

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 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	CHANCHAL SAHA
Address	Santi Colony, Biswas Para, Balurghat, Dakshin Dinajpur, Durhapur, Pincode –733101
GSTIN	19APBPS2503L1ZR
Case Number	WBAAR 32 of 2022
ARN	AD1912220056188
Date of application	December 22, 2022
Jurisdictional Authority (State)	BALURGHAT Charge
Jurisdictional Authority (Central)	Dinajpur Division, Siliguri Commissionerate
Order number and date	09/WBAAR/2023-24 dated 26.06.2023
Applicant's representative heard	Mr. Sandip Choraria, Authorized Advocate Mr. Rajkumar Banerjee, Authorized Advocate Ms. Payel 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 an entity engaged inter-alia in the business as holder of license issued by the Government of West Bengal, authorising him to carry on trade in Super Kerosine Oil, hereinafter also referred to as SK Oil, as a "Dealer" as defined under the Notification No. 2565/FS/FS/Sectt/Sup/4M-16/2014 dated 3rd November 2014 which is issued by the Department of Food and Supplies, Government of West Bengal.

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 applicant being a Fair Price Shop as defined under the Notification No. 2565/FS/FS/Sectt/Sup/4M-16/2014 dated 3rd November 2014 issued by the Government of West Bengal, is liable to charge GST from the State Government against the supply made by them?
- ii. Whether the other charges like Dealer's commission, Dealers Transport Charges, Stationery Charges, H & E Loss etc. would be chargeable to GST or treated as exempt?
- iii. Whether the supply of "S.K.Oil" along with charges would be treated as a composite supply wherein the principal supply would be the supply of "S.K.Oil"?

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (e) of sub-section (2) of section 97 of the GST Act. The applicant also stated 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. The officer concerned from the Revenue has raised no objection to the admission of the application.

1.5 The application is, therefore, admitted.

Submission of the Applicant

The submission of the applicant is reproduced herein under:

2.1. In terms of Notification No. 2565/FS/FS/Sectt/Sup/4M-16/2014 dated 03/11/2014 issued by Food and Civil Supply Department, Government of West Bengal, the applicant is a Dealer, where "Dealer" means "a person or a registered Co-operative society or a registered self help group in whose name a license to sell S.K.Oil to ration card holders under the Public Distribution system has been issued by an order under Para 6 of the Control Order, 1968". It is obligatory on the part of the Dealer to comply with the provision of the West Bengal Kerosene Control Order, 1968, Notification No. 2567/FS/FS/Sectt/Sup/4M-16/2014 dated 03/11/2014 issued by the Department of Food and Supply, Government of West Bengal where Para 6A(iii) of the said Order reads as follows:

Para 6A(iii)

"While making such an Allotment Order, the Area Inspector of Consumer Goods Directorate in case of Kolkata & Bidhan Nagar or the SCFS/Inspector of Food and supply in case of districts shall consider the weekly or fortnightly requirements of the concerned dealers on the basis of number of Ration Card Holders and permits and scales of distribution of S.K.Oil as may be fixed by the State Government from time to time and balance stock in hand".

Therefore, the basis of allotment here is number of Ration Cards.

2.2. The applicant purchases S.K.Oil from agents of the Oil Companies and in terms of the aforesaid Notification, "Agents" means "a person who executed an agreement with the concerned Oil Marketing Company and has been granted a licence under paragraph 5 of this order as an Agent in West Bengal authorizing him/her to carry on trade in Kerosene as such Agent". It is obligatory on the part of the Agents to comply with the provision of the West Bengal Kerosene Control Order, 1968, Notification No. 2566/FS/FS/Sectt/Sup/4M-16/2014 dated 03/11/2014 issued by the Government of West Bengal, Ministry of Food and Supply Department, Para 5(iv), 5A and 5B(iii) of the said order which read as follows:

Para 5(iv):

"No Agent shall sell, supply or transfer Kerosene to any person other than an S K Oil Dealer duly licensed under Paragraph 6 of this order or a holder of Permit issued under Paragraph 11 of this order"

Para 5A:

"Every agent after having allocation of S K Oil made by the DCG for distribution to S.K.Oil dealers shall take delivery of allocation from the concerned Oil

Marketing Company. While making an allocation, the DCG shall consider the weekly or fortnightly requirements of the concerned agent on the basis of ration cards tagged and scales of distribution of S.K.Oil as may be fixed by the State Government from time to time and balance stock in hand".

Para 5B (iii):

"The Agent shall not charge any excess price other than the fair price fixed by the State Government from time to time and shall issue a cash memo against sale of S K Oil to the Dealers".

Thus, it transpires that the applicant being an Agent is allotted such quantity of S.K.Oil by the authorities, commensurate with the weekly or fortnightly requirements of the concerned agent on the basis of ration cards tagged and scales of distribution of S K Oil as may be fixed by the State Government from time to time and balance stock in hand. Therefore, the basis of allotment here is also the number of Ration Cards.

2.3. Further, the price at which the applicant can supply as an Dealer along with the elements of such prices are also fixed by the District Controller of Food and Supplies, Government of West Bengal. It transpires from the price chart issued by the District Controller, Food and Supplies, vide Memorandum No. DCG-16016(99)/2022-SEC(DCG)- DCG-Part(1)/711 dated 01/05/2022 which is demonstrated below:

Sl. No.	Price components [per KL]	Revised retail price if without GST w.e.f. 1st May, 2022	Revised retail price with GST w.e.f. 1st May, 2022
A	B	C	D
1.	Basic price ex supply points of OMCs at Budge Budge/Mourigram	72,491.37	72,491.37
2.	GST @ 5% on item 1	3,624.56	3,624.56
3.	TOTAL	76,115.93	76,115.93
4.	Agents Commission	1,341.88	1,341.88
5.	Agent's Transport Charges	816.60	816.60
6.	Agent's Stationery Charges	50.00	50.00

Sl. No.	Price components [per KL]	Revised retail price if without GST w.e.f. 1st May, 2022	Revised retail price with GST w.e.f. 1st May, 2022
7.	Compensation of Handling & Evaporation Loss @1% on Basic Price excluding GST	724.91	724.91
8.	GST @5% on items 4, 5, 6 & 7 above	0	146.66
9.	Selling price of the Agents (wholesale)	79,049.32	79,195.98
10.	Dealer's Commission.	1,048.30	1,048.30
11.	Dealer's Transport Charges.	386.60	386.60
12.	Dealer's Stationery Charges	250.00	250.00
13.	Compensation for Handling & Evaporation Loss@2% on Agent's price excluding GST on basic price and Agent's price.	1,508.49	1,508.49
14.	GST @5% on items 10, 11, 12 & 13 above	0	159.66
15.	Maximum Retail Price of the Dealer (if Agent and Dealer do not charge GST)	82,242.71	
16.	Maximum Retail Price of the Dealer (if Agent charges GST but the Dealer does not)	82,389.37	
17.	Maximum Retail Price of the Dealer (if both Agent and Dealer charge GST)		82,549.03

2.4. Thus the Oil Company is to sell S.K.Oil at a fixed base price called Base Price and charge Tax @5% on such base price. Therefore, the purchase price of the agent is base price +5% Tax. This price is being recovered by the Agents from the Dealers as pure agents. Dealers shall recover the same from Ration Card holders in the capacity of Pure Agents. The Agent may or may not charge tax @5% on the charges like agent's commission, agent's transport charges, stationery charges, compensation on handling & evaporation loss. Therefore, the price to be charged by the Agents to the Dealers shall be the cost of Purchase from Oil Company + Cost of Service rendered with or without 5% tax. The applicant being the Dealer may also charge tax @5% or may not charge tax on the charges like Dealer's commission, Dealer's transport charges, stationery charges, compensation on handling & evaporation loss. Therefore, the price to be charged by the Dealers to the Ration Card Holders shall be the cost of Purchase from Agents + Cost of Service rendered with or without 5% tax.

2.5. The applicant submits that to arrive at the aforesaid interpretation of taxability of each of the elements, the District Controller, Food and Supplies Department, Government of West Bengal, has placed reliance on the order issued by the Principal Secretary to the Government of West Bengal, Food and Supplies Department, dated 03/11/2017 which takes reference of Notification No. 1498-FT dated 22/08/2017 of the Finance Department (Revenue), Government of West Bengal, read with Notification No. 21/2017- Central Tax (rate) dated 22/08/2017 to state that the tax rate would be NIL for both Central and State GST in respect of following:

'Service provided by Fair Price Shops (FPS) to State Government by way of sale of kerosene, sugar, edible oil etc. under Public Distribution System (PDS) against consideration in the form of commission or margin'.

As per the above, it appears that for charging NIL rate of Tax, the following criteria shall have to be met:

- i. Should be fair price shop.
- ii. Services to the State Government.
- iii. Sale of kerosene, Sugar, Edible Oil under Public Distribution System (PDS).
- iv. against consideration in the form of commission or margin.

2.6. According to the applicant, the tax charged by the Agents from him is not according to the provision of law as because the Agents also qualifies as a Fair Price Shop. In this regard,

the applicant draws attention to clause (4) of section 2 of the National Food Security Act, 2013 wherein 'Fair Price Shop' has been defined as under:

"**fair price shop** means a shop which has been licensed to **distribute essential commodities** by an order issued under Section 3 of the Essential Commodities Act, 1955 to the ration card holders under the Targeted Public Distribution system". The above definition thus covers fair price shops that have been licensed to distribute to the **ration card holders** under the Public Distribution System. The license would be issued under an order issued under Section 3 of the Essential Commodities Act, 1955.

In exercise of the power conferred by Section 3 of the Essential Commodities Act, 1955, the Government of West Bengal issued the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 on 08/08/2013. The said order defines fair price shops as following:

"Fair Price Shop" means a shop engaged and licensed under this Control Order for distribution of public distribution commodities against ration documents"

Further, the West Bengal Kerosene Control Order, 1968 defines 'S.K. Oil Shop'. Paragraph 3(t) of the order is reproduced below:

"S.K.Oil Shop means a shop belonging to S K Oil Dealer appointed and licensed under this Control order for distribution of S.K. Oil to consumers having valid Ration Cards"

2.7. Therefore, it appears that Fair Price Shop refers to the following:

- i.) Distributor of essential commodity,
- ii.) To valid Ration Card/Documents.

Considering the above both the Agents as well as the Dealers are part of Fair Price Shop as according to Notification No. 2566/FS/FS/Sectt/Sup/4M-16/2014 & Notification No. 2567/FS/FS/Sectt/Sup/4M-16/2014 both dated 03/11/2014 issued by the Government of West Bengal, Ministry of Food and Supply Department, the basis of allocation in both the cases is the number of Ration Card Holders and the distribution is of essential commodity being S.K.Oil.

2.8. According to the applicant, as the service of supplying the essential commodities is the service to the State Government, tax should not be leviable. In this regard, the applicant submits the following:

- i.) The applicant submits that the Essential Commodities (Amendment) Act, 2020 (hereinafter referred to as “ECA”) was enacted in 1955 and has since been used by the Government to regulate the production, supply, and distribution of a whole host of commodities that it declares ‘essential’ to make them available to consumers at fair prices. Additionally, the government can also fix the minimum support price (MSP) of any packaged product that it declares an ‘essential commodity’.

The applicant hereby submits that as per the said Act, in the instant case the applicant is merely acting an agent of the State Government whereby it is engaged in the supply of kerosene being an essential commodity under Public Distribution System (PDS) thereby making it available to the ration card holders (consumers) at fair prices. It is pertinent to mention hereby that the prices in the instant supply chain is directly regulated by the government and all the dealers are required to adhere to the provision of Essential Commodities Act, 1995 and others issued from the Office of the Deputy Commissioner/Sub Divisional Officer (Supply), from time to time. To support the same, the applicant has enclosed a copy of the appointment letter issued by the government thereby authorizing the dealer to supply the said commodity on its behalf.

- ii.) Based on the appointment letter and the submission made herein above, the applicant submits that undoubtedly the applicant is engaged in the business for supply of kerosene under Public Distribution System (PDS).
- iii.) With respect to consideration received by the dealer against the instant supply to the ration card holders, the applicant submits that as per the above mentioned price sheet under sl. No. 1.3, the applicant first recovers the whole of the MRP from the consumers on behalf of the government. But since the applicant while acting as agent has to deploy certain resources which gets exploited in the due process, it earns its consideration in the form of Dealer’s commission, Dealer’s transport charges, stationery charges, compensation on handling & evaporation loss. These consideration after being reduced from the MRP collected from the customer is reimbursed back to the “Agent” who in turns reimburses it back to the IOCL and ultimately to the State Government.

2.9. The applicant clarifies that the regulation of prices by the government is done to benefit the ultimate consumers of the PDS, being the ration card holders in the instant case. This regulation is done so that the consumers receive its goods at a fixed base price which remains constant throughout the supply chain. The increment in the MRP over and above

the base price is merely on account of cost of commission added to the product which the government has to bear on account on involving Dealer and the Agent for making it available to the end consumers. It is to be emphasized that this increment in price is only the price which the government recovers from the customer as a pure agent against the cost incurred for making such supply via agent and the dealer.

2.10. In other words, the Dealer of the state of West Bengal is liable to receive delivery of the goods on behalf of the State of West Bengal and the state of West Bengal is responsible to deliver the goods to the Dealers. As per the instruction of the State of West Bengal, the Dealers being an agent sells the same to the ration card holders and recovers its cost of goods. However, for making such supply the dealers are required to deploy certain resources for which they earn consideration in the form of commission.

2.11. The applicant submits that the deciding factor for determination of whether the instant supply classifies as a supply of kerosene or a supply of agency service, needs examination of the true nature of the agreement and the subsequent dealing between the parties and then deciding whether it establishes a relationship of agency under the law. It is common experience that the word 'Agent' is frequently used to describe a relationship which is not an agency in law. In several cases a person described as an agent in the agreement or his letter of appointment was held to be not an agent according to the law.

2.12. It is also submitted that it is a well settled principle of law that Agency depends on True Nature of Relationship in order to ascertain whether the relation of agency exists, the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent will be regarded and if it is found that such agreement in substance contemplates the alleged agent acting on his own behalf, and not as an agent in the agreement, the relation of agency will not have arisen.

2.13. Moreover, the applicant submits that in determining legal nature of relationship between the alleged principal and the agent the use or omission of the word 'agent' is not conclusive. American law is similar:

“The manner in which the parties designate the relationship is not controlling, and if an act done by the person on behalf of another is in its essential nature one of agency, the one is the agent of such other notwithstanding he is not so called. Conversely the mere use of the word by agent in the contract cannot have to be held the effect of making one agent, who, in fact is not such.”

American Jurisprudence, 11nd edition Vol. 3 page 431.

The foot-note on this page refers to a case in which it was held that the use of the words “agency agreement” and “agent” by the parties in a contract does not necessarily establish a relationship of agency in the legal case. *McCarty v. King County Medical Service Corp.* 26 Wash 2d 660, 175 P2d 658. The law in India is the same. It has been held in several decisions that the fact that the parties have called their relationship an agency is not conclusive, if the incidence of this relationship, as disclosed by evidence does not justify a finding of agency, and that the court must examine the true nature of the relationship and the functions and responsibilities of the alleged agent: *Banaras Bank v. Ram Prasad*, AIR 1930 All 573, *Phool Chand v. Agarwal B. M. Co.*, AIR 1938 Lah 814; *Suryaprakasraya v. Matheson’s Coffee Works*, (1913) 14 Mad L.T. 249. What is the real nature of the relationship created between the applicant and the IOCL under the so-called agreement of agency? Before analyzing the agreement, it is necessary to state the essential characteristic of an agency in law. Section 182 of the Contract Act defines an agent as “a person employed to do any act for another or to represent another in dealings with third person.” The section defines a principal as “the person for whom such act is done or who is so represented.” According to this definition, an agent never acts on his own behalf but always on behalf of another. He either represents his principal in any transaction or dealing with a third person, or performs any act for the principal. In either case, the act of the agent will be deemed in law to be not own but of the principal. The crucial test of the status of an agent is that his acts bind the applicant.

2.14. There is a distinction between a person employed in to do an act for another and a person who does an act at the bidding of another. In the first place the act done is not that of the person employed but of him who employs him. In the second, the act is that of the person himself. Again, in the first case, the person employed is an agent of the employer, in the second, he merely acts at the request of another. If the applicant had been employed to purchase and sell kerosene on behalf of the Government of West Bengal, or asked by them to distribute kerosene, belonging to the Government, he would be their agent under Section 182 of the Contract Act.

2.15. Based on the above, the applicant submits that, in the instant case, it nowhere acts on his own behalf but always act on behalf of the Government of West Bengal. It is the goods which the State of West Bengal was required to make available to the general public under the PDS but for the want of proper distribution channel to make the scheme possible, the dealers and the agents were put in the place in the supply chain. Accordingly, the price of the product isn’t altered throughout the chain. Moreover, the applicant also submits that had the applicant acted on his own behalf, he could have sold it to anyone in the state. But

on the contrary, in the instant case, the applicant is restricted to allocate the product only to the ones who hold the ration card issued by the said government and not to anyone else thereby establishing the agency relationship.

2.16. It is pertinent to mention that the said agency service can never be said to be rendered to the IOCL as it is neither the IOCL who is responsible for the proper functioning of the PDS nor the goods belong to the IOCL.

2.17. Moreover, as per clause 11(a) of the Kerosene/Light Diesel Oil Dealership Agreement made between the applicant and IOCL, it clearly appears that the applicant does not act as an agent on behalf of the Oil Marketing Company-

“Dealer to act as ‘Principal’: In all contracts, engagements or transactions entered into by the dealer with the customers for the sale of products or otherwise, the dealer shall act and shall always be deemed to have acted as a principal and not as an agent or on account of the Corporation except to the extent if any, permitted by the Corporation in writing and the Corporation shall not in any way be liable in any manner in respect of any such contracts, engagements or transactions and/or in respect of any act or omission on the part of the dealer, his servants, agents and workmen in regard to such sale or otherwise.”

2.18. Furthermore, the applicant submits that if at all the instant supply fails to qualify as a supply of service, the objective behind inclusion of sl. No. 11A under the Exemption Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 would lapse.

2.19. That the distribution through PDS is covered under Entry No. 28 of the Eleventh Schedule of the Constitution. It is an 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.

2.20. **Statement containing applicant’s interpretation of law:**

- i.) Applicant being a Fair Price Shop as defined under the Notification No. 2565/FS/FS/Sectt/Sup/4M-16/2014 dated 03/11/2014 issued by the Government of West Bengal, is not liable to charge GST from the State Government against the supply made by the applicant vide notification No. 1498 FT dated 22/08/2017.
- ii.) Dealer’s commission, Dealers Transport Charges, Stationery Charges, H & E Loss etc. would be treated as exempt from GST.

- iii.) Supply of "S.K. Oil" along with charges would be treated as a composite supply wherein the principle supply would be the supply of "S.K. Oil".
- iv.) On the basis of above mentioned facts and the provisions of law as referred to above, it is submitted that the instant service provided by the applicant to the State Government by way of supply of kerosene under PDS against consideration in the form of commission is eligible for exemption under entry No. 11A of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017.

Alternatively, even if it is assumed without accepting that the aforesaid exemption is not available to the applicant, the supply shall be taxable at the rate of as 5% (CGST + SGST) vide sl. No. 164 of Notification No. 34/2017- Central Tax (Rate).

Additional submissions during the personal hearing:

2.21. The applicant provides services to the State Government:

- i.) That the applicant is licensed by the DCG of Balurghat Municipality, Dakshin Dinajpur with the approval of State Government as required in terms of para 6(i) of the West Bengal Control Order, 1968 published with the Department Order No. 4816/FS/FS/CG/14R-15/66 dated 26/06/1968 amended vide Notification No. 2567/FS/FS/Sectt/Sup/4M-16/2014 dated 03/11/2014.
- ii.) That the price at which the S.K. Oil is to be supplied is fixed wherein the dealer cannot charge any excess price other than the fair price fixed by the State Government [para 6(B)(ii) of Notification dated 03/11/2014].
- iii.) That the territorial jurisdiction within which the applicant can supply the S.K. Oil is fixed by the State Government being the Balurghat Municipality, Dakshin Dinajpur [para 6(A) of Notification dated 03/11/2014].
- iv.) That the quantum which the applicant shall receive and the quantum that is to be supplied to the card holders is controlled by the State Government [para 6(A) of Notification dated 03.11.2014].
- v.) That the recipients or the beneficiaries of the instant PDS Scheme being the persons to whom the S.K. Oil is to be supplied are identified by issuance of ration cards and tagged to the applicant by the State Government [para 6(C)(ii) of Notification dated 03/11/2014].

2.22. Based on above, since the dealer, product, market, suppliers, recipient, quantity of supply and even the price, all the major ingredients that is necessary for supplying of goods or services or both are regulated and controlled by the State Government, therefore, the applicant submits that the applicant is nothing but a person who merely acts as an agent of the State Government in supplying the essential commodity being S. K. Oil to the ration card holders.

2.23. Further, the applicant submits that the “agency by estoppel” as defined in Black’s Law Dictionary [page no.71 of Ninth Edition] means “An agency created by operation of law and established by a principal’s actions that would reasonably lead a third person to conclude that an agency already exists.”

2.24. Also, the term “Agency” as defined in page 30 of second edition, 2009 of Interpretation of words, phrases and commodities, read as hereunder-

“The agent is one who sells the goods sent to him for sale not as his own goods but as the property of his principal, and the property wherein remains always with the principal who is liable to account them for in his books of accounts. Their actual relationship in each case depends on the facts of the particular case. Nobody will be agent if-

- i.) He charges different price from the principal as compared to the payments made for the purchases thereof
- ii.) He pays different price to the principal as compared to his sale proceeds:
- iii.) He does not furnish full details of the receipts/deductions regarding the goods purchased and sold by him to his principal, in respect of purchases or sales made for them. [Sri Tirumal Venkateshwar Timber and Bamboo Firm v. Commercial Tax Officer, Rajmundri 1965-79 (Vol.1) STJ-250, by Hon’ble Supreme Court]”

2.25. Moreover, the applicant also submits that under Articles 243G and 243W of the Constitution of India, the ration card holders have the right to receive the essential commodities including the S.K. Oil from the fair price shop. Accordingly, it is the duty of Government to provide such essential commodities to the card holders. The applicant is therefore nowhere bound to make such suppliers to the card holders. It is only the license granted to the applicant which allows him to supplement such supply from Government to the card holders in the capacity of an agent against the consideration fixed vide memorandum bearing File No. DCG-16016(99)/1/2022-SEC (DCG)-DCG-Part (1)/711 dated 13/05/2022. The applicant submits that the terms coined in the said memorandum being “Agent,” Dealer” and “Commission” issued by the DCG, Department of Food and

Suppliers, Government of West Bengal itself establishes that the government accepts the fact that the applicant acts as an agent on its behalf.

2.26. Furthermore, it is submitted that Section 2(4) of The National Food Security Act, 2013 defines "*fair price shop*" as

"a shop which has been licensed to distribute essential commodities by an order issued under Section 3 of the Essential Commodities Act, 1955 to the ration card holders under the Targeted Public Distribution system"

where

"ration card" as per section 2(16) of the National Food Security Act, 2013 means

"a document issued under an order or authority of the state Government for the purchase of essential commodities from the fair price shops under the Targeted Public Distribution System"

and

"Targeted Public Distribution System" as per section 2(23) of The National Food Security Act, 2013 means *"the system for distribution of essential commodities to the ration card holders through fair price shops"*.

Therefore, from the above definitions it is proved that the applicant is merely supplementing the essential supplies on behalf of the state government to the ration card holders in the capacity of an agent by estoppel.

The applicant submits that sl. No. 11B of Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017 as amended by Notification No. 21/2017- Central Tax (Rate) dated 22/08/2017 itself identifies that the supply of S.K. Oil to ration card holders by the fair price shops is supply of services to the State Government.

2.27. The applicant submits the affidavit wherein mentioned that in furtherance of such business the applicant had never received any commission or consideration in the form of pecuniary benefit either from IOCL or the "Agent" or the State Govt. except that which is earned as Dealer's commission, reimbursement of expenses on fixed cost basis being Dealer's transport charges, stationery charges, compensation on handling & evaporation loss and which is inclusive in the amount collected from end-user customers as per the memorandum bearing F.No. DCG-16016(99)/1/2022-SEC(DCG)-GCG-Part(1)/711 dated 13.05.2022

3. Submission of the Revenue

3.1. The officer concerned from the revenue has not expressed any view in this regard.

4. Observations & Findings of the Authority

4.1. We have gone through the records of the issue as well as submissions made by the authorized advocates of the applicant during the course of personal hearing.

4.2. We find that that the main issue involved in the instant case is to determine the applicability of Nil rate of tax under entry 11A of the Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 (*as amended*). The said notification provides for Nil rate of tax for the following supplies :

‘Service provided by Fair Price Shops (FPS) to State Government by way of sale of kerosene, sugar, edible oil etc. under Public Distribution System (PDS) against consideration in the form of commission or margin’.

On going through this provision, we find that all the following criterion have to be fulfilled for this Notification to be applicable in this case:

- i. Whether the applicant can be regarded as a fair price shop;
- ii. Whether the applicant is supplying services to the State Government;
- iii. Whether the applicant receives consideration in the form of commission or margin.

Nature of business:

4.3. Before examining the applicability of the Notification, the nature of the business activity of the applicant has to be understood.

4.4. The applicant is supplying S.K. Oil (*Super Kerosene Oil*) to the holders of ration card issued by the Government. The applicant is working under the provisions of the West Bengal Govt. Notification No. 2565/FS/FS/Sectt./Sup/4M-16/2014 dated 03/11/2014 issued by the Government of West Bengal, Ministry of Food and Civil Supply Department, regarding the supply of kerosene oil to the ration card holders. The applicant, who is the ‘dealer’ as per this Notification, purchases S.K. Oil from the ‘agent’ where the agent purchases it from the oil marketing company. The purchase and selling price of the applicant is fixed and specified in the price chart, as mentioned in para. 2.3 above. The difference between the purchase price and sale price is mentioned in the price chart, and pertains to heads: Dealer's Commission, Transport Charges, Stationery charges and compensation for evaporation losses.

4.5. Further, in the affidavit submitted by the applicant during the course of the hearing, the applicant has declared that no other consideration is received by the applicant for these transactions. Consequently, the only consideration received by the applicant in these transactions is by way of sale of S.K. Oil to the ration card holders at the retail price specified in para. 2.3. It thus appears that the consideration is flowing only from the ration card holders to whom the S.K. Oil is being sold and no other consideration is received by the applicant from the Government for these transactions.

Applicant being a Fair Price Shop:

4.6. As mentioned in para. 2.6, a '*Fair Price Shop*' is licensed by the Government for distribution of essential commodities to the ration card holders. During the personal hearing, the applicant had presented the license, issued to it by the West Bengal State Government, for a dealer issued under the West Bengal Kerosene Control Order, 1968 which has been renewed from time to time. This license authorizes the applicant to carry out business as a dealer of kerosene from his shop, and make purchases of kerosene from a licensed dealer subject to any limits imposed by law. We thus find that the applicant is a '*Fair price shop*' for the purpose of entry 11A of the Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 (*as amended*).

Consideration in the form of commission or margin:

4.7. The applicant receives consideration from the ration card holders against sale of S.K. Oil at the price mentioned in the price schedule mentioned in para. 2.3. In the table mentioned in this price schedule, the entries 10-14 mention the difference between the purchase price and sale price wherefrom it appears that the sale price i.e., the consideration against which the applicant supplies S.K.Oil to the ration card holders comprises inter alia of 'Dealer's Commission'.

Supply of services to the State Government:

4.8. The submissions of the applicant on this issue may be summarized as follows:

- i. The license to sell S.K. Oil to ration card holders is issued by the State Government. The State Government regulates the selling price of S.K. Oil, the territorial jurisdiction where the applicant can sell, the quantum of S.K. Oil allowed to be sold and beneficiaries/ration card holders to whom S.K. Oil is to be sold. Thus, all the major ingredients that is necessary for supplying the goods or services or both are regulated and controlled by the State Government. The applicant thus submitted

that it is acting as an agent of the State Government in supplying S.K. Oil to ration card holders and consequently, the supply is being made to the Government. [paras.2.15,2.21, 2.22]

- ii. The applicant submits that there is an '*Agency by estoppel*' in this case, and that the applicant is working as an agent of the State Government for supplying S.K. Oil to the ration card holders. [paras. 2.23, 2.24, 2.25.]

4.9. Without prejudice to the aforesaid arguments, we find that for the purpose of this ruling, the nature of supply has to be determined in consonance with the provisions of the GST Act and the provisions of the GST Act would over-ride any other interpretation with respect to determining the nature of supply.

4.10. As per the nature of business of the applicant, which is discussed from para. 4.3 to 4.5, it could be observed that the applicant is engaged in supplying S.K. Oil to the ration card holders. Further, the monetary consideration against this sale of S.K. Oil is received from the ration card holders only, who are purchasing the S.K. Oil from the applicant's fair price shop. Further, the applicant has submitted that no other monetary or non-monetary consideration is received for these transactions. It therefore appears that in respect of the supply of S.K.Oil being made by the applicant:

- i. Entire consideration is paid to the applicant by the ration card holders, and
- ii. No consideration is paid by the Government.

4.11. Section 7 of the GST Act *inter-alia* defines '*supply*' as the following :

'...

"supply" includes-

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made **for a consideration** by a person in the course or furtherance of business;*

...'

In this definition, it may be noted that consideration is an essential component of supply. In this case, there is no consideration flowing from the Government to the applicant. Thus, activity in this case is not a supply by the applicant to the Government as per Section 7 of the GST Act.

4.12. Further, section 2(93) of the GST Act defines '*recipient*' of supply of goods or services or both as under:

(93) "recipient" of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services or both, the **person who is liable to pay that consideration**;

(b)

(c)

In light of this definition, the recipient would be a person who is liable to pay consideration for the supply of goods or services. In this case, the person liable to pay the consideration is the ration card holder, and is thus the recipient of the supply. The supply is of S.K. Oil and the recipients are the ration card holders. Consequently, this supply is in the nature of supply of goods to the ration card holders.

4.13. Thus, in view of the above provisions of the GST Act, it is clear that in the instant case, there is no supply made by the applicant to the Government and that the ration card holders are the recipient of the supply. The applicant has made various submissions arguing that they are making supply of services to the State Government by way of working as an agent of the Government for distributing S.K. Oil to the ration card holders identified by the Government. If this argument of the applicant is to be accepted, it would mean that there are two different supplies being made in the same transaction, wherein one supply is of goods-S.K. Oil to the recipients and another is supply of service to the Government. We do not agree with this proposition since a supplier cannot provide a single supply to two different recipients simultaneously in the same transaction, especially when there is only one recipient as per the Section 2(93) of the GST.

4.14. We therefore find that the applicant is making supply to the ration card holders and not to the State Government. Thus the entry 11A of the Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 (*as amended*) is not applicable in this case. Further, the supply to the ration card holders is of goods namely, kerosene oil, i.e., S.K. Oil, for which the consideration is paid by these recipients.

4.15. The applicant has raised three questions in the application on which advance ruling is sought. The same are being examined in light of the above findings.

- i. The first question is that whether the applicant being a Fair Price Shop, is liable to charge GST from the State Government against the supply made by them. In this regard, we find that Section 9 of the GST Act states that :

Section 9. Levy and collection. -

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central/state goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

...'

Similar provision is made for inter-state supplies on which Integrated GST is levied.

The above provision clearly states that tax shall be levied on all supplies of goods or services. However, we are of the view that no supply is made by the applicant to the State Government. In absence of any supply being made to the State Government, no tax would be leviable and thus no tax should be charged to the State Government.

- ii. The second question is that whether the difference between the purchase and selling price, which consists of charges like Dealer's commission, Dealer's Transport Charges, Stationery Charges, H & E Loss etc., would be chargeable to GST or treated as exempt. We have already discussed that the applicant is making supply of goods namely S.K.Oil to ration card holders. As per Section 15 of the GST Act, tax would be leviable on the entire value of supply, which will also include the aforesaid charges. Thus, the answer to the question of the applicant is that tax would be leviable on these charges also, at the rate prescribed for the supply of kerosene oil (*S.K.Oil*).

iii. The third question is that whether the supply of "S.K.Oil" along with other charges would be treated as a composite supply wherein the principal supply would be the supply of "S.K.Oil". 'Composite supply' as defined in section 2(30) means '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'. We reiterate that the instant case is not a case of composite supply as the applicant makes a single supply of goods namely S.K.Oil to the recipients : ration card holders. Therefore, the amount received by the applicant as Dealer's Commission, Dealer's Transport Charges, Stationery Charges, H & E Loss etc., shall form a part of the value of supply on which tax shall be levied in terms of sub-section (1) of section 9 of the GST Act. The value of supply, as per clause (c) of sub-section (2) of section 15, shall include 'incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services.' The aforesaid clause thus clearly specifies that in respect of supply of goods, any amount charged for anything done by the supplier at the time of, or before delivery of goods shall be a part of the value of supply.

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

RULING

Question: Whether the applicant being a Fair Price Shop as defined under the Notification No. 2565/FS/FS/Seect/Sup/4M-16/2014 dated 3rd November 2014 issued by the Government of West Bengal, is liable to charge GST from the State Government against the supply made by them?

Answer: The applicant is not making any supply to the State Government. No tax is, therefore, to be charged to the State Government.

Question: Whether the other charges like Dealer's commission, Dealer's Transport Charges, Stationery Charges, H & E Loss etc. would be chargeable to GST or treated as exempt?

Answer: GST would be applicable on these charges.

Question: Whether the supply of “S.K.Oil” along with charges would be treated as a composite supply wherein the principal supply would be the supply of “S.K.Oil”?

Answer: The applicant makes supply of goods namely S.K.Oil. Other charges shall form a part of the value of supply as per clause (c) of sub-section (2) of section 15 of the GST Act.

(SARTHAK SAXENA)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 26th June, 2023

To,

Chanchal Saha
Santi Colony, Biswas Para, Balurghat,
Dakshin Dinajpur, Pincode-733101

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, Balurghat Charge, Old Sub-jail Market Complex, Balurghat, Dist.-Dakshin Dinajpur, Pin-733101
- (4) The Commissioner, Siliguri Commissionerate, C.R. Building, Haren Mukherjee Road, Hakimpara, Siliguri, West Bengal, Pincode-734001
- (5) Office Folder