

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009**

**(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide
Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)**

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-20/2020-21

DATE:04-05-2020

Sl. No	Name and address of the appellant	M/s THE NURSERYMEN CO-OPERATIVE SOCIETY LTD, Lalbagh, Double Road Gate, Bengaluru 560004
1	GSTIN or User ID	29AABAT4416F1ZK
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 81/2019 Dated 25th Sept 2019
3	Date of filing appeal	08-01-2020
4	Represented by	Shri. Srinivas, Advocate.
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Bangalore South Commissionerate.
6	Jurisdictional Authority- State	LGSTO 100, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No SBN20012000066332dated 08.01.2020 for Rs 20,000/-

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and 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 would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s THE NURSERYMEN CO-OPERATIVE SOCIETY LTD, Lalbagh, Double Road Gate, Bengaluru 560004 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 102/2019 dated 30th Sept 2019.

Brief Facts of the case:

3. The Appellant is an Association of Persons and is in the business of maintaining the gardens and landscape development for State and Central Governments, local bodies and government undertakings. The work involves removing old and existing unwanted weeds and plants, digging the soil and levelling of ground and planting small shrubs, flowering plants and grass etc. The Appellant states that he is sub-contracting this work to the sub-contractors.

4. In this connection the Appellant sought an 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?

5. The Karnataka Authority for Advance Ruling vide ruling No KAR ADRG NO 81/2019 dated 25-09-2019 held as follows:

“The 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.”

6. Aggrieved by the ruling, the appellant has filed this appeal on the following grounds.

6.1. The Appellant submitted that on account of the ruling given by the lower Authority, the inward supply of the Appellant becomes taxable. The same inward supply becomes

outward supply to the government organizations like BBMP, KSRTC, etc; that the outward supply is exempt as per the entry No 3 of Notification No 12/2017 dt 28-06-2017; that this is purely back to back contract from government agencies to sub-contractors. Hence taxing of these transactions affect the main intention of Article 243G and 243W of the Constitution.

6.2. They submitted that the activity of maintenance of community assets mentioned in entry no 29 to Schedule II of Article 243G of the Constitution falls under exemption in GST as per No 3 of Notification No 12/2017 CT (R) dated 28-06-2017; that the provision of urban amenities and facilities such as parks, gardens, playgrounds mentioned in entry No 12 to Schedule 12 of Article 243W of the constitution falls under exemption in GST as per entry No 3 of Notification No 12/2017 CT (R) dt 28-06-2017; that the above mentioned services are amenities provided by Government through government organisations like BBMP, KSRTC, etc.

6.3. They submitted that they provide the above services to the Government organisations like BBMP, KSRTC, etc through sub-contractors; that the services provided by the sub-contractors to the government organisations like BBMP, KSRTC, etc through the Appellant are the amenities provided by Government through government organisations; that if the sub-contractor charges GST, the Appellant is not in a position to avail input tax credit as the outward supply is exempt and it would become cost to the Appellant and to the government organisations like BBMP, KSRTC, etc.

6.4. They contended that when the outward supply is exempt, inward supply should be exempted; that the main intention of the Government is the cost of the service rendered to the Government agencies should not be taxed, but in this case, government agencies are taxed indirectly by non-availing of input tax credit from the sub-contractors bills. In view of the above, they prayed that the ruling given by the lower Authority be set aside.

PERSONAL HEARING:

7. The Appellants were called for a personal hearing on 24thFebruary 2020 and were represented by Shri. Srinivas, Advocate who reiterated the submissions made in the grounds of appeal.

DISCUSSIONS AND FINDINGS

8. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing.

9. We find that the Appellant has committed delay in filing the present appeal by 14 days. The impugned order of the lower Authority dated 25.09.2019 was received by the Appellant on 25.11.2019. In terms of Section 100(2) of the CGST Act, every appeal to this Authority should be filed within a period of 30 days from the date on which the Advance Ruling order is communicated to the aggrieved party. The proviso to Section 100(2) empowers this Authority to condone the delay in filing the appeal by another period of 30 days. In this case, the due date for filing the appeal was 25-12-2019 but the Appellant has filed the appeal on the 8th January 2019 after a delay of 14 days from the due date for filing appeal. The Appellant has not furnished any reasons for the delay and has also not sought for condonation of delay. However, in the interest of justice and since the delay is within the condonable period, we are inclined to condone the delay in filing the appeal in exercise of the power vested in terms of the proviso to Section 100(2) of the CGST Act.

10. Coming to the issue at hand, briefly stated, the facts are that the Appellant has received contract from Government departments like BBMP and KSRTC for undertaking gardening and landscaping activities. In order to execute the work, the Appellant has engaged sub-contractors. The sub-contractors bill the Appellant for the gardening and landscaping work done at the government departments. The Appellant in turn bills the Government department in terms of the contract given to them. The issue to be determined is whether the supply of services by the sub-contractor to the Appellant for executing the gardening and landscaping work for government departments is exempt from GST.

11. The relevant entries of the GST rate exemption Notification No 12/2017 CT (R) dt 28-06-2017 for services is reproduced below:

Sl.No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (per cent)	Condition
1	2	3	4	5
3	Chapter 99	Pure services (excluding works contract service or other composite supplies	Nil	Nil

		involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity] 2 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.		
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

12. An analysis of the above two entries No 3 and 3A shows that the exemption is available in the following circumstances:

- The services supplied should be either pure services or composite supply of goods and services where the value of goods supplied is not more than 25% of the total value of supply
- The supply should be to the Government (central/State/UT) or local authority or a Governmental authority or a Government Entity.
- The services supplied should be 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.

13. In the instant case, the issue being examined is whether the services supplied by the sub-contractors to the Appellant, who is the recipient of the services, is exempted from GST. The entries under Sl.No 3 and 3A above will apply only if the recipient of services is a Government (central/State/UT) or local authority or a Governmental authority or a


Government Entity. In this case, the Appellant who is the recipient of the supply from the sub-contractor is a Co-operative Society and not an entity specified in Sl.No 3 and 3A. When this criterion of the Notification is not satisfied, the sub-contractors as suppliers of service, will not be eligible for the exemption under the entries 3 or 3A of the above said Notification.

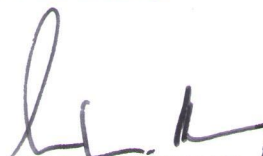
14. It is the argument of the Appellant that if the exemption is not available to the sub-contractors, then the GST paid by the Appellant on the inward supply from the sub-contractors will become a cost to them since they will not be eligible to avail the input tax credit of the tax paid on the inward supply, for the reason that the output supply made by them to the Government Department is exempted. While we agree that the Appellant will not be eligible for the input tax credit of the tax paid on the inward supply from the sub-contractors, we do not agree that this should be a ground for allowing the sub-contractors to avail the benefit of exemption. It is a well settled law that exemption notifications are to be interpreted strictly as to their eligibility. One cannot be influenced by extraneous factors while determining a person's eligibility to an exemption notification. Therefore, on a strict interpretation of the entry Sl.No 3 and 3A, we hold that the supply of services by the sub-contractors to the Appellant is not eligible for the benefit of exemption under either SL.No 3 or 3A of Notification No 12/2017 CT (R) dated 28-06-2017.

15. In view of the above discussion, we pass the following order

ORDER

We uphold the Advance Ruling No KAR/ADRG 81/2019 dated 25-09-2019 and dismiss the appeal filed by M/s The Nursery Men Co-operative Society Ltd on all counts.


(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling


(M.S. SRIKAR) 4.5.2020
Member
Karnataka Appellate Authority
for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Bangalore South Commissionerate
4. The Assistant Commissioner, LGSTO-100, Bangalore
5. Office folder