

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 20/ 2019

Date : 26.08.2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Deputy Conservator of Forests, Bangalore Urban Division, Department of Forest, Government of Karnataka, Aranya Bhavan, 18 th Cross, Malleshwaram, Bengaluru, Karnataka - 560003
2.	GSTIN or User ID	29AAAGD1565L1Z8
3.	Date of filing of Form GST ARA-01	02.03.2018
4.	Represented by	Smt Dipika Bajpai, Deputy Conservator of Forests, Bangalore Urban Division, Department of Forests, Karnataka
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangalore North Commissionerate, HMT Bhavan, Bengaluru.
6.	Jurisdictional Authority - State	LGSTO-130, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each under CGST Act and KGST Act vide CIN 18032900007397 dated 02.03.2018

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES
TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS &
SERVICES TAX ACT, 2017**

1. The Deputy Conservator of Forests, Bengaluru Urban Division,
Department of Forests, Government of Karnataka, (called as the 'Applicant')



hereinafter), Aranya Bhavan, 18th Cross, Malleshwaram, Bengaluru 560 003, having GSTIN number 29AAAGD1565L1Z8, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Government Department (Karnataka Forest Department) and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following questions:

- a) Is it legally correct to infer that the service of “logging” and its components described before do not attract any SGST under the CGST Act, 2017? If not, what is the correct position by law?
- b) In case the trees have grown from “plants” not planted by the Karnataka Forest Department, but that which grew by natural regeneration but were nurtured, managed and protected by the Karnataka Forest Department, does the same nil rate of SGST and CGST apply to them too? If not, what would be the rate?
- c) In case of sale of forest produce or any other goods belonging to Karnataka Forest Department, where the buyer is registered or is based in and transports the goods to outside the State of Karnataka, what should be charged under the CGST Act, 2017, (A) SGST and CGST, or (B) IGST?
- d) In case of sale of forest produce or any other goods belonging to Karnataka Forest Department, where the buyer is registered or is based outside the State of Karnataka, but uses the goods within the State of Karnataka, what should be charged under the CGST Act, 2017? (A) SGST and CGST, or (B) IGST?

3. The applicant furnished some facts relevant to the stated activity:

- a. The applicant states that Karnataka Forest Department, under its sovereign functions, raises “plants” of tree species, plants them in forest, waste & common lands. Over time, with the nurturing and management of the department, these plants grow up to become trees when they are harvested to yield timber, poles, billets, firewood, pulpwood, etc. which are raw material (for say carpentry works), fuel (firewood is burnt as

fuel), and fibre (pulpwood is used as fibre for paper and rayon industry).

b. The task of harvest of these trees which grew from “plants” planted by the department is at times given to Government Corporation / Corporations. (That the National Forest Policy and the Hon’ble Supreme Court directions prohibit engagement of Contractors is a matter not germane to the case at hand). These Corporations –

- i. Fell the trees that grew from the “plants” – Labour work
- ii. Convert them, into timber, firewood, poles, etc so that they become marketable for the primary market – Labour work
- iii. Load the marketable timber, firewood, etc in vehicles – Labour work
- iv. Transport the marketable timber, firewood etc. by vehicles – Non Labour work
- v. Unload the marketable timber, firewood etc. from vehicles – Labour work
- vi. Stack the marketable timber, firewood etc. in government timber depots – Labour work

c. The applicant submitted that all of these, and some activities related to it (like clearing the roads, fire prevention, etc.) together are termed as an item of work called “logging”. The question arises is that, for this service of “logging” done by the Corporation and received by the Forest Department, what is the GST payable?

d. The applicant reasons that “Logging” is a forestry operation. The only serial number of Notification No. 11/2017 – Central tax (Rate) dated 28-06-2017 and amendments upto 14-11-2017 where the “forestry” occurs is in serial no. 24, Heading 9986, which is cited as under:



24.	Heading 9986	<p>(i) Support services to agriculture, forestry, fishing, animal husbandry.</p> <p>Explanation:</p> <p>“Support services to agriculture, forestry, fishing, animal husbandry” mean –</p> <p>(i) Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of</p> <p>(a) Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) Supply of farm labour;</p> <p>(c) Processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling, or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) Loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) Agricultural extension services;</p> <p>(g) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce</p> <p>(ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.</p>
-----	-----------------	--

		(iii) Carrying out an intermediary production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.	
--	--	---	--

- e. With the definition and contents of “logging” operation explained as above, and trees being “grown up plants” and since the term “plant” is not defined in the Central Goods and Services Tax Act, 2017 and in the Acts mentioned in section 2(120) of the said Act therein, the scientifically correct meaning of the said term (All living beings in this world, irrespective of the shape or size that they may have, are either “plant” or “animal”. Since trees are living but not animals, they are plants) needs to be taken. Hence the applicant argues that it is legally, scientifically and logically prudent and inferable that the service of “logging” falls under service heading 9986 and thus does not attract any service tax (GST).
- f. Regarding the other issues, the applicant submits that the Karnataka Forest Department disposes by e-auction and e-tender cum auction methods, timbers of various species both, harvested from forests/ plantations as well as confiscated being involved in forest offences. These are disposed through various depots in the State, including Jarakbande Sandal Godown, Bengaluru.
- g. In the sales of timber and red sanders that have been taken place since 22nd November, 2017, the department has mentioned in its sale conditions that the point of sale is the Depot and the destination of sale is also the depot. Thus, 9% SGST and 9% CGST is made applicable on sales. It is reasoned by the department that only after a buyer pays all the amounts due towards the lots purchased, is the lot his/ her/ theirs. After the purchase is complete, the buyer is free to request for and transport it to any place, within or outside Karnataka.
- h. In case of buyers based in States outside Karnataka, they have represented (particularly the ones of 20th February, 2018 red sanders sale) that the insistence of the forest department on



payment of SGST and CGST is wrong. Their contention is that since the material sold/ purchased is being taken to and consumed outside the State of Karnataka, they should be paying 18% IGST under the IGST Act, 2017.

- i. In view of the above, the applicant has sought advance ruling.

PERSONAL HEARING: / PROCEEDINGS HELD ON 21.03.2018

4. Sri. Brijesh K Dikshit, Deputy Conservator of Forests, Bangalore Urban Division, Karnataka Forest Department, appeared and stated that the "Logging" work is done only by the Government Agencies which are State Government Corporations like KSFIC, which is a company registered under the Company Act and they charge the Department on job work basis. They have maintained that all trees are owned by the Forest Department as per the Land Revenue Act, 1976.

5. FINDINGS & DISCUSSION:

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by the Deputy Conservator of Forests, during the personal hearing. We have also considered the issues involved on which advance ruling is sought by the applicant and relevant facts of the issue involved.

5.2 The Applicant, filed the instant application dated 03.03.2018 seeking advance ruling on the questions mentioned at para 2 supra. The Applicant contends that the activity of logging means the harvest of plants that have been cultivated on land, grown big & mature enough to be used as fuel or raw material; logging is an agricultural operation; falls under the heading 9986 and therefore in terms of entry no.24 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, effective from 01.07.2017, qualifies nil rate of GST.

5.3 The Applicant, in their application reasons that "Logging" is a forestry operation and contradictorily claims, during the personal hearing on 21.03.2018, in written submissions that "Logging" is an agricultural operation.

5.4 In view of the above, to answer the first two questions of the applicant, it is essential to decide whether the activity of "logging" amounts to harvesting of agriculture produce & accordingly whether it falls under the support services to agriculture or not. Therefore it is pertinent to find the meaning of "Agricultural Operation", which has not been defined under the CGST Act 2017. However, the term "Agriculturist" is defined under Section 2(7) of the CGST Act 2017, according to which an individual or a HUF who undertakes cultivation of land is an "Agriculturist".

The applicant endeavors to derive the meaning of the term "agricultural operation" from the aforesaid definition as any operation forming a part of cultivation of land.

Support services to agriculture i.e services relating to cultivation of plants for food, fibre, fuel, raw material by way of agricultural operations directly related to **production of any agricultural produce** including cultivation, **harvesting** etc., falling under Chapter heading 9986 are taxable at NIL rate of GST under entry no. 24 of the Notification No. 11/2017 - Central Tax (Rate) dated 28th June 2017, effective from 01.07.2017.

5.5 It is clearly evident from the said entry that the condition for the said services to attract Nil rate of GST is that the agricultural operations must yield the agricultural produce and harvesting is one such operation which yields agricultural produce. Therefore the term "agricultural produce" is crucial in the instant case. In common parlance it means growing of crops. The applicant submits in their application that the service being received by them yields timber, firewood etc.. However the yields of timber, firewood etc do not qualify as "agricultural produce" and are more specifically in the nature of "forest produce".

5.6 We find that the term "forest produce", is defined under Section 2(7) of the Karnataka Forest Act 1963. Further the terms "timber" and "trees" have been defined under Sections 2(20) and 2(21) of the Karnataka Forest Act 1963 respectively as under:

(20) "timber" includes trees when they have fallen or have been felled, and all wood whether cut up or sawn or fashioned or hollowed out for any purpose or not;



(21) "tree" includes palms, bamboos, stumps, brushwood and canes;

5.7 In view of the above, it is clearly evident that the activity of "Logging" does not yield agricultural produce and hence is not covered under entry number 24 of the Notification No. 11/2017 – Central Tax (Rate) dated 28th June 2017, effective from 01.07.2017.

5.8 Further the activity of "Logging" also does not fall under the support services to forestry. The term "forestry", in terms of oxford dictionary, means **"The science or practice of planting, managing, and caring for forests"**. In the instant case the nature of work done by the Corporation i.e. the services received by the applicant are not related to the management of forest i.e planting, managing, caring, in relation to cultivation of plants, but are of felling of trees and converting them into a marketable timber or firewood. It is an intermediary operation in the conversion of wood to timber and firewood and hence is not covered under the explanation given to the words "Support Services to forestry" and hence is not covered under the entry no. 24 of the Notification No. 11/2017 – Central tax (Rate) dated 28.06.2017. The services received by the applicant are of composite in nature and the principal supply is covered under sub-entry (ii) of entry no.26 of the Notification No.11/2017-Central tax (Rate) dated 28.06.2017 which reads "Manufacturing services on physical inputs (goods) owned by others, other than (i) above" and taxable at 9% under the CGST Act and 9% under SGST Act. Similarly it is taxable at 18% under the IGST Act.

5.9 Regarding the second question, the activity of the Government Corporation done to the Forest Department is independent of the nature of the activity involved in the growing of trees and hence what applies to the naturally grown trees applies to the trees which are nurtured, managed and protected by the Forest Department.

5.10 Section 10 of the IGST Act which deals with the Place of Supply reads as under

10. Place of supply of goods other than supply of goods imported into, or exported from India.

(1) *The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—*

- a) *where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;*
- b);
- c) *where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;*

The contention of the applicant that the department had mentioned in its sale conditions that the point of sale is the depot and the destination of sale is also the depot. It is only after the buyer pays all the amounts due towards the lots purchased, the transfer of property takes place and after the completion of such transfer, the buyer is free to transport it to any place within or outside Karnataka.

5.11 As per the contention of the applicant there is no condition in the sale offer that there must be an interstate movement or local movement of goods and the applicant also submitted that the permit to transport the goods so purchased shall be issued only after the completion of sale and delivery of goods. The persons participating in the auction are aware of the condition that the transfer of title to goods is happening at the depot and they have to take possession of the goods at that place. The supply gets completed the moment the goods are delivered to the purchaser and the purchaser applies and obtains permit from the Forest department later to transport the goods to his place or any place, on which the Forest department has no control or conditions. In view of all the above reasons and specifically since the delivery is given in the place of depot itself, as per section 10, the place of supply is Karnataka.

5.12 Also, as per of sub-section (1) of section 10, the stress is on the words "supply" and "movement of goods". If the movement of goods is involved within the supply contract then it, then clause (a) is attracted and the place of supply would be the place where the movement of goods terminates for delivery to the recipient. The words clearly say that the there must be termination of movement and delivery to the recipient is a subsequent action. In the pertinent case, it is seen that the goods are delivered to the buyer and the supply transaction is completed. The



contract is over the moment the invoice is raised and the payment is made and there is no condition of the movement of goods being an ingredient in the supply contract. The buyer then after clearing the goods and taking possession of goods applies for permit and takes the goods to whichever place he wants. The delivery of the goods happens when the possession of goods is handed over to the supplier and the movement of goods is not a precondition for supply, they both being independent events. There is no breach of contract of supply, if the purchaser, being from outside the state does not actually take the goods to his place outside the state. Hence as per clause (c), the place of supply would be the place of the location of such goods at the time of the delivery to the recipient and hence Karnataka.

5.13 Further, sub-section (1) of section 8 of the Integrated Goods and Services Tax Act, 2017 reads as under –

“(1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply”

In the pertinent type of transaction, since the location of the supplier, [Department of Forests, Government of Karnataka is within the state of Karnataka], is Karnataka and the place of supply (as per the conclusion arrived in the preceding paragraphs), is also Karnataka, as per section 8(1) of the IGST Act, 2017, the nature of supply would be an “intra-State supply” within Karnataka State and hence CGST and SGST would be applicable on the transaction and not IGST.

But, if the disclosure of destination is part of the supply contract and the contract makes it mandatory to issue transport permit to the place of such destination, then the place of supply would be the place of termination of movement of such goods and if both the place of supply and location of the supplier is within the same state, then it would amount to an “intra-State supply” and CGST and SGST would be chargeable. If the place of supply and the location of the supplier are in different states, then the transaction would amount to an “inter-State supply” and IGST would be chargeable.

5.14 In view of the above, the third and fourth questions are answered as under:

CGST and SGST must be charged as the place of supply and the location of the supplier are in the same State, in the reference transaction provided in the application.

6. In view of the foregoing, we pass the following

R U L I N G

1. The operations of "logging" as described in the application would attract tax under the Goods and Services Tax Acts and it is independent of the trees, whether planted by the Forest Department or which grew out of natural regeneration.
2. The transaction described in the application in Issue No.2, is an intra-State supply and attracts CGST and SGST and is independent of where the goods are taken by the recipient after the supply is completed.


26.08.2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,
Date : 26.08.2019

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore North Commissionerate,
H M T Bhavan, Bengaluru.

The Asst. Commissioner, LGSTO-130, Bengaluru.

Office Folder.

