

**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 81/2019
Dated: 25th September, 2019**

Present:

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

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|----|---|--|
| 1. | Name and address of the applicant | M/s THE NURSERYMEN CO-OPERATIVE SOCIETY Lalbagh, Lalbagh Double Road Gate, Bengaluru 560004 |
| 2. | GSTIN or User ID | 29AABAT4416F1ZK |
| 3. | Date of filing of Form GST ARA-01 | 11.03.2019 |
| 4. | Represented by | Sri Vishwanath Bhat, Cost Accountant and DAR |
| 5. | Jurisdictional Authority - Centre | Commissioner of Central tax, Bangalore-South |
| 6. | Jurisdictional Authority - State | LGSTO-100, Bengaluru |
| 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 SBIN19032900040061 dated 07.03.2019 2. Rs.5,000-00 under KGST Act vide CIN SBIN19032900040061 dated 07.03.2019 |

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 The Nurserymen Co-operative Society, (called as the 'Applicant' hereinafter), having GSTIN number 29AABAT4416F1ZK, 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 is an Association of Persons and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

Whether the landscape development and maintenance of garden work for State and Central Government Departments, all government local bodies (Municipalities and Corporations) etc. and other government undertakings through contract from sub-contracts attracts GST as inward supplies from those vendors?

3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant states that he is in the business of maintaining the gardens and landscape development for State and Central Governments, local bodies and government undertakings. He also stated that he has been providing pure services (excluding works contract services and other composite supplies not involving any goods) to these recipients of services and the same is exempted by way of serial no. 3 of the Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017. This is also clarified by the advance ruling issued in KAR ADRG 18/ 2018 dated 06.08.2018.
 - b. Now the applicant states that he is sub-contracting this work to the sub-contractors and whether such sub-contract work are liable to tax under the GST Act?

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. Vishvanath Bhat 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 transaction in question is examined and it is found that the applicant is executing two types of works wherein in one set of cases the applicant is making supply of pure services with the existing material without it being a works contract services or other composite supply involving any goods and in the second category of supply the applicant is providing composite supply of both goods and services. The first set of activities is covered under entry no.3 of the Notification No.12/2017 –

Central Tax (Rate) dated 28.06.2017 and the same is clarified as exempt in the advance ruling issues in KAR ADRG 18/2018 dated 06.08.2018.

4.2 The second activity of the applicant is examined. As per entry no. 3A of the Notification No.12/2018 -Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 02/2018 – Central Tax (Rate) dated 25-01-2018 which reads as under:

| Sl.No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Service | Rate (per cent) | Condition |
|--------|---|--|-----------------|-----------|
| 1 | 2 | 3 | 4 | 5 |
| 3A | Chapter 99 | Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union Territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution | Nil | Nil |

4.3 The activity of the applicant in relation to the supplies which are involving goods either as a works contract or as a composite supply involving supplies of goods also, the activity gets exempted as per entry 3A above subject to the following conditions:

- That the value of supply of goods should not constitute more than 25% of the value of the said composite supply
- The supply to the provided to the Central Government, State Government or Union Territory or a local authority or a Governmental Authority or a Government Entity
- The activity entrusted must be in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

4.4 The applicant states that he is effecting landscape development and



maintenance of gardens. The applicant has not provided any details of the quantum of the involvement of goods in each of these contracts and for the sake of argument, it is assumed that the value of such supply of goods is less than 25% in order to satisfy the conditions provided in the Notification.

4.5 Secondly, the supply of such services must be for the Central or State Government Departments or a local authority or the recipient of such services must be a Government Entity or Authority as per the definitions provided in the said notification. It is also assumed for the time being that the recipient of services from the applicant is covered under these categories.

4.6 Then the third condition must be satisfied that the activity must be in relation to the function entrusted to a Municipality or Panchayat under Article 243W or Article 243G of the constitution respectively. Maintenance of parks is an activity entrusted under Article 243W of the Constitution and hence the same is covered, but not private gardens.

4.7 Subject to the facts that all the above conditions are said to be satisfied, the activity of the applicant is exempted under entry 3A of the Notification No.12/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No.2/2018 - Central Tax (Rate) dated 25.01.2018.

4.8 Now coming to the subject matter of discussion, the precondition for this is that the activity of the applicant is exempt either as a pure services covered under entry no.3 or a composite supply or works contract involving goods covered under entry no.3A of the Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No.2/2018 - Central Tax (Rate) dated 25.01.2018.

4.9 The applicant offers this contract on sub-contract basis to sub-contractors and any activity done by these contractors are not exempted either under entry 3 or entry 3A of the Notification No.12/2017 - Central Tax (Rate) dated 28.06.2017 for the following reason:

- (a) The entry no.3 states that the Pure Services (excluding works contract service or other composite supplies involving supply of any goods) must be provided to the Central Government or State Government or Union territory or local authority or a Governmental authority are exempted from tax. Further entry no.3A states that Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply must be provided to the Central Government, State

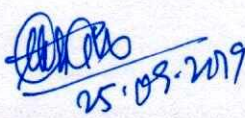
Government or Union Territory or a local authority or a Government Authority or a Government Entity are exempted from tax. In the present case, in both the scenarios, the supply of the sub-contract service is to the applicant by the sub-contractor and the applicant is not covered under the class specified either under entry 3 or entry 3A of the said Notification.

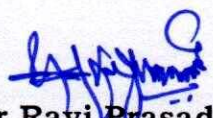
5. In view of the foregoing, we rule as follows

RULING

Even after assuming the activity of the applicant being either covered in entry no.3 or entry no.3A of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 (as amended), the activity supply by the sub-contractor to the applicant of execution of the sub-contract work of the said activity would not be exempt as it is not covered either in entry no.3 or entry no.3A of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 (as amended), as the applicant being the recipient of such service is not covered under the class of recipients enumerated in the said entries.




25.09.2019
(Harish Dharnia)
Member


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

Place: Bengaluru,
Date: 25.09.2019

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. The Commissioner of Central Tax, Bangalore-South, Bengaluru.
4. The Asst. Commissioner, LGSTO-100, Bengaluru.
5. Office Folder.