

‘The Curious Case of Missing Elaichi (Cardamom) in my Paan (Betel Leaf)’

“Ramu Kaka, ek special meetha Pan dena, bina supari waala.”

(Ramu Kaka, please give me my special sweet Pan, without betel nut)”, I told our next door ‘Pan wala’ (Pan vendor), Ramu kaka, while returning from my late evening stroll, after my dinner.

“Ek banarasi”, said another evening walker to Ramu Kaka.

“Sorry Bauji, ab humne banarasi Pan to rakhna bund kar diya hai. (Sorry Sir, now I no longer keep ‘banarasi Pan)’” Ramu kaka told that person, while preparing my meetha Pan, with gulukand (sweet mixture of rose petals), but missing out on the usual elaichi (cardamom), which he usually put in my meetha Pan.

“Kya baat hai Ramu kaka” (What happened?), I asked.

“Bauji, hamare bete Atul ne, jo ki CA ki padhai kar raha hai, ab humey sirf aisa hi Pan rakhne ko kaha hai, jisme na to katha ho, na supari ho, na tambaku ho, aur na hi elaichi ho.”

(Sir, my son Atul, who is studying CA, has told me to make only those Pans, now onwards, which are without lime, beetle nuts, tobacco and cardamom).

“Arey aisa kyun Ramu Kaka?”, I asked in surprise.

“Aap to khud CA ho, apko to pata hona hi chahiye.”, (You are yourself a CA, so you should know), uttered Ramu Kaka, with a worried face.

I returned my home, scratching my head, with my meetha Pan, in my mouth, but with the missing elaichi.

My curious mind compelled me to find out the reason, for this strange behavior of Ramu Kaka, and more importantly, for the missing elaichi in my Pan.

Soon I found out, that the reason was this peculiar Ruling by hon’ble Authority for Advance Ruling (AAR), Madhya Pradesh, in the case of **Gulab Singh Chauhan**, in Re. Order No. 15 of 2021, dated 6.10.2021, reported in [2022] 135 taxmann.com 38 (AAR- Madhya Pradesh).

In this Ruling, the hon’ble AAR, Madhya Pradesh, has held that a Pan Shop Seller, is not eligible for the benefit of the ‘Composition Scheme’ under the CGST (GST) Act, by holding that a Pan shop seller also generally makes a product akin to Gutka, by mixing of betel nuts, lime, katha, tobacco and Elaichi (cardamom).

Provisions related to ‘Composition Scheme’ have been provided under section 10 of the Central GST Act, 2017 and Chapter 2 of the CGST Rules, 2017. Under this scheme, a registered taxable person, whose aggregate turnover in the preceding financial year, does not exceed Rs. 1.5 crores (Rs. 75 lakhs for special category States), may opt for this scheme.

A taxpayer registered under composition levy scheme has to pay an amount equal to certain fixed percentage of his annual turnover as tax to the government. This tax has to be paid on quarterly basis. Such taxpayer does not have to maintain elaborate accounts and records and has to only file a self-assessed tax return in one-page statement – Form GST CMP 08, on quarterly basis, and a simplified annual return in Form GSTR 4.

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

<i>Category of Registered Persons CGST Tax Rate SGST Tax Rate</i>	<i>CGST Tax Rate</i>	<i>SGST Tax Rate</i>
(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

Thus, it can be seen from the above Table that The manufacturers of tobacco, ice cream, Pan masala and aerated waters have been specifically excluded from the benefits of the Composition Scheme, under section 10(2)(e) of the CGST Act.

Interestingly, the hon'ble AAR in this Ruling (Gulab Singh Chauhan), has held that preparation of Gutka/ Pan Masala, in the Pan Shop, is akin to manufacture on account of the process of preparation being that of mixing of different bought out ingredients and the resultant product having a distinct name and use, and as such the Pan Shop Seller being akin to a Pan Masala/ Gutka manufacturer, is not eligible for the benefits of the Composition Scheme.

In arriving at this conclusion, the hon'ble AAR, Madhya Pradesh, has relied upon Supplementary Note - 1 to Chapter 21, of the Customs Tariff Act, containing the definition of 'Pan Masala'. The extract is as under:

“I. 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.”

The hon'ble AAR, Madhya Pradesh has also held that the Pan Shop Seller is not eligible for the Composition Scheme on another account also, i.e., under section 10(2)(b) of the CGST Act, which provides 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.

The Pan shop seller is engaged in the supply of a 'nil rated' product, i.e., Pan (betel leaves), and as such is excluded from the benefit of the Composition scheme u/s 10(2)(b) of the CGST Act, also.

Next day, my usual late evening stroll, again brought me to Ramu Kaka's Pan shop. His son Atul (pursuing CA), was also there.

I asked for my usual sweet Pan. This time, I was offered my sweet Pan, with the usual cardamom in it.

Cherishing my Pan, I asked, "Aaj to phir se elaichi bhi daali hai. Kya huya?" (Today, you have put the usual cardamom also, what happened?)

For answering this, Atul began his intelligent narrative, in an enthusiastic and sincere voice,

"Bhaiya, I have done some further research on the sections and provisions quoted by the hon'ble AAR, in the said Ruling. Firstly, I believe that the AAR ruling is applicable and binding on the respective applicant only and as such is only persuasive in nature, for the assesseees in general.

Further, the definition of 'Pan Masala' as contained in the 'Supplementary Note- 1' to the Customs Tariff Act, and as relied upon by the hon'ble AAR, has been prescribed in the context of pre-GST regime, wherein the manufacturing of Pan masala and other tobacco products was subject to the levy of excise duty with respect to the production capacity of a manufacturing machine and retail sale price of the product, under 'Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 (which was further modified in 2010), depending upon the price of per packet of Pan masala and production capacity of machines.

Similarly, the levy of customs duty on imported tobacco products/pan masala was applicable on the packaged/canned pan masala/tobacco products and it was not applicable on loose items of katha, supari, elaichi, contained in a Pan (betel leaf), supplied by a Pan vendor.

Thus, the process of preparation of Pan Masala by mixing of ingredients like lime, katha, tobacco, supari, Elaichi etc., as referred to in the prescribed definition of 'Pan Masala' in the Supplementary Note 1 to Chapter 21 of the Customs Tariff Act, has to be understood as a machine enabled process only, with specific reference to the production capacity of such Pan masala manufacturing machines.

So, it will be a very far-fetched figment of imagination, to consider the loose items of katha, supari, tobacco, cardamom etc. put together in a Pan, by a Pan vender, as Pan Masala and the manual mixing or putting of such already ready ingredients in a Pan, by a Pan vendor, as a manufacturing process akin to that of a Pan masala manufacturing machine.

With due regards to this Ruling of the hon'ble AAR, the manual process of putting together various ingredients, like katha, supari, tobacco, Elaichi etc. in the making of a Pan, by a Pan vendor, can't be equated and treated at par, with the sophisticated manufacturing processes of Pan masala manufacturing companies, using specialized Pan masala manufacturing machines.

Thus, a Pan vendor can't be considered as a manufacturer of Pan masala, so as to get excluded from the benefits of the composition scheme u/s 10(2)(e) of the CGST Act, because if that being the case, then, even me, making a sandwich, by putting together bread, chutney and salad, can be considered as a manufacturer, eligible for some production linked incentive scheme in agri-food industry.

Further, as correctly observed by the hon'ble AAR that, as per Entry No. 93 in Notification No. 02/2017-Central Tax (Rate), Pan or Betel Leaf, is taxed at NIL rate under this Act.

Therefore, the supply of Pan (Betel Leaf) by a Pan shop seller, is amenable to be considered as a composite supply within the meaning of section 2(30) of CGST Act, with the exempt supply portion i.e., supply of Pan (Betel Leaf), as the Principal Supply and the ingredients of Pan like tobacco, supari, katha, lime, elaichi, gulukand etc. as the incidental/secondary supply, and as such the supply of such man-made Pan should be outside the purview of the levy of GST.

In that case, there will not be even the need for opting for the Composite scheme, provided that such Pan vendor is supplying or selling only Pans and no other tobacco products or cigarettes separately.

I am right Bhaiya?”, asked Atul, finishing his laborious explanation.

I could not help myself but praise Atul, with utter amazement at his sheer brilliance and impressive analytical aptitude.

“Yaar Atul, chal aaj ek aur extra special meetha Pan khila de, with double Elaichi, (Atul, give me one more extra special sweet Pan with double cardamom), as the hon’ble AAR has raised your tax status, to the likes of ‘Rajnigandha’ and ‘Pan Parag’, I exclaimed with laughter.....

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