

**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 18 / 2018**

**Dated : 6<sup>th</sup> August 2018**

Present:

1. Sri. Harish Dharnia,  
Joint 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 The Nursery Men Co-operative Society, Lalbagh, Lalbagh Double Gate Road, Bengaluru, Karnataka – 560004
2.	GSTIN or User ID	29AABAT4416F1ZK
3.	Date of filing of Form GST ARA-01	06.12.2017
4.	Represented by	Sri Vishwanath Bhat, Cost Accountant
5.	Jurisdictional Authority – Centre	---NA---
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.2,500-00 each under CGST Act and KGST Act vide CIN SBIN17122900075546 dated 14.12.2017. (2) Rs.2,500-00 each under CGST Act and KGST Act vide CIN No. SBIN18012900329776 dated 22.01.2018

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

1. M/s The Nurserymen Co-operative Society Ltd, (called as the ‘Applicant’ hereinafter), Lalbagh, Bengaluru 560 004, having GSTIN number 29AABAT4416F1ZK, has filed an application for Advance Ruling under Section 97 of CGST Act,2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01. At the time of filing of application, they had not discharged the fee and subsequently on 14.12.2017, they have discharged the fee of Rs.2,500-00 each under the CGST Act and the KGST Act. Later on 22.01.2018, they have made the payment of a fee of Rs.2,500-00 each under the CGST Act and the KGST Act. They also enclosed copy of challans.

2. The Applicant is a society, which is a wing of Horticulture Department of Government of Karnataka and is registered under the Co-operative Societies Act, 1957, with small and very small nurserymen as members. The works of formation of parks and land scaping on the lands belonging to the Government and other Government Undertakings is entrusted to this society and they execute the works of deweeding of the land, levelling of land, landscaping and formation of parks in the Lands belonging to the Government and other Government Undertakings. The applicant has sought advance ruling in respect of the following question:

*“Whether landscaping and gardening work for government departments like BBMP, KSRTC, etc, through works contract attracts GST from this society?”*

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

- a. The applicant maintains that Horticulture is the science and art of growing plants and includes landscaping, soil management, designing, construction and maintenance of gardens. He maintains that the said activity is covered under the entry no. 24 to the Notification No. 11/2017 – Central Tax (Rate) dated 28<sup>th</sup> June, 2017 under the Heading 9986, for which the tax rate prescribed is “NIL” under the CGST Act. Similar exemption is also available under the Karnataka Goods and Services Tax Act.
- b. The applicant also submitted a copy of an advance ruling issued by the Clarification and Advance Ruling Authority, Government of Karnataka bearing no. CLR.CR.78/02-03 dated 13.05.2003 in which the following are seen:-
  - i. The work involved in landscaping job is removing old and existing unwanted weeds and plants, digging the soil, and levelling of ground and plating small shrubs, flowering plants and grass, etc.
  - ii. Digging cleaning and levelling of the land is purely a earthwork and it is not exigible to sales tax. Similarly the sale of plants is also exempted from tax and hence the work of landscaping does not involved any taxable transactions.
  - iii. In view of the above, the authority rules that the work of landscaping undertaken by the society was not liable to tax under the provisions of the Karnataka Sales Tax Act and if there was any other transfer of property, the same would attract tax appropriately.

- c. The applicant has also stated that “Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution” is exempted from tax. Further he has also quoted that “Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority 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” is exempted from tax vide entry no. 3 of Notification No.12/2017 – Central Tax (Rate) dated 28<sup>th</sup> June, 2017. He has also submitted a letter from the Bruhat Bengaluru Mahanagara Palike (BBMP) stating that BBMP is a local authority and maintenance of parks is a function entrusted under article 243W of the Constitution. Pure services provided to Local Authority (BBMP) under this article has Nil rate of GST and the BBMP has stated that he is not liable to make payment of GST for the maintenance of park works.

4. Sri. Vishwanath Bhat, Cost Accountant and learned representative appeared and stated that any services given to local authority, Government (State or Union) are exempt from tax and sought one more hearing to submit the same.

5. The learned representative produced the copy of the Eleventh Schedule to the Constitution and stated that Land improvement, implementation of land reforms, land consolidation and soil conservation are all covered under entry no. 2 and Maintenance of community assets is covered under entry no. 29. Park being a community asset is covered under article 243G. He also produced a copy of the Twelfth Schedule and stated that “Provision of urban amenities and facilities such as parks, gardens, playgrounds” are covered under entry no. 12. He stated that the development and maintenance of parks are assigned to Urban Local bodies and hence pure services provided to a local authority (i.e. Bruhat Bengaluru Mahanagara Palike) is covered under entry no. 12/2017 – Central Tax (Rate) dated 28.06.2017 and hence is exempt. He also stated that the same services are not exempt if they are effected on behalf of KSRTC and other government undertakings, as they are neither government nor local bodies.

## 6. **FINDINGS & DISCUSSION:**

6.1 The entry no. 3 of the Notification No. 12/2017 – Central Tax (Rate) dated 28<sup>th</sup> June 2017 states that the tax rate in respect of the pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of

any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in in relation to a Municipality under article 243W of the Constitution is “NIL”. Bruhat Bengaluru Mahanagara Palike is a municipal corporation and hence covered under the term “Local Authority”.

6.2 The activity of maintenance of Parks is covered under the entry 12 of the Twelfth Schedule to the Constitution of India which reads “Provision of urban amenities and facilities such as parks, gardens, playgrounds” and hence is an activity covered under article 243W of the Constitution.

6.3 Admittedly, the activity of maintenance of parks done by the applicant for Government undertakings are not covered by the entry no. 3 of the Notification No. 12/2017 – Central Tax (Rate) dated 28<sup>th</sup> June 2017. So also the activities which are in the nature of works contract and composite supplies. It is only the pure services which are exempt from the levy of tax.

#### 6.4 **Concept of composite supply**

Section 2(30) of CGST Act defines composite supply to mean '*a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply*'.

Section 2(90) defines principal supply as 'principal supply' means *the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary*'.

#### 6.5 **Concept of works contract**

Works contract has been defined under Section 2 (119) of CGST Act as follows:

*“a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property\_ wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.”*

7. Per the above legal provisions, we understand that in present case, since the scope of exemption allowed in the entry no. 3 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28<sup>th</sup> June 2017 is only to the extent of pure services of provision of urban amenities and facilities such as parks, gardens, playgrounds to the Governments and Local Authorities and does not cover any activity where in transfer of property in goods is involved either in the form of a works contract or a composite supply.

8. The Applicant has sought Advance Ruling on whether landscaping and gardening work for government departments like BBMP, KSRTC, etc, through works contract attracts GST from this society?

9. At time of hearing, the activity done by the applicant is analysed and the activity done by the applicant is of the nature of “maintenance of parks” and hence the activities can be divided into two different types:

(a) maintenance of parks not involving the transfer of property in goods

(b) maintenance of parks involving the transfer of property in goods

The first activity is of the nature of pure services and is squarely covered under the entry no. 3 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28<sup>th</sup> June 2017, if it is provided to a Government or Local Authority and Governmental authority.

The second activity falls in the ambit of works contract and hence is not covered under the entry no. 3 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28<sup>th</sup> June 2017 even if it is provided to a Government or Local Authority and Governmental authority.

10. Further, in the question raised, whether the KSRTC and other entities fall under the Government departments, the learned representative, at the time of personal hearing has accepted that they are not covered under the entry no. 3 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28<sup>th</sup> June 2017 and hence there is no question of answering the same.

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

### **R U L I N G**

1. The service of maintenance of parks provided by the society to the State Government, Central Government or a Local Authority (including BBMP) or a Governmental Authority, not involving transfer of property in goods either as a component of a works contract or a composite supply is covered under entry no. 3 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28<sup>th</sup> June 2017 and hence exempt.

2. This exemption is not available if there is any transfer of property in goods or if the service is made to persons other than State Government, Central Government or a local Authority or a Governmental Authority.

**(Harish Dharnia)**  
**Member**

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

Place : Bengaluru,  
Date : 06.08.2018

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 South Commissionerate, Bengaluru.

The Asst. Commissioner, LVO - , Bengaluru.

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