry of Finance, the same is regarding classification of unmanufactured tobacco merely broken by beating and then sieved and packed for consumption as chewing tobacco (Zarda) and it was clarified that the same should be classifiable as unmanufactured tobacco under heading 2401. Hence, the same is not applicable in the present case.

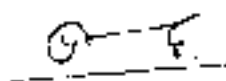
39. Regarding CESTAT Order in the case of Yogesh Associates V/s Commissioner Central Excise, Surat-II dated 06.09.2005 reported in 2006 (195) E.L.T. 196 (TRI- Mumbai), it was held that application of a solution of quiman (which is tobacco flavoured water) and other flavours including saffron water which admittedly serve no other purpose than to prepare a blend of unmanufactured tobacco for purposes of use in further manufacture of Gutkas/Pan Masala, classification under sub-heading 2401.10 of Central Excise Tariff is appropriate. Hence, the ratio of the said order is not applicable in the present case.

40. Regarding Circular No. 143/12/2011-ST dated 26.05.2011 mentioned by the applicant, it is observed that the same is regarding levy of Service Tax on certain processes in relation to agriculture and hence, the same is not applicable in the present case.

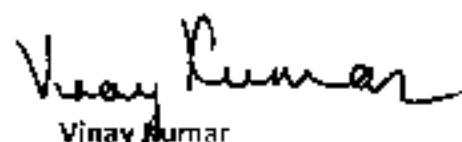
41. Further, the applicant has mentioned Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 which pertains to levy of GST on certain processes related to agriculture. Hence, the same is not applicable in the present case.

Ruling

42. It is held that the 'Dried Tobacco Leaves' which have undergone the process of curing after harvesting of tobacco leaves are 'unmanufactured tobacco' covered in HSN Code 2401. However, they are not covered under S. No. 109 of Schedule-1 of Notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 @ 2.5% (CGST) + 2.5% (SGST) or 5% (IGST), but the same are covered under S. No. 13 of Schedule- IV of the said Notification as 'unmanufactured Tobacco (other than Tobacco Leaves)' @ 14% (CGST) + 14% (SGST) or 28% (IGST).



Pankaj Jain
Member (Centre)


Vinay Kumar
Member (State)