

WEST BENGAL AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Sarthak Saxena, Joint Commissioner, CGST  
& CX

Joyjit Banik, Senior Joint Commissioner,  
SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or the West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	SONA SHIP MANAGEMENT PRIVATE LTD
Address	19/1, GROUND FLOOR, CAMAC STREET, PARK STREET, KOLKATA-700017
GSTIN	19AAECS4180L1ZX
Case Number	WBAAR 05 of 2023
ARN	AD190722009932Z
Date of application	February 03, 2023
Jurisdictional Authority (State)	Ballygunge Charge
Jurisdictional Authority (Central)	Park Street Division, Kolkata South Commissionerate
Order number and date	07/WBAAR/2023-24 dated 30.05.2023
Applicant's representative heard	Ms. Neha Agarwal, C.A

1.1 At the outset, we would like to make it clear that the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar

provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be engaged in stevedoring and cargo handling in the Kolkata Dock Complex and is specialized in handling cargo such as food grain, fertilizers, coal, iron ore, break bulk/project cargo, etc.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- (i) Whether the service of loading and unloading of imported unprocessed 'toor' and 'whole pulses' and 'black matpe' is exempt under SI No. 54(e) of the Notification No. 12/2017-Central Tax (Rate), Sl. No. 24 of notification No. 11/2017-Central Tax (Rate) both dated 28.06.2017? Whether charging of tax by the agents from your applicant is in violation to the Notification No 12/2017 dated 28.06.2017 serial No 3?
- (ii) Whether the services in relation to loading and unloading of imported unprocessed toor and whole pulses and black matpe are agricultural produce or not and covered under the circular No 16/16/2017-GST dated 15.11.2017 and the Circular is binding or not?

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (b) and (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

## 2. Submission of the Applicant

2.1 The applicant submits that he is engaged in stevedoring and cargo handling in the Kolkata Dock Complex for the past 30 years and is specialized in handling cargo such as food grain, fertilizers, coal, iron ore, break bulk/project cargo, etc.

2.2 It is submitted that the applicant had to engage the Calcutta Dock Labour Board (in short CDLB) for bringing in the imported pulses as the said pulses were imported by using smaller ships directly to Kolkata Dock. Accordingly, in terms of the Dock Workers (Regulation of Employment) Act, 1948 the applicant availed the manpower services for unloading the said imported goods.

2.3 According to the applicant, the services received from CDLB and subsequently provided by him to the importer for unloading of unprocessed (i.e., straight from the fields of foreign land) black matpe and toor whole pulse is covered under Entry No. 54(e) of the exemption Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 which reads as follows:

*“Services relating to the 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.....*

*~.....*

*(e) loading, unloading, packing, storage, or warehousing of agricultural produce; ....”*

2.4 The applicant submits that though the term “agricultural produce” has not been defined in the GST Act, the same has been defined in the Notification No. 11/2017-Central Tax (Rate) and 12/2017- Central Tax (Rate) both dated 28-6-2017 as follows:

“agricultural produce” means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

In the instant case the applicant is also not making activity which alters the essential characteristics of the Yellow toor dal & black matpe.

2.5 The applicant contends that in the instant case, no such activities are being carried out by him that alters the essential characteristics of the yellow toor dal & black matpe. Therefore the goods can be regarded as ‘agricultural produce’ and services relating to unloading of the aforesaid goods is exempted from payment of tax. However, CDLB, relying on the clarification given in the Circular No 16/16/2017 - GST dated 15.11.2017 issued by the CBEC (Tax Research Unit), has held that the services is exigible to be taxed @ 18%.

### 3. Submission of the Revenue

The submission of the officer concerned from the revenue is reproduced in verbatim:

It is revealed from the application made by M/s Sona Ship Management Pvt Ltd that there is a dispute regarding taxability on Manpower Services being provided by Calcutta Dock Labour Board (CDLB) relating to import of pulses by the said taxpayer.

After going through the points as mentioned in the ARA-1, it is felt that:-

- (i) The Circular No. 16/16/2017-GST dated 15.11.2017 clearly stipulates at serial no. 6 that pulses commonly known as dal is obtained after de-husking or splitting or both. The process of de-husking or splitting is generally not carried out by farmers or at farm level but by pulse millers. Hence the above Circular clarifies that the pulses are not agriculture produce and the benefit of exemption of taxes on services relating to these pulses are not allowed. It also states that Whole Grain is covered under agriculture produce. So, it is felt that services like loading & unloading etc related to these whole pulse grain being agriculture produce are automatically exempt.
- (ii) Here from, the application and information/details filed with ARA-01, it is not clear whether the goods being imported by M/s Sona Ship Management Pvt. Ltd are Whole Pulse Grain or whether these imported items have been de-husked or splitted or both before arrival then they are not agriculture produce and as such no exemption benefit is allowed to the services relating to these items as per the above Circular. Only if these items are whole pulse grain and not husked or splitted before arrival, then the benefit of exemption to services related these goods are allowed.

- (iii) Thus the entire issue stands on the nature and physical conditions/state of the imported items i.e. to be more precise, whether these goods have been husked or splitted or both before arrival. From the application no such information could be found. Actual nature and condition of the imported goods need to be ascertained to arrive at a decision.
- (iv) So it seems that without physical verification of samples of imported items, the exact taxability or exemption of the related services like loading and unloading is not possible to ascertain.
- (v) Here it is to point out that the Notification No. 11/2017-Central Tax (Rate) and 12/2017 also described the benefit to agriculture items. But in order to specifically decide whether the imported goods under question is to be considered as agriculture produce or not the proposal at point no.(iv) above is to be considered.

#### 4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the revenue.

4.2 The applicant is stated to be acting as a stevedore. In the instant case, the applicant has filed the application seeking an advance ruling whether services relating to loading and unloading of unprocessed 'toor' and 'whole pulses' and 'black matpe' is eligible for exemption being loading and unloading services of agricultural produce as specified under serial number 54(e) of Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 –F.T. dated 28/06/2017), as amended from time to time.

4.3 As per serial number 54 of Notification No. 12/2017 -Central Tax (Rate) dated 28/6/2017, services relating to the cultivation of plants, *inter alia*, for agricultural produce are exempt and classified under SAC 9986. However, a conjoint reading of the aforesaid entry and the definition of 'agricultural produce' delineates that the said services can be eligible for exemption where such services are supplied till the products are taken to the primary market for disposal.

4.4 The officer concerned from the revenue has expressed his views that without physical verification of samples of imported items, the exact taxability or exemption of the related services like loading and unloading is not possible to ascertain. The applicant has furnished photocopies of "Bill of Lading" and 'Bill of Entry for Home Consumption' wherefrom it appears that goods namely black matpe (raw pulses, Vigma Mungo) having HSN Code 07133110 and Toor Whole Lemon (Pigeon Peas) having HSN 07136000 have been imported from outside the country. Such goods thus were cultivated in a foreign country and thereafter imported into India.

4.5 In this context, the expression 'makes it marketable for primary market' in the definition of 'agricultural produce' bears a significant importance. The term 'primary market' has not been defined in the GST Act. However, on the basis of location or place of operation, such markets in relation to agricultural produce are located in towns near the centres of production of agricultural commodities. In these markets, a major part of the produce is brought for sale by the producer-farmers themselves. Transactions in these markets usually

take place between the farmers and primary traders. [Source: 'Agricultural Marketing: Concept and Definition' from the website of Jawaharlal Nehru Krishi Vishwa Vidyalaya ]

4.6 We further find that in the case of T.P. Roy Chowdhury & Co. (P.) Ltd reported in [2020] 113 taxmann.com 100 / [2020] 32 GSTL 661, the West Bengal Appellate Authority for Advance Ruling has observed that *'The term primary market in common parlance refers to farmers' market like "mandi" or "arhat" being a place where the farmers directly sell their product to the buyers like wholesalers, millers, food processing units, etc. The spirit of the legislature was intended to boost the agricultural sector of the home country and not that of a foreign land. The primary market in the instant case being located in foreign shores does not conform to the definition as stated above. Further there is no evidence that the grains have not undergone any type of treatment before leaving the foreign country from where they have been imported into India.'*

4.7 The applicant has also sought for an advance ruling on applicability of clarification given in circular No 16/16/2017-GST dated 15.11.2017 in his case. Circular No. 16/16/2017-GST dated 15/11/2017 issued by CBIC clarifies that pulses (de-husked or split) are not considered as agricultural produce since the process of de-husking or splitting of pulses is usually not carried out by farmers or at farm level but by the pulse millers. It therefore appears that for the purpose of agricultural produce, the processes and services that are applied till the goods are at the farmer's hand to make it marketable for primary market is to be considered. Any services supplied for loading and unloading as supplied by the applicant after the goods left the primary market do not qualify for exemption under serial number 54 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. However, it would be relevant to mention here that sub-section (2) of section 97 of the GST Act speaks that the question on which an advance ruling may be sought shall be in respect of matters covered under clause (a) to (g) of the said sub-section. This question is related to applicability of clarification given in a circular and thus appears not be covered under the aforesaid clauses. We therefore do not proceed to pronounce any ruling on this issue.

In view of the above discussions, we rule as under:

#### RULING

Services by way of loading and unloading of imported unprocessed 'toor' and 'whole pulses' and 'black matpe' as involved in the instant case does not qualify for exemption under serial number 54(e) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

(SARTHAK SAXENA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 30<sup>th</sup> May, 2023

To,

SONA SHIP MANAGEMENT PRIVATE LTD

19/1, GROUND FLOOR, CAMAC STREET, PARK STREET, KOLKATA-700017

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Joint Commissioner, Ballygunge Charge, 14, Beliaghata Road, Kolkata-700015
- (4) The Commissioner, Kolkata South Commissionerate, 180, Shantipally, R.B. Connector, Kolkata-7000107
- (5) Office Folder