

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail :advance.ruling @mptax.mp.gov.in****Phone : 0731- 2437315****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present****1. Shri Manoj Kumar Choubey**
Joint Commissioner**Office of the Commissioner of Commercial Tax, Indore Division-1****2. Shri Virendra Kumar Jain**
Joint Commissioner**Office of the Commissioner CGST and Central Excise, Indore**

GSTIN Number. If any/User-id	23AAYPC2644L1ZG
Name and address of the applicant	GULAB SINGH CHAUHAN 12-FF, VIJAY NAGAR, SCHEME NO. 54, INDORE MADHYA PRADESH(452001)
Point on which advance ruling sought	a. Classification of any goods or services or both b. Applicability of a notification issued under the provisions of this Act c. Determination of the liability to pay tax on any goods or services or both g. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Present on behalf of applicant	CA Rachit Bhandari
Case Number	...26../2021
Order dated	06.10.2021
Order Number	15/2021

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. **GULAB SINGH CHAUHAN** (hereinafter referred to as the Applicant) is proposed to open a new business venture of PAN SHOP. Shop is located at Vijay nagar, Scheme no. 54 in the Indore district of the state of Madhya Pradesh (452001). The Applicant is having a GST registration with GSTIN 23AAYPC2644L1ZG.
2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. **BRIEF FACTS OF THE CASE –**

3.1. **GULAB SINGH** is proposed to open a new business venture of PAN SHOP. The Business model of PAN SHOP would be selling Pan Masala, Tobacco Products, aerated Drinks etc.

3.2. There will not be any kind of manufacturing of these products. It merely act as a trader. Whether the composition scheme is available to assessee if the turnover does not exceed Rs. 1,50,00,000 in the preceding financial year.

3.3. what should be the HSN Code, the new business would be required to take at the time of registration under the composition scheme, because at the time of registration under the composition scheme, GSTN Portal is not allowing the assessee to take HSN code of Pan Masala and Tobacco products.

4. **QUESTION RAISED BEFORE THE AUTHORITY –**

- 4.1. Whether we are eligible to be in the composition scheme as our turnover is much less than 1.5 crores?
- 4.2. Which HSN codes that needs to be obtained at the time of obtaining registration as any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10 of if the person engaged Pan Masala and Tobacco products Trading under the composition scheme?
- 4.3. What will be applicable tax rate on the supply of such Pan Masala or Tobacco products as any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10 in the Composition scheme?
- 4.4. Whether Tax rate prescribed under Notification No. 50/2020 is applicable on any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10 is applicable on the above-mentioned class of assessee who are engaged in Trading of Pan Masala or Tobacco Products?

DEPARTMENT'S VIEW POINT– No view from the jurisdictional officer was communicated to this authority.

6. **RECORD OF PERSONAL HEARING -**

6.1 Mr.Rachit Bhandari, Chartered Accountant and the jurisdictional officer (SGST) appeared for personal hearing through virtual hearing. Mr. Rachit reiterated the



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submissions already made in the application, and attached additional submissions as follows:

6.2. As per Section 10 of the CGST Act, 2017 A registered person is eligible is eligible for Composition scheme if aggregate turnover in the preceding Financial year does not exceed Rs. 1.5 crores (75 lakhs for special category states). Since the applicant is registered under the State of Madhya Pradesh which is not a special category state. The Turnover Limit in the Preceding Financial Year is up to Rs. 1.5 crores.

6.3 The eligible persons for the Composition scheme are Manufactures (other than the manufactures of the Tobacco, Ice cream, Pan Masala, Aerated Waters), Restaurant Service Providers, Other suppliers.

6.4 From the above interpretation the Traders or Dealers of Tobacco, Pan Masala can opt for composition scheme

6.5 Under which HSN code they have to get registered while taking registration under the GST composition scheme. Because the GSTN portal does not allow even the law permits.

6.6 As per Section 10 of the CGST Act, 2017, a registered person is eligible is eligible for composition scheme if aggregate turnover in the preceding financial year does not exceed Rs. 1.5 crores (75 lakhs for special category states). Since the applicant is registered under the State of Madhya Pradesh, which is not a special category state, the turnover limit in the preceding financial year is up to Rs. 1.5 crores.

6.7 The Scheme is eligible to the following class of persons under sub-sections (1) and (2) of section 10 of the CGST Act, 2017:

Category of Registered Persons CGST Tax Rate SGST Tax Rate	CGST Tax Rate	SGST Tax Rate
(a). Manufactures (other than manufactures of Tobacco, Ice Cream, Pan Masala, Aerated Waters)	Half per cent. of the turnover in the State or Union territory	Half per cent. of the turnover in the State or Union territory
(b). Restaurant Service Provider	Two and a half per cent. of the turnover in the State or Union territory	Two and a half per cent. of the turnover in the State or Union territory
(c). Other Suppliers	Half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory	Half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory

Based on the above table, we can interpret that the dealers or traders of tobacco, ice Cream, pan masala, or aerated waters can opt for composition scheme. Further section 10 clearly describes that the manufactures of tobacco, ice cream, pan masala and



aerated waters cannot opt for composition scheme. However, law does not restrict the class of persons of dealers or traders of tobacco, ice cream, pan masala and aerated water to opt for eligible scheme.

6.8 If the assessee is eligible for the composition scheme, then under which HSN code do the assessee have to apply for registration as GSTN portal does not allow composition taxpayers to add the HSN codes of pan masala, tobacco products or ice cream because GSTN Portal does not bifurcate between the manufacturers and traders of tobacco, ice cream, pan masala and aerated waters. Due to this issue even if the assessee is eligible for composition scheme, the assessee cannot take the benefit of the composition scheme.

6.9 Since, HSN code of Pan Masala: 2106, HSN code of Tobacco: 2401 comes under the following chapters which do not allow to opt for composition scheme. SO, which HSN codes does we need to obtain in order to become eligible for composition scheme.

6.10. At the time of personal hearing on 28 July 2021 Applicant submitted a letter for withdrawing all the questions other than question "Whether we are eligible for composition scheme or not u/s 10 of the CGST/SGST Act as our aggregate turnover is less than 1.5 crore, we are just trader of the Pan Masala and Tobacco Products falling under chapter 24 and Ice cream Products falling under chapter 21. Hence this authority is going to provide ruling only on the above said question.

6.11. The Applicant further on 31st August 2021 made a declaration on nature of the business that the Applicant proposed to carry out for the eligibility of composition scheme under section 10 of the CGST/SGST Act, 2017 as the Applicant propose to carry out with the business of Pan Masala & tobacco products as a trader. There is no business of Ice cream products.

6.12. Again on 2nd September 2021 the Applicant made a declaration on the products in which we are going to trade in the Pan Shop that the sale of products which he is going to engage in the business of Pan Shop. Therefore he will be dealing in all types of products related to Pan and its products and the necessary items which are generally accepted in Pan shop in the general trade parlance.

7. DISCUSSIONS AND FINDINGS –

7.1. We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing.

7.2. The applicant had filed the application seeking ruling on questions stated in para 4 above. However at the time of personal hearing on 28 July 2021 Applicant submitted a letter for withdrawing all the questions other than question "Whether we are eligible for composition scheme or not u/s 10 of the CGST/SGST Act as our aggregate turnover is less than 1.5 crore, we are just trader of the Pan Masala and Tobacco Products falling under chapter 24 and Ice cream Products falling under



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chapter 21. Hence this authority is going to provide ruling only on the above said question.

7.3. The applicant vide its letter dated 31.08.2021 and 02.09.2021 furnished a declaration regarding the goods that it proposes to sell in the due course of its business. On perusal of the list, it is found that the applicant proposes to sell Betel Leaves (Pan) and its products. Further, there shall be supply of all the necessary items which are generally accepted in Pan shop in the general trade parlance.

7.4. The provisions relating to Composition, as contained in Section 10 of the GST Act, 2017 contains certain conditions, the presence of which excludes a person from taking the benefit of this scheme of Composition. One such conditions is given in Section 10(2)(b) which states that the benefit of this scheme shall not be available to a person who is engaged in the supply of goods that are not leviable to tax under this Act.

7.5. The applicant has stated vide its letter dated 21.9.21 that it shall be engaged in the supply of Pan (betel leaves). As per Entry No. 93 in Notification No. 02/2017 – Central Tax (Rate), Pan or Betel Leaves as they are known, is taxed at NIL rate under this Act. The entry is given herein below:

S.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
93.	1404 90 40	Betel leaves

7.6. Supplementary Note – 1 to Chapter 21, of the Customs Tariff contains the definition of Pan Masala. The extract is as under:

“1. In this Chapter, “Pan Masala” means any preparation containing betel nuts and any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredient, such as cardamom, copra or menthol.”

As per explanation (ii) to Notification No. 14/2019 – CT, the rules for the interpretation of the First Schedule to the said 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.

7.7. Further, the applicant, in its letter regarding the goods that are going to be sold has stated as under:

“....As we are engaged in the business of Pan shop therefore we will be dealing in all types of products which are related to Pan and its products and the necessary items which are generally accepted in Pan shop in the general trade parlance.”

From the above statement in the letter, it appears that the list of goods to be sold from the Pan shop include all kinds of goods that are normally bought from a Pan Shop. Accordingly, one of the goods that shall be sold from the applicant's Pan Shop is Gutka, containing Tobacco or otherwise. The Gutka is a preparation of betel nuts and any one or more of lime, katha (catechu) and tobacco whether or not containing any other ingredient, such as cardamom, copra or menthol, which is same as Pan Masala discussed supra. In a Pan shop the seller also generally makes a product akin to Gutka themselves by mixing of betel nuts, lime, kattha and tobacco containing or not containing other ingredients are sold which amounts to manufacture of Gutka. Preparation of Gutka in the Pan Shop is akin to manufacture on account of the process



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of preparation being that of mixing of different bought out ingredients and the resultant product having a distinct name and use. Thus the preparation of Gutka at the Pan Shop for sale is covered in the Second Proviso of Notification No. 14/2019 – CT. In the Table given in Notification No. 14/2019 – CT both Pan Masala and goods covered under Chapter 24 are listed as goods for which composition cannot be obtained. The table is as under:

TABLE

Sl. No.	Tariff item, sub-heading, heading or Chapter	Description
(1)	(2)	(3)
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2.	2106 90 20	Pan masala.
3.	24	All goods, i.e. Tobacco and manufactured tobacco substitutes.


7.8 The case of the applicant is fully and squarely covered under the restrictive condition of Section 10(2)(b) and 10(2)(e) of the GST Act, 2017.


8. Ruling

8.1. In respect of Question regarding availability of the benefit of the Composition Scheme, for the reasons stated above, it is ruled that the benefit of the Composition Scheme u/s 10 of the GST Act, 2017 shall not be available to the applicant.

8.2. In respect of the other questions raised, since they have been withdrawn by the applicant, no ruling is being provided in respect of those questions.

8.3. The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.


(Manoj Kumar Choubey)
(Member)


(Virendra Kumar Jain)
(Member)

Copy to:-

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

