

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

Advance Ruling No. KAR ADRG 99/2019

Dated: 27th September, 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 TATA COFFEE LIMITED No.57, Railway Parallel Road, Kumara Park West, Bengaluru 560020
2.	GSTIN or User ID	29AABCC0241R1ZH
3.	Date of filing of Form GST ARA-01	18.07.2019
4.	Represented by	Sri Dayananda, Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangalore North
6.	Jurisdictional Authority - State	SGSTO-301, Virajpete
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN HDFC19042900480702 dated 30.04.2019 2. Rs.5,000-00 under KGST Act vide CIN HDFC19042900480702 dated 30.04.2019

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

1. M/s Tata Coffee Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AABCC0241R1ZH, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

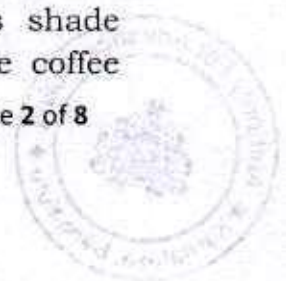


2. The Applicant company is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

- a) Whether the legally binding and prescribed activity of depositing the timber / wood by the applicant with the Government Timber Depot for disposal as per the provision of Section 104 of the Karnataka Forest Act will constitute a "supply" and therefore subject to payment of GST for keeping the goods at the custody of the auctioneer i.e. Government Timber Depot?
- b) If GST applicable on depositing timber with the auctioneer, on what value GST is chargeable in the invoice by the applicant?
- c) Whether the payment of GST on the full amount by the auctioneer i.e. Government Depot, will be the complete discharge of liability in the hands of the applicant and hence the applicant is not required to charge any GST while depositing as well as receiving the net consideration from the auctioneer?
- d) If the transaction is supply in the hands of the applicant, what is the time of supply of timber?
- e) If the transaction is considered as "supply" in the hands of the applicant when consideration is not fixed / known at the time of supply, when would be the time of supply and when the applicant has to remit the tax on what value? This is especially where the Government Timber Depot decides the time of auction and the applicant does not have any control on this process.
- f) Should GST be paid by the applicant on supervision charges collected by the Government Timber Depot under Reverse Charge as per the Sl.No.5 of Notification No.13/2017?

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

- a. The applicant states that he is a part of the Tata Group of Companies and is engaged in the business of Coffee /Tea / Pepper plantation. In the plantation, certain trees are grown for the purpose of "shade" of coffee crop. Shade trees are absolutely necessary for the protection of coffee bushes. It is not possible to grow coffee in India without the necessary shade trees. However, excessive shade trees are also not suitable for coffee growing.
- b. The applicant identifies such excessive trees as part of its shade management policy and the same is cut down to protect the coffee



bushes surrounding them from getting damaged. Such trees other than silver oak timber, along with dead standing/ wind fallen trees, but along with Rose wood will be transported to Government Auction Depots as mandated by the provision of the Forest Act for its disposal.

- c. The applicant supplies the Rosewood and Jungle kind timber (hereinafter collectively called "Timber / wood") to the Government Timber Depots at Thithimathi and Kushalanagara (both located in Kodagu District) as mandated under section 104 A of the Karnataka Forest Act read with Rule 127A of Karnataka Forest Rules made thereunder.
- d. The Government Agency i.e. Government Timber Depots auction the same to the general public.
- e. The applicant transports the above timber and keeps the same in the premises of these Government Timber Depots for which they issue "Depot Receipts" as an acknowledgement in the form of FAC26.
- f. When these Government Timber Depots auction the timber/wood, they raise invoice in their name and collect consideration from the buyer. The invoice raised by them will not mention the name of the applicant as well as timber/wood sold out of the stock of timber /wood belonging to the applicant. The Government Timber Depots are registered entities under the GST Act.
- g. After the completion of auction, Timber Depots before remitting the sale proceeds to the applicant, deducts supervision charges at the rate of 10% of the total sale value along with GST and remits the net amount to the account of the applicant. In this regard, the Government Order clearly provides for the same. The Government Timber Depot is not issuing valid Tax Invoice for the collection of GST on supervision charges.

4. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri.Dayanand, CA, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

4.1 The transactions of the applicant is examined and found that there are two types of transactions between the applicant and the Karnataka

Tata Coffee Ltd.



Timber Depots:

- (a) The sale of timber by the Karnataka Timber Depot on behalf of the applicant
- (b) provision of service of supervision of timber till the time of sale

4.2 The timber / wood belonging to the applicant is handed over to the Karnataka Timber Depot (referred hereinafter as "Depot") for auction or further supply and the Depot is raising invoice against such supply made to third parties. This action of the Depot is in the capacity of an agent of the applicant with rights to transfer the title of the goods to third parties and hence is clearly transferred the same as an agent of the applicant. Hence the supply made by the agent on behalf of the principal amounts to supply and the depot is collecting GST on the same. The Depot is remitting the sale value of the timber to the applicant.

4.3 Since the depot is considered as an agent within the meaning of clause (5) of section 2 of the Central Goods and Services Tax Act, 2017, the transfer of goods from the applicant to the agent is also a supply for the reasons as noted below:

Clause 3 of Schedule I to the CGST Act, 2017 states as under

"Activities to be treated as Supply even if made without consideration

3. Supply of goods

(a) by the principal to his agent where the agent undertakes to supply such goods on behalf of the principal.

(b) . . ."

From the above it is clear that the supply of goods by the applicant to the depot for further supply on behalf of the principal would also amount to a supply and the applicant has to issue a tax invoice and discharge GST on the same. Hence the answer to the first question is yes, that the transaction of depositing timber with the Government Timber depot for disposal would amount to "supply" within the meaning assigned to it under the GST Act and GST is chargeable on the value of such supply.

4.4 Regarding the value for which the tax shall be paid for the transaction of supply explained in para 4.3 above, Section 15(4) of the CGST Act, 2017 mandates that where the value of supply of goods cannot be determined as per Section 15(1) then the same shall be determined in such manner as may be prescribed.

4.5 Rule 29 of the CGST Rules, 2017 reads as under:

"Rule 29: Value of supply of goods made or received through an agent
The value of supply of goods between the principal and his agent shall –

- (a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.
- (b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.”

So, in light of the above, the value of supply of timber to the Depot by the applicant shall be the open market value or the value as may be determined under rule 30 or rule 31 in that order.

5. Regarding the third question, there is no provision in the GST Act for shifting of the tax liability and considering that as a deemed discharge of liability. There are two supplies of timber involved in the chain of transactions, one when the timber is handed over to the depot by the applicant and the second when the timber is sold by the depot. Both are independent supplies in the eyes of the GST Act and hence the tax needs to be discharged at both stages.

6. Regarding the time of supply of the transaction involving handing over of goods to the auctioneer, sub-section (2) of section 12 of the CGST Act, 2017 needs to be referred, which reads as under:

“(2) The time of supply of goods shall be the earlier of the following dates, namely:

- (a) the date of issue of invoice by the supplier or the last date on which he is required under section 31, to issue the invoice with respect to the supply; or
- (b) the date on which the supplier receives the payment with respect to the supply.”

Further, section 31(1) of the CGST Act, 2017 reads as under:

“(1) A registered person supplying taxable goods shall, before or at the time of, -

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of the goods, the tax charged thereon and such other particulars as may be prescribed:”



A conjoint reading of the above two provisions makes it amply clear that the time of supply is the time of removal of timber/ wood by the applicant for supply to the depot.

7. Regarding the fifth question, it is a repetition of the earlier questions and hence not answered again. It is pertinent to note that the time of second supply involving timber i.e. by the depot (agent) to the third party does not have any impact on the value or time of supply of the first supply, i.e. supply of timber/ wood by the applicant to the depot for sale.

8. Regarding the last question, it is pertinent to note that this supply of services of supervision is a supply between two principals and GST needs to be paid on the transaction. Notification No.13/2017 – Central Tax (Rate) dated 28.06.2017 which shifts the liability to pay the tax on the recipient of the service instead of the supplier by a reverse charge mechanism . Entry 5 of the said notification reads as under:

Sl.No.	Category of supply of services	Supplier of Service	Recipient of service
5	<p>Services supplied by the Central Government, State Government, Union Territory, or local authority to a business entity excluding</p> <p>(1) renting of immovable property</p> <p>(2) services specified below</p> <p>–</p> <p>(i)</p> <p>(ii)</p> <p>(iii)</p>		

Since the activity of providing supervision services is not covered under the exceptions in entry 5, the same is liable to tax under reverse charge and this is subject to the condition that the Government Timber Depots are Government Departments, the applicant is liable to pay tax on the receipt of supervision services. In case the Government Timber Depots are not Government Department then such reverse charge mechanism shall not be applicable and the Government Timber Depot shall collect the GST and issue invoice to the applicant.

9. In view of the foregoing, we rule as follows

RULING

1. The transaction of depositing timber with the Government Timber depot for disposal would amount to "supply" within the meaning assigned to it under the GST Act and GST is chargeable on the value of such supply.
2. The value of supply of timber to the Depot by the applicant shall be the open market value or the value as may be determined under Rule 30 or Rule 31 in that order.
3. There is no provision in the GST Act for shifting of the tax liability and considering that as a deemed discharge of liability. There are two supplies of timber involved in the chain of transactions, one when the timber is handed over to the depot by the applicant and the second when the timber is sold by the depot. Both are independent supplies in the eyes of the GST Act and hence the tax needs to be discharged at both stages.
4. The time of supply is the time of removal of timber/ wood by the applicant for supply to the depot.
5. It is the repeat of the earlier questions and hence not answered again. It is pertinent to note that the time of second supply involving timber i.e. by the depot (agent) to the third party does not have any impact on the value or time of supply of the first supply, i.e. supply of timber/ wood by the applicant to the depot for sale.
6. The activity of providing supervision services is not covered under the exceptions in entry 5 of Notification No.13/2017- Central Tax (Rate) dated 28.06.2017, the same is liable to tax under reverse charge and this is subject to the condition that the Government Timber Depots are Government Departments, the applicant is liable to pay tax on the receipt of supervision services. In case the



Government Timber Depots are not Government Department then the transaction would not be covered under Notification No.13/2017- Central Tax (Rate) dated 28.06.2017 and such reverse charge mechanism shall not be applicable and the Government Timber Depot shall collect the GST and issue invoice to the applicant.




27.09.2019

Harish Dharnia)
Member

Place: Bengaluru,
Date: 27.09.2019


(Dr.Ravi Prasad.M.P.)
Member

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Commissioner of Central Tax, Bangalore-North
4. The Asst. Commissioner, SGSTO-301, Virajpete
5. Office Folder

