

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 Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services 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 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	TP Roy Chowdhury & Company Pvt Ltd
Address	53B, Mirza Ghalib Street, Kolkata- 700016
GSTIN	19AAACT9370R1ZE
Case Number	23 of 2019
ARN	AD190519001124B
Date of application	30/05/2019
Order number and date	17/WBAAR/2019-20 dated 19/08/2019
Applicant's representative heard	Amal Kanti Das, Authorised Representative

1. Admissibility of the Application

1.1 The Applicant is stated to be acting as a stevedore and handles imported raw whole yellow peas. It seeks a ruling on whether such imported yellow peas are 'agricultural produce' and services by way of handing of it is eligible for exemption under SI No. 54(e) of Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time (hereinafter collectively referred to as Exemption Notification).

1.2 Being a stevedore, the Applicant supplies the service of loading and unloading of cargo in seagoing vessels. The questions raised are, therefore, admissible as far as they relate to the supplies made as a stevedore. Viewed from that perspective, the question is whether the service of loading and unloading of imported raw whole yellow peas is exempt under SI No. 54(e) of the Exemption Notification. It is admissible for advance ruling under section 97(2)(b) of the GST Act.

1.3 The Applicant declares that the issues raised in the Application are not pending nor decided in any proceedings under any provisions of the GST Act. The officer concerned from the revenue has not objected to the admission of the application. The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Applicant refers to Circular No. 16/16/2017-GST dated 15/11/2017 of CBIC. It clarifies that pulses, commonly known as dal, are obtained after de-husking or splitting or both. The process of de-husking or splitting is usually not carried out by farmers or at the farm level but by the pulse millers. Therefore, pulses (de-husked or split) are also not agricultural produce. However, whole pulse grains such as gram, rajma etc. are covered in the definition of agricultural produce. Therefore, exemption from GST is not available to the loading, warehousing etc. of pulses (de-husked or split) in terms of SI No. 54(e) of the said notification.

2.2 The Applicant submits that it handles imported raw whole yellow peas in bulk that contains 1.45% broken grain and 10.86% split kernel. It produces a test report for a cargo of 27,280 MT of the above item for which the importer has engaged the Applicant as the handling contractor. M/s SGS India Pvt Ltd carried out the test on the samples drawn between 22/01/2019 to 04/02/2019 from the accessible portions of the cargo while it was being loaded into the barges.

2.3 The Applicant argues that the percentage of broken grain or split kernel is insignificant and occurred in the course of the handling of the cargo and does not alter its character as raw whole yellow peas. It should, therefore, be treated as 'agricultural produce' as defined in clause 2(d) of the Exemption Notification and, therefore, the service of loading and unloading of the cargo should be exempt in terms of SI No. 54(e) of the Exemption Notification.

3. Observation & Findings of the Authority

3.1 Services relating to the cultivation of plants, inter alia, for agricultural produce are exempt under SI No. 54 of the Exemption Notification and classified under SAC 9986. They include, among others, loading, unloading, packing, storage or warehousing of agricultural produce [clause 54(e) of the Exemption Notification]. The agricultural produce means any produce out of cultivation of plants etc. "for food, fibre, 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."

3.2 It, therefore, appears that the service of loading, unloading etc. of agricultural produce is admissible for exemption under SI No. 54(e) of the Exemption Notification, provided such loading/unloading service is related to the cultivation of plants and classifiable under SAC 9986. The scope of such support services extends to post-harvest crop services such as preparation of crops for the primary markets. In sync with it 'agricultural produce' is so defined as to include processes as may be done to make the produce marketable in the primary market without altering its essential characteristics.

3.3 The term 'primary market' is not defined in the GST Act. It is understood in common parlance as a platform or a place, like a mandi, where the farmers are directly selling to the buyers, including the wholesalers, mills, food processing units, exporters etc. It appears that services relating to the cultivation of plants include support services as may be required till the

farmer disposes the agricultural produce in the primary market. All services and processes beyond the realm of the primary market are excluded.

3.4 Circular No. 16/16/2017-GST dated 15/11/2017 of CBIC clarifies that the process of de-husking or splitting of pulses is usually not carried out by farmers or at the farm level but by the pulse millers and, therefore, such products are not to be considered 'agricultural produce'. The emphasis, therefore, is on the processes and services that are applied till the goods are at the farmer's hand. As soon as they leave the farmer's hand and the primary market, the services rendered thereafter are not to be considered related to cultivation of the plant and classifiable under SAC 9986.

3.5 The Applicant renders the service of loading, unloading etc. after the cargo of yellow peas, imported from a foreign land, reaches the port of entry. The produce has been procured from the farmers in the foreign land and exported to India. Clearly, it is, whether processed in a mill, no longer in the domain of the primary market or at the farmer's hand. Exemption under SI No. 54(e) of the Exemption Notification, therefore, is not applicable to the Applicant's services.

Based on the above discussion, we rule as under

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The Applicant supplies the service of loading, unloading etc. after the cargo of yellow peas, imported from a foreign land, reaches the port of entry. Exemption under SI No. 54(e) of Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended from time, is not applicable to the Applicant's service.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.


(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling