

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)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr 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	Nathmull Bhagchand Jain
Address	Station Road, Lalgola, Murshidabad, Pincode- 742148 West Bengal
GSTIN	19AAEFN3947P1ZJ
Case Number	24 of 2021
ARN	AD191221004821K
Date of application	December 28, 2021
Order number and date	23/WBAAR/2021-22 dated 29.03.2022
Applicant's representative heard	Mr. Supriyo Bose, Authorised Advocate Mr. Subrata Ray, Authorised Advocate

1.1 At the outset, we would like to make it clear that the provisions of 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 submits that he is an agent of Indian Oil Corporation Limited (IOCL) and is engaged in the distribution of Superior Kerosene Oil (SKO) for domestic purposes to fair price dealers. The applicant procures S.K.Oil directly from Indian Oil Corporation Ltd (IOCL) and supplies the same as per instruction of Government of West Bengal at a sale price

which is also fixed by the Government. The State Government allows some commission on different heads like agent commission, agent transport charges, agent stationery charges, compensation of handling and evaporation loss over the basic purchase price.

1.3 It is submitted by the applicant that he has been charging output tax on the total consideration received (basic price+ agent commission+ agent transport charges+ agent stationery charges+ compensation of handling and evaporation loss) i.e. on the entire value of supply since the inception of Goods and Services Tax. However, the Dist. Controller, Food and Supplies has issued an instruction vide memo no. 2405(5)(EN)/DCFS/MSD/2021 dated 25/10/2021 where the price chart for supply of S.K.Oil has been revised. According to the revised price list, the applicant is now required to charge GST @ 5% only on the base price of Kerosene. On other charges like agent's commission, agent's transport charges, stationery charges, compensation on handling & evaporation loss, no GST is to be charged.

1.4 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 is a service provider or suppliers of goods?
- (ii) Whether the output tax is chargeable on the total consideration received or only on the basic price?
- (iii) Whether an agent of S K Oil lies under the category of fair price shop?

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

1.6 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.

1.7 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.8 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits that he is an authorized agent of Superior Kerosene Oil (herein after referred to SKO) on the strength of license issued by Govt of West Bengal for supplying the same to the MR Dealers, commonly known as ration dealers.

2.2 The applicant procures SKO from Indian Oil Corporation Ltd (IOCL) and supplies the same to the allotted MR Dealers in terms of instructions of Govt. of West Bengal.

2.3 The price at which the applicant can supply as an agent is also fixed by the District Controller, Food and Supplies, Government of West Bengal which, in addition to the price of SKO, includes agent commission, agent transport cost, agent stationery cost, agent compensation of handling loss.

2.4 The applicant submits that ever since the roll out of the GST Act, he has been charging output tax on the total consideration received (basic price of SKO + agent commission + agent transport cost + agent stationery cost + agent compensation of handling loss) in consonance with price list issued by the Government of West Bengal. This is in accordance with the provisions as envisaged in sub-section (1) of section 15 of the GST Act read with section 9 of the Act *ibid*.

2.5 Sub-section (1) of section 15 of the GST Act reads as follows:

“The value of supply of goods or services or both shall be transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and price is the sole consideration for the supply.”

2.6 However, the District Controller, Food and Supplies has issued an instruction vide memo no. 2405(5) (EN) DCFS/MSD/2021 dated 25/10/2021 with an attached revised price list wherefrom it transpires that the applicant is now required to charge GST @ 5% only on the base price of Kerosene. On other charges like agent’s commission, agent’s transport charges, stationery charges, compensation on handling & evaporation loss, no GST is applicable as per the revised rate chart.

2.7 The applicant further submits that ‘Fair Price Shop’ as defined in section 2(4) of National Food Security Act, 2013 means a shop which has been licensed to distribute essential commodities to the ration card holders under the public distribution system and the applicant does not fall under the category of fair price shop.

3. Submission of the Revenue

The officer concerned from the revenue has expressed his view in writing as under:

3.1 Whether the applicant is a service provider or supplier of goods:

The GST Act has defined “goods” in sub-section 52 of section 2 as follows:

“goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Scope of supply has been described under section 7 of the said Act, wherein, it is stated that “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;”

The applicant is a reseller and he deals in kerosene oil. Kerosene, being a movable property and “sale” of kerosene oil by the applicant being a form of supply for a consideration in the course of business, the applicant should be a supplier of goods.

3.2 Whether the output tax is chargeable on the total consideration or basic price:

Section 15 of the GST Act deals with the provisions of value of taxable supply. Ordinarily the value of supply is the transaction value, where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply as per provisions made u/s 15(1) of the GST Act.

According to the explanation appended to section 15, one of the grounds of persons to be deemed to be “related persons”, if both of the supplier and the recipient are directly or indirectly controlled by the third person. The applicant, the supplier in the instant case, and the recipient, the SKO dealers, in the instant case are directly/indirectly controlled by the third person, in the instant case – the Directorate of Consumer Goods, Foods and Supply Department, Govt. of West Bengal. Hence, the value of supply should be determined according to the provisions made under section 15(4) of the said Act which reads as:

“(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed“

Determination of Value of supply has been prescribed in Chapter IV of WBGST/CGST Rules,2017 in rules from 27 to 35 and the instant case matches with the provisions made under rule 30 of the said rules which states that-

“30. Value of supply of goods or services or both based on cost. - Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Furthermore, section 15(2)(c) states that the value of supply 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;”

Hence, the value of goods should be the cost of acquisition of kerosene oil and the incidental expenses including the commission charged by the supplier (the applicant) to the recipients (SKO dealers).

3.3 Whether an agent of S.K Oil lies under the category of fair price shop:

The question raised by the applicant is not in accordance with the provisions made u/s 97(2) of the GST Act.

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 advocates 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 moot question involved in the instant case is to determine the value of supply of Superior Kerosene Oil (SKO) made by the applicant to MR Dealers (ration dealers) in terms of the license granted by the Director of Consumer Goods, Government of West Bengal.

4.3 The license is issued under Paragraph 5 of the West Bengal Kerosene Control Order, 1968 by virtue of which the applicant has been licensed as an Agent to sell P.D.S. Kerosene.

4.4 The term 'agent' has been defined in Para 3(b) of the West Bengal Kerosene Control Order 1968 which reads as under:

"Agent means a person who executed an agreement with the concerned Oil Marketing company and has been granted a license under paragraph 5 of this order as an agent in West Bengal authorizing him / her to carry on trade in Kerosene as such agent"

4.5 We find that 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 8th August 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"

4.6 It appears from the above definition that a fair price shop is licensed to sell public distribution commodities against ration documents i.e., a fair price shop supplies S.K.Oil, along with other public distribution commodities, to the ration card holders only.

4.7 The applicant, on the other hand, procures S.K.Oil from the Oil Marketing Company and supplies the same to the MR Dealers (ration dealers). We are, therefore, of the view that the applicant cannot be regarded as a 'fair price shop'.

4.8 According to the rate chart fixed by the District Controller, Food and Supplies, Government of West Bengal, the applicant is required to charge tax only on the base price of Kerosene although the applicant receives consideration in respect of other elements like agent's commission, agent's transport charges, stationery charges, compensation on handling & evaporation loss.

4.9 The officer concerned from the revenue has submitted that the value of goods should be the cost of acquisition of kerosene oil and the incidental expenses including the commission charged by the supplier (the applicant) to the recipients (SKO dealers).

4.10 In the instant case, the applicant admittedly charges, other than price of kerosene, commission, transportation charges, stationery charges, compensation on handling & evaporation loss, to the recipient of goods i.e., dealers which are permitted / approved by the Director of Consumer Goods, Department of Food and Supplies, Government of West Bengal.

4.11 We are, therefore, of the view that the amount received by the applicant against supply of S.K.Oil together with consideration received in respect of other elements as discussed earlier, 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 is a service provider or suppliers of goods?

Answer: The applicant is found to be engaged in supply of Superior Kerosene Oil.

Question: Whether the output tax is chargeable on the total consideration received or only on the basic price?

Answer: Tax would be levied on the entire value of supply.

Question: Whether an agent of S K Oil lies under the category of fair price shop?

Answer: In the instant case, the applicant being an agent who is licensed to supply S.K.Oil to dealers cannot be regarded as 'Fair Price Shop'.

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling