WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015

Before:

Mr R. Srinivasa Naik, Member
Mr Khalid Aizaz Anwar, Member

In the matter of

Appeal Case No. 03/WBAAAR/APPEAL/2026

- And -

In the matter of:

An Appeal filed under Section 100 (1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by Ms. Iman Das, Deputy Commissioner, State Tax, Bowbazar Charge, Govt. of West Bengal against the Ruling passed by the West Bengal Authority for Advance Ruling vide Advance Ruling Order No. 28/WBAAR/2025-26 dated 13.02.2026 in respect of the application for Advance Ruling filed by M/s Om Jai Balajee Construction Private Limited.

Present for the Appellant:	Ms. Iman Das, Deputy Commissioner, State Tax, Bowbazar Charge, Govt. of West Bengal.
Present for the Respondent:	Mr. Y. Sreenivasa Reddy, Advocate.

Matter heard on:	15.06.2026
Date of Order:	02.07.2026

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'SGST Act, 2017') are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the SGST Act, 2017.

1. This appeal has been filed by Ms. Iman Das, Deputy Commissioner, State Tax, Bowbazar Charge, Govt. of West Bengal against the Ruling passed by the West Bengal Advance Ruling Authority (hereinafter referred to as WBAAR) vide Advance Ruling Order No. 28/WBAAR/2025-26 dated 13.02.2026 in respect of the application for Advance Ruling filed by M/s Om Jai Balajee Construction Private Limited.

2. The Respondent, M/s Om Jai Balajee Construction Private Limited (applicant before the WBAAR) submitted before the WBAAR that they were presently engaged in the business of construction of buildings in and around Kolkata. The Respondent proposes to diversify into the business of trading in tobacco leaves. For this purpose, the Respondent intends to procure tobacco leaves directly from cultivators/farmers and supply the same, without undertaking any further processing, to other dealers. It has been submitted that tobacco is a significant commercial crop cultivated in various parts of India, including the northern districts of West Bengal. Prior to commencing the proposed business activity, the Respondent sought a ruling from the WBAAR by filing an application under sub-section (1) of Section 97 of the Central Goods and Services Tax Act, 2017 and the West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively referred to as "the GST Act"), seeking an advance ruling on the following questions:

(i) What would be the applicable rate of GST on tobacco leaves sold to the other traders, by the Respondent as they were purchased from farmers after sun curing in the fields, without undertaking any processing except the storage/ stocking of the leaves?

(ii) What would be the applicable rate of GST if the Respondent segregates the tobacco into grades depending upon their size (width), colour /shade, length, texture of the leaf etc., and sells such graded tobacco leaf?

(iii) What would be the applicable rate of GST if the tobacco leaves are sold to other dealers after removing the butts to avoid damage to leaves during transportation etc.?

<u>Submission of the Respondent before the WBAAR</u>

3. In their application made before the WBAAR, the Respondent submitted inter alia the following:

i. The Respondent submitted that tobacco is an agricultural produce and that the variety of tobacco cultivated in West Bengal is predominantly used for manufacture of khaini, chewing tobacco and hookah tobacco. The tobacco leaves are plucked by farmers and thereafter subjected to sun-curing to reduce moisture and render them marketable.

ii. It was submitted that farmers sell such cured tobacco leaves either directly to dealers or through agricultural market yards. The Respondent proposes to purchase such tobacco leaves and supply the same without undertaking any processing other than storage and stocking.

iii. The Respondent submitted that, during storage, only routine handling activities are undertaken to prevent fungal formation and heat build-up in the stored leaves and that no chemicals or substances are added to alter the character of the tobacco leaves.

iv. It was further submitted that, depending upon the requirements of buyers, certain manual operations such as grading, bundling and butting may be undertaken. According to the Respondent, these activities do not alter the essential character of the tobacco leaves.

v. The Respondent contended that prior to the introduction of GST, tobacco leaves were not subjected to VAT or Central Excise duty and that even threshing and re-drying of tobacco leaves had been held to be an exempt intermediate process relating to agriculture.

vi. Referring to Notification No. 9/2025-Central Tax (Rate) dated 17.09.2025, the Respondent submitted that “tobacco leaves” falling under Heading 2401 attract GST at the rate of 5%, whereas “unmanufactured tobacco; tobacco refuse (other than tobacco leaves)” falling under the same heading attract GST at the rate of 28%.

vii. The Respondent also relied upon Notification No. 4/2017-Central Tax (Rate) dated 28.06.2017 and submitted that procurement of tobacco leaves from agriculturists attracts GST under reverse charge mechanism at the rate of 5%, while subsequent supplies are taxable at the same rate under forward charge.

viii. Reliance was placed on Circular No. 332/2/2017-TRU dated 27.12.2017, wherein it was clarified that, for the purpose of GST, tobacco leaves include leaves of tobacco as such, broken tobacco leaves and tobacco leaf stems.

ix. The Respondent submitted that cured tobacco leaves purchased from farmers and thereafter sold by traders continue to retain their identity as tobacco leaves and do not become a different commodity merely on account of curing, storage or natural reduction of moisture.

x. It was contended that tobacco leaves remain "tobacco leaves" so long as they do not lose their essential character as leaves and that processes such as curing, grading, bundling and butting do not change such character.

xi. Reliance was placed on the HSN Explanatory Notes to Heading 2401, which include within the scope of unmanufactured tobacco whole leaves, cured leaves, stemmed/stripped leaves and other forms of tobacco leaves specified therein.

xii. The Respondent further relied upon various Advance Ruling decisions of Andhra Pradesh, Kerala and Karnataka Authorities for Advance Ruling wherein cured tobacco leaves, graded tobacco leaves, butted tobacco leaves and re-dried tobacco leaves were held to be liable to GST at the rate applicable to tobacco leaves.

xiii. It was submitted that curing is an essential agricultural process required to render tobacco leaves marketable and that green tobacco leaves as plucked from the plant are not commercially traded.

xiv. The Respondent contended that the GST notifications do not restrict the expression "tobacco leaves" to green or uncured leaves and that, where the legislature intended to distinguish between fresh, dried or processed goods, it has done so expressly in the tariff notifications.

xv. The Respondent relied upon judicial precedents relating to interpretation of taxing notifications and submitted that no words can be added to or omitted from a statutory notification and that the expression "tobacco leaves" should be given its plain and ordinary meaning.

xvi. Accordingly, the Respondent contended that the following goods continue to remain classifiable as "tobacco leaves" and attract GST at the rate of 5%:

(a) cured tobacco leaves procured from farmers;

(b) tobacco leaves traded between dealers without any further processing other than stocking, storage or baling; and

(c) tobacco leaves subjected only to manual operations such as grading, bundling or butting, without any physical or chemical transformation of the leaves.

Submission of the Revenue before the WBAAR

4. The Revenue, in their submissions made before the WBAAR, inter alia, highlighted the following issues:

i. The Revenue relied upon the judgment of the Hon'ble Gujarat High Court in the case of Patel Products v. Union of India.

ii. It was submitted that the Hon'ble High Court had observed that activities such as drying, cleaning, sieving, sizing and cutting of tobacco leaves amounted to "production" under the provisions of Section 3(p) of COPTA, 2003.

iii. According to the Revenue, the product involved in the said case was held liable to tax as a tobacco product attracting higher rates namely, GST at 28%, Compensation Cess at 160%, Excise Duty at 0.5%, and National Calamity Contingency Duty at 25%.

iv. The Revenue contended that the ratio of the aforesaid judgment would be applicable to the present case, as the activities involved in relation to tobacco leaves include drying, cleaning, sizing and cutting of tobacco leaves.

v. On the above basis, the Revenue expressed the view that the tobacco leaves in question should not be treated as mere tobacco leaves attracting GST at the concessional rate applicable thereto.

Observation of the WBAAR and its Order

5. The WBAAR, upon consideration of the facts of the case, the submissions of the applicant, the views of the Revenue and the applicable legal provisions, arrived at the following observations and findings while passing the impugned ruling:

i. The Authority noted that the applicant proposed to purchase tobacco leaves from farmers or market places and supply the same without undertaking any processing other than storage and stocking.

ii. The Authority considered the various stages through which tobacco leaves pass after harvesting, namely curing, grading, butting, bundling, stemming/stripping and threshing.

iii. It was observed that curing is a controlled drying process undertaken to reduce moisture and develop the desired characteristics of tobacco leaves and that curing may be carried out through methods such as flue-curing, air-curing, fire-curing and sun-curing.

iv. The Authority observed that grading involves segregation of tobacco leaves on the basis of factors such as size, colour, texture, maturity and other physical characteristics.

v. It was further observed that butting involves removal of the rough stem-like edge of the leaf for convenience of packing and to prevent damage to other leaves.

vi. The Authority noted that bundling is a process undertaken for storage, transport and handling of tobacco leaves and that, up to the stage of bundling, the fundamental nature of tobacco leaves does not undergo any change.

vii. The Authority distinguished the processes of stemming/stripping and threshing from curing, grading, butting and bundling. It was observed that during stemming or stripping the midrib of the tobacco leaf is removed and the leaf loses its character as a leaf as such.

viii. The Authority observed that, as a common market practice, farmers cure, grade and bundle tobacco leaves before bringing them to market and that green tobacco leaves are ordinarily not sold in that form.

ix. The Authority did not accept the Revenue's reliance on the judgment of the Hon'ble Gujarat High Court in Patel Products v. Union of India, holding that the factual matrix of the said case was distinguishable from the facts involved in the present application.

x. The Authority observed that the GST rate notifications specifically distinguish "tobacco leaves" from "unmanufactured tobacco; tobacco refuse (other than tobacco leaves)" although both fall under Heading 2401.

xi. Upon examining the relevant entries of the Customs Tariff Act, 1975, the Authority observed that a distinction is maintained between tobacco not stemmed or stripped and tobacco partly or wholly stemmed or stripped.

xii. The Authority took the view that tobacco which is not stemmed or stripped retains the essential character of tobacco leaves and that the tariff itself recognises cured tobacco as tobacco leaves.

xiii. The Authority observed that curing does not alter the essential character of tobacco leaves and merely renders them commercially fit for further use.

xiv. Reliance was placed upon the clarification contained in FAQ No. 332/2/2017-TRU dated 27.12.2017, wherein tobacco leaves were stated to include leaves of tobacco as such, broken tobacco leaves and tobacco leaf stems.

xv. The Authority held that sun-cured tobacco leaves do not lose their character as tobacco leaves merely because moisture and sap are removed through the curing process.

xvi. The Authority further held that grading of tobacco leaves according to size, colour, length or texture does not alter the essential characteristics of the tobacco leaves.

xvii. The Authority also held that removal of the butt portion of tobacco leaves for packing and transportation purposes does not affect the character of tobacco leaves.

xviii. Based on the above findings, the Authority concluded that:

(a) sun-cured tobacco leaves supplied after storage or stocking,

(b) graded tobacco leaves, and

(c) tobacco leaves subjected to butting,

continue to retain their character as tobacco leaves and are classifiable under Tariff Item 240110.

xix. Accordingly, the Authority ruled that the above supplies are covered by Entry No. 162 of Schedule I to Notification No. 1/2017-Central Tax (Rate), as amended, and are liable to GST at the rate of 2.5% CGST + 2.5% SGST.

Submission of the Appellant before the WBAAAR

6. Being aggrieved by the aforesaid ruling of the WBAAR, the Deputy Commissioner, State Tax, Bowbazar Charge, Govt. of West Bengal (hereinafter referred to as "the Appellant") has preferred the instant appeal before the West Bengal Appellate Authority for Advance Ruling (hereinafter referred to as the WBAAAR) under Section 100 of the GST Act. The grounds urged by the Appellant in support of the challenge to the impugned ruling are summarised hereunder:

i. The Appellant contended that the WBAAR erred in holding that the tobacco leaves proposed to be supplied by the Respondent are taxable at the rate of 2.5% CGST + 2.5% SGST under Entry No. 162 of Schedule I of Notification No. 1/2017-Central Tax (Rate).

ii. It was submitted that Chapter Heading 2401 of the Customs Tariff covers "Unmanufactured Tobacco; Tobacco Refuse" and includes both tobacco not stemmed or stripped and tobacco partly or wholly stemmed or stripped.

iii. The Appellant contended that sun-cured tobacco is covered within the scope of "Unmanufactured Tobacco" under Heading 2401.

iv. The Appellant submitted that while "Tobacco Leaves" attract GST at the rate of 5%, "Unmanufactured Tobacco (other than tobacco leaves)" attracts GST at the higher rate prescribed under the relevant GST rate notification.

v. Reliance was placed on CBEC Circular No. 332/2/2017-TRU dated 27.12.2017, wherein it was clarified that, for the purpose of GST, the concessional rate applicable to "tobacco leaves" covers only:

a. leaves of tobacco as such;

b. broken tobacco leaves; and

c. tobacco leaf stems.

vi. The Appellant contended that the expression "leaves of tobacco as such" refers to leaves obtained from the tobacco plant without undergoing any processing.

vii. It was argued that tobacco leaves which have undergone curing, including sun-drying or air-drying processes, would not fall within the category of "tobacco leaves" as contemplated in the aforesaid clarification.

viii. The Appellant further contended that the three categories referred to in the CBEC Circular cover only those tobacco leaves which have not undergone processing such as curing or fermentation.

ix. According to the Appellant, since the goods proposed to be supplied by the Respondent admittedly undergo curing by sun-drying or air-drying processes, the same cannot be treated as "tobacco leaves".

x. The Appellant submitted that cured or dried tobacco leaves are appropriately classifiable as "Unmanufactured Tobacco (other than tobacco leaves)" under HSN 2401.

xi. It was further contended that the Respondent had not specifically addressed the classification of cured/dried tobacco leaves as "unmanufactured tobacco" under Heading 2401.

xii. On the above grounds, the Appellant prayed for modification of the impugned ruling by holding that the goods proposed to be supplied by the Respondent are classifiable as "Unmanufactured Tobacco" under HSN 2401 and are taxable at the rate applicable thereto, instead of the rate applicable to "tobacco leaves".

Submission of the Respondent made before the WBAAAR

7. Apart from the submissions made before the WBAAR and discussed hereinabove, the Respondent, in its written submissions dated 30.04.2026 and 13.06.2026, has, inter alia, submitted as follows:

i. The appeal has been preferred mainly on the basis of an interpretation of CBEC Circular No. 332/2/2017-TRU dated 27.12.2017 and, according to the Respondent, the said circular has been misconstrued by the Appellant while challenging the ruling of the WBAAR.

ii. The Respondent submitted that no curing or processing activity is undertaken by it after purchase of tobacco leaves. The Respondent purchases tobacco leaves from farmers or market places and sells them as such, and only routine stacking and repositioning of the leaves is undertaken during storage to avoid fungus formation and heat build-up.

iii. It was submitted that sun-drying/sun-curing is undertaken by the farmers themselves before the leaves are brought to the market, since freshly plucked green tobacco leaves contain high moisture, are perishable in nature and are not capable of being transported or marketed in that condition.

iv. The Respondent contended that the drying undertaken by farmers merely removes moisture and makes the leaves marketable and does not alter the fundamental characteristics of the tobacco leaves.

v. It was submitted that acceptance of the Appellant's interpretation would result in tobacco leaves, once dried by farmers, ceasing to be "tobacco leaves" for GST purposes, thereby rendering the reverse charge provisions relating to procurement of tobacco leaves from agriculturists unworkable.

vi. The Respondent contended that the expression "tobacco leaves" used in the relevant GST rate notification is not qualified by any adjective such as fresh, green, cured or uncured and, therefore, all forms of tobacco leaves retaining their character as leaves would continue to be covered by the said entry.

vii. It was further submitted that the Appellant's interpretation seeks to read additional conditions into the notification which are not expressly provided therein.

viii. The Respondent submitted that the HSN Explanatory Notes to Heading 2401 specifically include cured tobacco and tobacco leaves in various forms within the scope of unmanufactured tobacco and, therefore, curing by itself does not result in loss of the character of tobacco leaves.

ix. It was contended that the clarification issued under Circular No. 332/2/2017-TRU cannot override or restrict the scope of the statutory notification and that a circular cannot create a tax liability contrary to the notification.

x. The Respondent submitted that the GST rate notifications prescribe the applicable rates with reference to the nature of the goods and do not make any distinction based upon the identity of the supplier or recipient, except for determining the person liable to pay tax under the reverse charge mechanism.

xi. It was further submitted that the Appellant had not demonstrated how the findings recorded by the WBAAR regarding the continued character of cured tobacco leaves as "tobacco leaves" were erroneous in law or on facts.

xii. The Respondent had also relied upon certain Advance Ruling decisions of other States. In **Suresh G. M/s Govind Traders** (Kerala AAR), it was held that sun-cured tobacco leaves (locally known as *Kannipukayila*) continue to remain "tobacco leaves" and are classifiable under Entry No. 162 of Schedule I attracting GST at 5%. In **M/s VST Industries Ltd.** and several other rulings of the **Andhra Pradesh AAR**, it was held that tobacco leaves, so long as they retain their essential character as leaves and have not undergone threshing/stripping, continue to be classifiable as "tobacco leaves"; consequently, cured and dried tobacco leaves procured from farmers, tobacco leaves traded by dealers, graded tobacco leaves and tobacco leaves sold after removal of butts were held to be taxable at 5%, whereas threshed/stripped tobacco was held liable to GST at the higher rate applicable to unmanufactured tobacco. The Respondent further relied upon the ruling in **M/s Morigeri Traders** (Karnataka AAR), wherein a similar view was taken that cured tobacco leaves do not cease to be tobacco leaves merely by the process of curing/drying undertaken to make them marketable and, therefore, continue to attract GST at the rate applicable to tobacco leaves.

xiii. The Respondent submitted that several AARs have taken a consistent view on similar facts and that no appeal had been preferred against many of such rulings.

xiv. It was further submitted that adopting a different view in the present case would result in similarly placed traders dealing in the same commodity being subjected to different tax treatment.

xv. The Respondent relied upon various judicial decisions to contend that exemption and rate notifications are required to be interpreted on the basis of their plain language and that words not found in the notification cannot be read into it by implication.

xvi. The Respondent additionally submitted that where a commodity continues to retain its essential identity notwithstanding certain processes undertaken to render it marketable, the commodity does not cease to remain the same product merely because of such processing.

Personal Hearing

8. The personal hearing of the instant appeal was held on 15.06.2026.

9. During the course of the hearing, the authorised representative of the Respondent, while reiterating the written submissions already filed before the Appellate Authority, also produced samples of the tobacco leaves proposed to be traded by them. The samples were presented in support of the Respondent's contention that the tobacco leaves retain their essential character as leaves notwithstanding the processes of curing, grading, bundling and butting undertaken thereon.

10. The Deputy Commissioner, State Tax, Bowbazar Charge, Government of West Bengal, appearing on behalf of the Appellant, reiterated the submissions and contentions advanced in the Grounds of Appeal. Further, in response to certain queries raised by the Members of the WBAAAR during the course of the hearing, the departmental representative undertook to furnish judicial precedents in support of the Appellant's contention that cured tobacco leaves are classifiable as "Unmanufactured Tobacco" and are liable to tax at the rate applicable thereto.

Discussions and Findings

11. We find that the broad submissions of the Respondent were primarily based on the following contentions:

i. The Respondent has supported the impugned ruling and contended that the WBAAR has correctly held the goods in question to be classifiable as "tobacco leaves" attracting GST at the rate of 5% under Entry No. 162 of Schedule I to Notification No. 1/2017-Central Tax (Rate), as amended. It has been submitted that the tobacco leaves proposed to be traded by the Respondent are procured from farmers after sun-curing and thereafter supplied either as such or after operations such as grading, bundling and butting, without undergoing any process that alters their essential character as tobacco leaves.

ii. The Respondent has contended that curing is an indispensable agricultural process undertaken by the cultivators to render freshly harvested tobacco leaves marketable and capable of storage and transportation. According to the Respondent, green tobacco leaves, as plucked from the plant, are highly perishable and are not ordinarily traded in that form. It has therefore been argued that cured tobacco leaves continue to remain “tobacco leaves” in commercial parlance as well as for the purposes of classification under the GST rate notifications.

iii. The Respondent has further submitted that neither the tariff entries nor the relevant GST notifications draw any distinction between fresh, green, cured or dried tobacco leaves and that the expression “tobacco leaves” employed therein is wide enough to cover cured tobacco leaves so long as they retain their identity as leaves. It has been contended that the interpretation advanced by the Appellant seeks to read limitations into the notification which are not expressly provided therein.

iv. According to the Respondent, the tariff itself recognises the distinction between tobacco leaves which retain their character as leaves and tobacco that has undergone threshing or stripping operations resulting in removal of the midrib.

v. The Respondent has further placed reliance upon several Advance Ruling decisions rendered by the Authorities for Advance Ruling of Andhra Pradesh, Kerala and Karnataka, wherein cured tobacco leaves, graded tobacco leaves, butted tobacco leaves and tobacco leaves traded by dealers were held to be classifiable as “tobacco leaves” attracting GST at the rate of 5%. It has been argued that these rulings consistently hold that curing, grading, bundling and butting do not result in loss of the essential character of tobacco leaves.

vi. The Respondent has also contended that Circular No. 332/2/2017-TRU dated 27.12.2017 does not support the interpretation canvassed by the Appellant and, on the contrary, clarifies that tobacco leaves continue to remain tobacco leaves so long as they do not lose their basic character as leaves.

vii. On the basis of the aforesaid submissions, the Respondent has prayed for dismissal of the appeal and for affirmation of the ruling pronounced by the WBAAR.

12. The Respondent approached the Advance Ruling Authority seeking an advance ruling in respect of the questions which have already been reproduced hereinabove, and need not repeated.

13. The principal observations and findings recorded by the WBAAR, which form the basis of the present appeal, may be succinctly summarised as under:

i. The WBAAR, after considering the submissions of the applicant and the Revenue, examined the nature of the processes undertaken on tobacco leaves, namely curing, grading, butting, bundling, stemming/stripping and threshing, and the impact of such processes on the classification of the goods.

ii. The WBAAR observed that curing is a process undertaken to reduce the moisture content of freshly harvested tobacco leaves and to render them marketable, and that grading, bundling and butting are operations carried out primarily for purposes of sorting, storage, packing, transportation and handling. According to the WBAAR, these processes do not alter the essential character of the tobacco leaves. The WBAAR further observed that green tobacco leaves are ordinarily not traded in the market and that curing is a necessary process undertaken prior to their commercial sale.

iii. The WBAAR distinguished the processes of curing, grading, bundling and butting from stemming/stripping and threshing, and took the view that tobacco leaves continue to retain their character as leaves so long as the leaf structure remains intact. It was observed that removal of the midrib through stemming or stripping materially affects the character of the leaf and is recognised separately under the tariff.

iv. The WBAAR also took note of the relevant tariff entries under Heading 2401, the HSN Explanatory Notes and the clarification issued vide Circular No. 332/2/2017-TRU dated 27.12.2017. Upon consideration thereof, the WBAAR concluded that cured tobacco leaves do not cease to be “tobacco leaves” merely because of the curing process and that operations such as grading and butting likewise do not result in emergence of a different commodity.

v. The WBAAR further found support from the rulings rendered by the Advance Ruling Authorities of Andhra Pradesh, Kerala and Karnataka, wherein cured tobacco leaves and tobacco leaves subjected to similar processes were held to remain classifiable as “tobacco leaves”. The WBAAR also did not find the decision relied upon by the Revenue to be applicable to the facts of the present case.

vi. On the basis of the aforesaid findings, the WBAAR held that sun-cured tobacco leaves supplied after storage or stocking, graded tobacco leaves and tobacco leaves subjected to butting continue to be classifiable as “tobacco leaves” under Tariff Item 240110 and are covered by Entry No. 162 of Schedule I to Notification No. 1/2017-Central Tax (Rate), as amended, attracting GST at the rate of 2.5% CGST and 2.5% SGST.

14. We find that on being aggrieved by the above ruling, the Appellant has preferred its appeal, primarily on the following grounds:

i. The Appellant has assailed the impugned ruling primarily on the ground that the WBAAR erred in holding that the tobacco leaves proposed to be supplied by the Respondent are classifiable as “tobacco leaves” attracting GST at the rate of 5% under Entry No. 162 of Schedule I to Notification No. 1/2017-Central Tax (Rate), as amended. According to the Appellant, Heading 2401 of the Customs Tariff covers “Unmanufactured Tobacco; Tobacco Refuse”, though both fall under Heading 2401, the GST rate notification distinguishes ‘tobacco leaves’ from ‘unmanufactured tobacco; tobacco refuse other than tobacco leaves’.

ii. The Appellant has placed considerable reliance on Circular No. 332/2/2017-TRU dated 27.12.2017 and has contended that the expression “tobacco leaves” is confined only to tobacco leaves as such, broken tobacco leaves and tobacco leaf stems. It has been argued that the phrase “leaves of tobacco as such” appearing in the said circular should be interpreted to mean tobacco leaves obtained from the tobacco plant without undergoing any processing.

iii. It has further been contended that curing, whether by sun-drying, air-drying or any other method, constitutes a process undertaken on the tobacco leaves and that, upon undergoing such process, the leaves cease to remain “tobacco leaves” for the purpose of the aforesaid entry. According to the Appellant, cured tobacco leaves are appropriately classifiable as “Unmanufactured Tobacco” falling under Heading 2401 and are consequently liable to GST at the rate prescribed for “Unmanufactured Tobacco (other than tobacco leaves)”.

iv. The Appellant has also submitted that the clarification issued by the TRU specifically identifies the categories of goods eligible to be treated as "tobacco leaves" and that cured tobacco leaves do not fall within the ambit of the said clarification. It has been argued that the WBAAR failed to properly appreciate the distinction between tobacco leaves in their original form and tobacco leaves which have undergone curing and drying operations.

v. The Appellant has further relied upon the judgment of the Hon'ble Gujarat High Court in Patel Products v. Union of India and has contended that activities such as drying, cleaning, sizing and similar operations performed on tobacco leaves result in a commercially distinct product. According to the Appellant, the rationale underlying the said decision supports the view that cured tobacco leaves cannot continue to be regarded as mere tobacco leaves for the purpose of GST classification.

vi. The Appellant has subsequently submitted and placed reliance upon the rulings rendered in Shalesh Kumar Singh, In re (Delhi AAR) and Sringeri Yogis Pai, In re (Karnataka AAR). In both the aforesaid rulings, it was held that tobacco leaves which had undergone the process of curing after harvesting ceased to be "tobacco leaves" for the purpose of Entry No. 109 of Schedule I to Notification No. 1/2017-Central Tax (Rate). The respective Authorities took the view that the benefit available to "tobacco leaves" was confined to leaves of tobacco as such, broken tobacco leaves and tobacco leaf stems, as clarified in Circular No. 332/2/2017-TRU dated 27.12.2017. The Authorities therefore concluded that cured/dried tobacco leaves were not eligible for the GST rate specifically prescribed for "tobacco leaves".

vii. On the basis of the aforesaid submissions, the Appellant has prayed that the impugned ruling be modified by holding that cured tobacco leaves proposed to be supplied by the Respondent are classifiable as "Unmanufactured Tobacco" under Heading 2401 and are liable to tax at the rate applicable thereto, and not at the concessional rate prescribed for "tobacco leaves".

15. We find that the submission of the Respondent before this Authority basically rests on the following points:

i. The Respondent, while supporting the impugned ruling, submitted that the tobacco leaves proposed to be traded by them are procured from farmers after curing and are thereafter supplied either as such or after operations such as grading, bundling and butting, without any process being undertaken that alters their essential character as tobacco leaves. It was contended that curing is an indispensable agricultural process undertaken by cultivators to render freshly harvested tobacco leaves marketable and fit for storage and transportation and that green tobacco leaves are not ordinarily traded in commercial parlance.

ii. The Respondent further submitted that neither the GST rate notifications nor the tariff entries make any distinction between fresh, cured or dried tobacco leaves and that the expression "tobacco leaves" covers all tobacco leaves retaining their identity as leaves. According to the Respondent, the interpretation sought to be placed by the Appellant on Circular No. 332/2/2017-TRU dated 27.12.2017 is misconceived and contrary to the plain language of the relevant notification. It was argued that the said circular cannot be read as restricting the scope of the entry relating to tobacco leaves only to freshly plucked green leaves.

iii. The Respondent also relied upon the HSN Explanatory Notes, various Advance Ruling decisions rendered by the Authorities for Advance Ruling of Andhra Pradesh, Kerala and Karnataka, and judicial principles governing classification of goods, to contend that curing, grading, bundling and butting do not result in emergence of a new commodity or in loss of the essential character of tobacco leaves. It was further submitted that only processes such as threshing or stripping, involving removal of the midrib, result in tobacco losing its character as a leaf and attracting classification under the entries relating to unmanufactured tobacco other than tobacco leaves.

iv. The Respondent accordingly contended that sun-cured tobacco leaves, graded tobacco leaves and tobacco leaves subjected to butting continue to remain classifiable as "tobacco leaves" under Tariff Item 240110 and are liable to GST at the rate of 5% in terms of Entry No. 162 of Schedule I to Notification No. 1/2017-Central Tax (Rate), as amended.

v. The Respondent therefore prayed for dismissal of the appeal and affirmation of the ruling pronounced by the WBAAR.

16. We have carefully considered the submissions advanced by the Appellant and the Respondent, both in their pleadings and during the course of the personal hearing. We have also examined the impugned ruling passed by the WBAAR, the application originally filed by the Respondent before the WBAAR, the Memorandum of Appeal, the written submissions filed by the Respondent, the sample tobacco leaves produced during the hearing, the Advance Ruling decisions relied upon by the parties, and the relevant provisions of the GST Act, the Customs Tariff Act, 1975, the applicable notifications, circulars, HSN Explanatory Notes and other materials placed on record.

17. Upon consideration of the rival submissions and the materials available on record, the principal issue that arises for determination in the present appeal is whether sun-cured tobacco leaves procured from farmers and subsequently supplied as such or after operations such as grading, bundling and butting continue to retain their character as "tobacco leaves" covered under Entry No. 162 of Schedule I to Notification No. 1/2017-Central Tax (Rate), as amended, or whether, by reason of the curing process and the aforesaid activities, they become classifiable as "Unmanufactured Tobacco (other than tobacco leaves)" under Heading 2401, attracting the rate of tax applicable thereto.

18. We find that the Respondent has consistently represented that the goods proposed to be supplied are tobacco leaves procured from farmers after curing and that no process is undertaken by the Respondent which changes the essential character of the leaves. The activities referred to in the application, namely storage, stocking, grading, bundling and butting, are stated to be undertaken only for preservation, segregation, handling, packing and transportation of the leaves. On the materials placed before us, including the samples produced during hearing, nothing has been shown to conclude that the Respondent proposes to undertake any process such as threshing, stemming, stripping, cutting, flavouring, blending, treatment with additives or any other process resulting in emergence of a commercially different commodity.

19. The process of curing, particularly sun-curing in the present case, appears to be a necessary process undertaken at the farmers' level to reduce the moisture content of freshly harvested tobacco leaves and to make them fit for storage, transportation and sale. Freshly plucked green tobacco leaves are reportedly highly moist and perishable and are not ordinarily capable of being marketed in that condition. We therefore agree with the finding of the WBAAR that curing, by itself, does not result in loss of the essential character of tobacco leaves, provided the leaves continue to retain their identity and physical character as leaves.

20. The relevant GST rate notification specifically uses the expression "tobacco leaves" under Entry No. 162 of Schedule I. The notification does not qualify the said expression by restricting it only to green, fresh or uncured tobacco leaves. Had the intention been to confine the entry only to freshly plucked green leaves, the notification could have used appropriate restrictive words. In absence of such restriction, the expression "tobacco leaves" has to be understood in the context of commercial parlance, tariff structure and the nature of the commodity.

21. We also note that Heading 2401 of the Customs Tariff deals with "Unmanufactured Tobacco; Tobacco Refuse". The HSN Explanatory Notes to Heading 2401 recognise tobacco in the form of whole plants or leaves in natural state as well as cured or fermented leaves. Thus, curing is not alien to Heading 2401. The tariff itself recognises that tobacco leaves may exist in cured form. Therefore, the mere fact that tobacco leaves have undergone curing cannot, by itself, be determinative of their exclusion from the expression "tobacco leaves" in the GST rate notification.

22. The clarification contained in Circular No. 332/2/2017-TRU dated 27.12.2017 states that, for GST rate of 5%, tobacco leaves mean leaves of tobacco as such, broken tobacco leaves or tobacco leaf stems. The Appellant has sought to interpret the expression "leaves of tobacco as such" as referring only to uncured green leaves. We are unable to accept such a restrictive interpretation. The circular does not expressly state that cured tobacco leaves are excluded from the scope of "tobacco leaves". A circular cannot be read in a manner which adds a limitation not found in the rate notification itself. In the facts of the present case, the expression 'as such' is more appropriately understood to refer to leaves retaining their character as leaves, and not as a condition that the leaves must remain in the freshly plucked green condition.

23. We further find that grading of tobacco leaves according to size, colour, shade, length or texture is only a process of segregation based on physical characteristics. Bundling is a process undertaken for ease of handling, packing, storage and transportation. Butting involves removal of the rough edge or butt portion of the leaf to avoid damage to other leaves during packing and transport. None of these activities, on the facts placed before us, results in a change in the essential character of the product from tobacco leaves to another commodity.

24. The WBAAR has rightly distinguished the aforesaid activities from stemming, stripping or threshing. In stemming or stripping, the midrib of the tobacco leaf is removed and the lamina is separated. Such process may have a material bearing on whether the goods continue to remain leaves as such. However, the present ruling is confined to the activities disclosed by the Respondent, namely curing, grading, bundling and butting. The question of classification of tobacco subjected to stemming, stripping, threshing, cutting, blending, flavouring or any other further process is not the subject matter of the present appeal.

25. The Appellant has relied upon the rulings In re Shalesh Kumar Singh, and In re Sringeri Yogis Pai, wherein cured or dried tobacco leaves were held not to be eligible for the concessional rate applicable to tobacco leaves. We have considered the said rulings. However, we find that those rulings proceeded substantially on the premise that curing itself takes tobacco leaves out of the category of "tobacco leaves". For the reasons discussed above, and having regard to the wording of the relevant notification, the HSN Explanatory Notes and the factual matrix of the present case, we are of the view that the said rulings are distinguishable and cannot be treated as determinative of the issue arising in the present appeal.

26. On the other hand, the rulings relied upon by the Respondent from the Authorities for Advance Ruling of Andhra Pradesh, Kerala and Karnataka support the view that cured tobacco leaves, so long as they retain their essential character as leaves and are not subjected to processes such as threshing or stripping, continue to be classifiable as tobacco leaves.

27. Here, we find it pertinent to note that, in terms of Section 103 of the GST Act, an advance ruling is binding only upon the applicant who has sought the ruling and upon the concerned officer or the jurisdictional officer in respect of such applicant. Consequently, the rulings relied upon by the parties, though having persuasive value, do not constitute binding precedents of general application. Each case is required to be examined on its own facts, the nature of the goods involved and the applicable legal provisions, and therefore no advance ruling can be applied mechanically to a different set of facts without an independent examination thereof.

28. Classification has to be determined with reference to the nature, form and condition of the goods at the time of supply. So long as the goods supplied are tobacco leaves retaining their essential character as leaves, their subsequent use by the buyer cannot, by itself, alter their classification at the stage of supply by the Respondent.

29. At the same time, we consider it necessary to clarify that our conclusion is based on the facts and representations placed on record in the present proceedings. The classification affirmed herein proceeds on the factual premise that the goods consist of tobacco leaves subjected only to curing, grading, bundling and butting, and that such goods retain their essential character as tobacco leaves. The burden of establishing eligibility to a particular classification entry rest upon the person claiming such classification. This order shall not be construed as laying down a general proposition that every commodity described in trade or invoices as "tobacco leaves" would automatically qualify for classification under the entry relating to tobacco leaves.

30. Classification under GST law has to be determined on the basis of the actual nature, characteristics and degree of processing of the goods, and not merely on the nomenclature adopted in invoices, e-way bills or other commercial documents. Where there exists reasonable doubt regarding the actual nature of the goods, or where material is available to indicate that the goods have undergone processing beyond curing, grading, bundling or butting, it shall be open to the proper officer to examine the goods by physical verification, scrutiny of the processes undertaken, expert opinion, laboratory testing or any other legally permissible evidence.

31. Nothing contained in this order shall preclude the proper officer, in appropriate proceedings, from examining whether goods described as tobacco leaves are in fact tobacco leaves or whether they constitute a differently processed form of tobacco. If, on verification, it is found that the goods have undergone processes such as threshing, stemming, stripping, blending, flavouring, treatment with additives, re-drying or any other process which alters their essential character, classification shall be determined independently on the basis of the facts so established and in accordance with law.

32. In view of the foregoing discussion, we find no infirmity in the ruling pronounced by the WBAAR. We accordingly hold that sun-cured tobacco leaves procured from farmers and supplied by the Respondent without any further processing, except storage or stocking, as well as tobacco leaves subjected only to grading, bundling or butting, continue to retain their character as "tobacco leaves". Such goods are covered under Entry No. 162 of Schedule I to Notification No. 1/2017-Central Tax (Rate), as amended from time to time, and are liable to GST at the rate of 2.5% CGST and 2.5% SGST.

33. Accordingly, we pronounce our ruling as under:

Ruling:

The appeal filed by the Appellant is rejected. The ruling passed by the WBAAR is upheld, subject to the factual limitations and clarifications recorded hereinabove.

Send a copy of this order to the Appellant and the Respondent for information.

Sd/-	Sd/-
(**Khalid Aizaz Anwar**)	(**R. Srinivasa Naik**)
Member, West Bengal Appellate Authority for Advance Ruling	Member, West Bengal Appellate Authority for Advance Ruling