M/s Louis Dreyfus Company India Private Limited, Ground Floor, House No. 378, Model Town, Phase-1, Bhatinda, Punjab 151001 (GSTIN 03AAACL7361E1ZV)

Authority for Advance Ruling — Punjab

ORDER NO. AAR/GST/PB/001 Dated 28.09.2018 (Punjab Authority for Ad… Dated **28.09.2018**

Q Questions Before the Authority

- Whether GST is applicable on the differential payment received by a party to a cotton purchase or sale contract from the other party on the event of settlement, washout or closure of the contract by it (Form GST ARA-01, Sr. No. 14).

F Facts

The applicant buys and sells cotton and enters into customised forward contracts that end either in physical delivery or in a settlement by payment of a differential sum. Under the sale contracts the applicant may settle at a rate it fixes at its discretion, usually by reference to the MCX or CAI price on the settlement day. Under the purchase contracts the settlement rate is the market rate on the commodities exchange on the day of settlement.

H Ruling

Forward cotton sale contracts settled by payment of the differential between the forward rate and the prevailing market rate on the settlement date	**Not chargeable to GST, as the transaction falls within 'securities' under section 2(101)**	Ruling (i). The Authority's reasoning is that such settlement is a commodity derivative, but it also observed that the applicant had not shown the contracts were traded or settled on a recognised stock exchange (see reasoning).
Forward cotton sale contracts settled by payment of the differential between the forward rate and a rate fixed by the applicant at its discretion, different from the market price on the settlement date	**Chargeable to GST; not 'securities' under section 2(101)**	Ruling (ii). Treated as a supply of services under Schedule II, para 5(e), by agreeing to an obligation to refrain from an act, tolerate an act or situation, or do an act.
Forward cotton purchase contracts settled by payment of the differential between the forward rate and the prevailing market rate on the settlement date	**Not chargeable to GST, as the transaction falls within 'securities' under section 2(101)**	Ruling (iii). Same reasoning as ruling (i). The Authority noted that the purchase contract settlement terms match FAQ No. 37.

The Authority held that differential payments on forward cotton purchase contracts settled at the prevailing market rate fall within 'securities' and are not chargeable to GST. Differential payments on forward cotton sale contracts settled at a discretionary rate different from the market price are not 'securities' and are chargeable to GST as a supply of services. The ruling is stated to be based on the contract conditions furnished by the applicant and may not apply to contracts with differing conditions.

R Reasoning

The Authority first held that closure of a cotton contract without delivery is not a supply of goods, because it is not a sale, transfer or disposal. It then tested the settlement as a service. It accepted that 'securities' include commodity derivatives under the SCRA, read with the notification covering cotton, and that the 'use of money' limb cited by the jurisdictional officer must be read with the specific exclusion. However, it also said the applicant had not shown that the contracts were traded or settled on a recognised exchange under section 18A of the SCRA, which cast doubt on the applicant's exclusion claim. It relied on CBIC FAQ Nos. 36 and 37 as executive relief for net-settled forward contracts, and held that the relief extends only as far as the FAQ, which covers settlement at the market rate. For a discretionary sale-contract rate, the settlement was held to be an agreement to refrain from or tolerate an act, or to do an act, under Schedule II para 5(e).

P Provisions Relied On

- CGST Act, 2017 section 7(1)(a), (c) and (d) (scope of supply)
- CGST Act, 2017 section 9 (levy of tax)
- CGST Act, 2017 section 2(52) (goods)
- CGST Act, 2017 section 2(101) (securities)
- CGST Act, 2017 section 2(102) (services)
- CGST Act, 2017 Schedule II, para 5(e)
- CGST Act, 2017 section 98(4)
- Securities Contracts (Regulation) Act, 1956 section 2(h), 2(ac), 2(bc), 2(ea) and 18A
- Notification S.O. 3068(E) dated 27.09.2016, Entry No. 59 (cotton complex)
- CBIC FAQ Nos. 36 and 37 on financial services
- Finance Act, 1994 Chapter V, as referred to by the applicant (Education Guide para 6.7.1, non-compete example)

! For the Practitioner

This order helps cotton traders on both sides of the market. It supports treating a market-rate net settlement of a forward contract as exempt, and treating a discretionary-rate settlement on the sale side as taxable. It does not settle the position for contracts with different terms. The order is also internally inconsistent on whether the SCRA exclusion applies at all, since it says the exchange-trading requirement is not shown but still rules the purchase and market-rate settlements exempt. Practitioners should check the exact contract terms and the stated reliance on FAQ 37 before relying on the order.

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 -> aar_gst_pb_01_28.09.2018_louis_dreyfus.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com

Patron Accounting LLP