M/s Bhaktawar Mal Kamra & Sons (Appellant; GSTIN 06ABLPK0558P2Z5; represented by Sh. Gurdeep Kamra, Proprietor, and Sh. Manish Bansal, CA)

Appellate Authority for Advance Ruling — Haryana

Appeal Case No. HAAAR/2018-19/07, dated 20.11.2019 (order under Sect… Dated **20.11.2019**

Q Questions Before the Authority

- Whether a commission agent providing services in relation to sale or purchase of agricultural produce is liable to obtain registration, and whether such a commission agent is liable to tax under the reverse charge mechanism on services provided in the sale of raw cotton under notification No. 121/ST-2 dated 14.11.2017 (HGST), read with notification No. 43/2017 dated 14.11.2017 (CGST).

F Facts

The appellant is a proprietorship firm operating as a commission agent (Kachha Arhtiya) at the Mandi Dabwali grain market, Sirsa, selling agricultural produce of farmers to traders, manufacturers and government agencies. Its commission services relate mainly to exempt agricultural produce, and it also handles taxable produce such as raw cotton and oilseeds. It issues Form I under the APMC Act to buyers, and the question turns on whether that makes it liable for registration and for reverse charge tax on raw cotton.

H Ruling

Whether a commission agent (Kachha Arhtiya) is liable to obtain registration	****Yes**, where aggregate exempt and taxable turnover exceeds the Section 22(1) threshold**	The order treats him as an agent under Section 2(5) and Schedule I, para 3, and says he is compulsorily registrable under Section 24(vii). The order sets out this answer in its discussion and findings. It has no separate numbered RULING section.
Whether such a commission agent is liable to pay tax under reverse charge on raw cotton supplied by an agriculturist	****Yes**, as a registered recipient, under the reverse charge mechanism**	Relies on Sr. No. 4A (tariff item 5201, raw cotton) of the HGST and CGST notifications, which makes any registered person the recipient. The rate is not stated in the order as read. The answer comes from the discussion, not a numbered RULING section.

The Appellate Authority held that the commission agent is an agent under Section 2(5) read with Schedule I, para 3, because Form I shows that it supplies goods on behalf of agriculturists, so it cannot escape the definition of recipient. It held that such an agent is liable for registration if aggregate exempt and taxable turnover exceeds the Section 22(1) threshold, and that it must pay tax on raw cotton supplied by an agriculturist on a reverse charge basis as a registered recipient. The appeal was dismissed and the Advance Ruling dated 30.08.2018 was upheld.

R Reasoning

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

The authority read Section 7(1)(c) with Schedule I, para 3, which makes principal-agent activities a supply, and applied the circular dated 04.09.2018 (with corrigendum of 05.11.2018) to find that an agent who issues invoices, or here Form I, for goods on behalf of the principal acts in a representative capacity. It rejected the argument that the agent is not a recipient under Section 2(93), and held that the CBDT circular No. 452 of 17.03.1986 was issued under a different law. Compulsory registration was tied to Section 24(vii) and the Section 22(1) threshold, and reverse charge liability to the notification entry for raw cotton. The order rests on the Form I test, which treats the APMC Form I as sufficient to establish agency.

P Provisions Relied On

- Section 100(1) and Section 101 of the CGST Act, 2017 / HGST Act, 2017
- Section 2(5) (agent) and Section 2(93) (recipient) of the CGST/HGST Acts
- Section 7(1)(c) read with Schedule I, para 3 (principal-agent activities)
- Section 22(1) (threshold for registration)
- Section 23(1)(b) (agriculturist exemption from registration)
- Section 24(vii) (compulsory registration of persons making supplies on behalf of other taxable persons)
- Notification No. 12/2017-Central Tax (Rate), Sr. No. 54 (exemption for services of commission agents for agricultural produce)
- Notification No. 4/2017-Central Tax (Rate), Sr. No. 4A, inserted by No. 43/2017-CT(Rate) dated 14.11.2017 (raw cotton, reve…
- HGST Notifications No. 36/ST-2, No. 38/ST-2 and No. 121/ST-2 (corresponding State notifications)
- CBIC Circular No. 57/31/2018-GST dated 04.09.2018, with corrigendum dated 05.11.2018
- CBDT Circular No. 452 dated 17.03.1986 (relied on by the appellant, rejected by the authority)
- APMC Act Form I (relied on as the test of agency)

! For the Practitioner

This order is useful for a practitioner advising a Kachha Arhtiya in an APMC market who issues Form I. It shows that the Appellate Authority treats Form I as evidence of agency, which can bring the commission agent within the Section 24(vii) registration duty and the raw cotton reverse charge where aggregate turnover crosses the threshold. It does not decide the rate of tax on raw cotton, the composite supply argument the appellant raised, or the effect of the CBIC circular on invoicing for agents who issue no invoice. Read the full order before relying on it, since the holding is stated in the discussion rather than in a numbered ruling.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> haaar_07_2018-19_bhaktawar_mal_kamra.pdf

Prepared 14-11-2026.

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