

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

**Before:
Mr Ashutosh Awasthi, Member
Mr Khalid Aizaz Anwar, Member**

In the matter of

Appeal Case No. 03/WBAAAR/APPEAL/2022 dated 22.09.2022

- And -

In the matter of:

An Appeal filed under Section 100 (1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by Raj Mohan Seshamani (Trade Name- M/s Sustainable Green Initiative), P-41, 2nd floor, Room No. 213, Princep Street, Kolkata- 700072 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. 06/WBAAAR/2022-23 dated 18.08.2022.

Present for the Appellant: Mr. Rip Das, Authorised Representative

Present for the Respondent: Mr Biswanath Purkait, Deputy Commissioner of State Tax

Matter heard on: 22.11.2022

Date of Order: 13.12.2022

1. This Appeal has been filed by Raj Mohan Seshamani (hereinafter referred to as “the Appellant”) on 22.09.2022 against Advance Ruling Order No. 06/WBAAAR/2022-23 dated 18.08.2022, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the ‘WBAAR’).
2. The request of condonation of delay in filing of appeal was accepted under the provision of Section 100(2) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017 (hereinafter collectively referred to as “the GST Act”).
3. The Appellant is engaged in the business of cultivation, planting and nurturing of mangrove seeds and seedlings like Viviparous and Pseudoviviparous groups in the coastal areas across different states of the country as per contracts awarded by internationally acclaimed environmental organizations. The appellant performs this activity under the outsourced arrangements of seeds collection, developing the seeds

into seedlings in nurseries, pre-planting activities, planting of seeds, propagules and seedlings with the objective of environmental protection against cyclones and tidal waves. The appellant also aims to create sustainable development and provision of livelihood for the people living in and around such coastal areas by engaging them in the planting activities.

4. The appellant has submitted that the processes involved in executing the activity are as under:
 - i) Initially, the land identification is made for plantation of mangrove seeds & seedlings.
 - ii) Thereafter, trenches are dug on identified areas fortnight in advance to allow sedimentation for planting of the mangrove seeds, propagules and seedlings.
 - iii) The seeds are then collected from the mud lands or water bodies nearby. Sometimes, as per requirement of different species of mangroves, survivability is checked in nearby nurseries.
 - iv) Planting of Seeds & seedlings in the land identified and allotted by State Governments and also by the local people.
 - v) Local people are engaged for planting activity of these seeds and seedlings into the trenches. Planting activity is done during monsoons and low tide.
 - vi) Post plantation of seeds and seedlings, local people are engaged to safeguard the fenced areas and mangroves are monitored for 3 to 5 years to ensure survival.
 - vii) Periodic re-planting is done to make up for plant mortality.

5. The Appellant sought an advance ruling under section 97 of the GST Act on the following question:

What would be SAC Code & GST Rate for the outward supply made by the applicant, in case of mangroves being cultivated and nurtured at coastal communities?

6. View of the appellant on the Question sought above is as under:

The above described activity should be covered under Sl. No. 24 of the Notification No. 11/2017- Central Tax (Rate) dated 28/06/2017 having SAC 9986 and therefore shall attract Nil rate of tax.
7. The WBAAR made observation that the appellant does not provide such services for food, fibre, fuel, raw material or other similar products or agriculture produce rather the sole object of the services as it has been claimed by the applicant is to enhance biodiversity and re-establish ecosystem function to protect the islands and the populace from erosion. The WBAAR was therefore of the opinion that such supply of services will not get covered under chapter Heading 9986 being 'support services to agriculture, forestry, fishing, animal husbandry' but may be treated as 'environmental protection services' under chapter Heading 9994. The WBAAR mentioned that Sl. No. 32 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 and

corresponding West Bengal Notification No. 1135 F.T dated 28.06.2017, as amended from time to time, specifies that tax shall be levied @ 18% on 'Sewage and waste collection, treatment and disposal and other environmental protection services' covered under chapter Heading 9994.

8. In view of above, the WBAAR vide Order No. 06/WBAAR/2022-23 dated 18.08.2022 ruled that:

Supply of services for plantation of mangrove seeds and seedlings in coastal areas shall be covered under Sl. No. 32 of Notification No. 11/2017- Central Tax (Rate) dated 28/06/2017 having SAC 9994 and therefore shall attract tax @ 18% (CGST @ 9% + WBGST @ 9% or IGST @ 18%).

9. The Appellant has filed the instant appeal against the above mentioned Advance Ruling dated 18.08.2022 with a prayer to set aside/modify the said order or pass any such further or other orders as may be deemed fit and proper in the facts and circumstances of the case on the following grounds:

- a) WBAAR erred in understanding the nature of their work/service and failed to consider the activity of planting of mangrove trees as an agricultural activity;
- b) WBAAR failed to appreciate that oxygen produced by the mangrove trees via photosynthesis is itself a produce which not only caters to humankind but also to all other living organisms be it flora or fauna.
- c) WBAAR has wrongly categorised that such activity does not provide for food, fibre, fuel, raw material or other similar products or agricultural produce. The mangroves protect the coastline and the populace from the ravages of nature. The mangroves are home to numerous species, many of which are edible fish and shellfish. The mangrove wood is hardy and used for construction and fuel and mangrove leaves are used as fodder by the local people.
- d) WBAAR has incorrectly classified the service rendered as 'Sewage and waste collection, treatment and disposal and other environmental protection services'
- e) WBAAR has narrowed the fundamental of the benefits/importance of mangroves and its utility.

10. The appellant has also given further written submission wherein following points has been submitted:

- (a) The appellant has submitted that the GST Act nowhere defines the term "Agricultural Activity" though in section 2(7) the term "Agriculturist" has been defined. So, an analogy has to be drawn from the other Revenue Acts. The term

“Agricultural Income” has been defined under section 2(1A) of the Income Tax Act, 1961. The definition of ‘Agricultural Income’ under section 2(1A) provides that the following shall constitute Agricultural Income:

- (i) any rent or revenue derived from land which is situated in India and is used for agricultural purposes [Section 2(1A)(a)],
- (ii) any income derived from such land by agricultural operation including processing and sale of the agricultural produce as rent-in-kind so as to render it fit for the market [Section 2(1A)(b)],
- (iii) income derived from building or land used for agricultural operation, in certain cases. [Section 2 (1A)(c)].

(b) The appellant further submitted that Hon’ble Supreme Court of India had elaborately explained what constitute the term agriculture in depth in the case of CIT v. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC). It is a landmark case for the understanding of the term agriculture under the Income Tax Act. This judgment makes it clear that the term ‘agriculture’ is “cultra”, i.e., cultivation of the “agar” i.e., field / land. In other words, raising of a product through the use of human skill and labour on land may be classified as agricultural activity. The “product should have some utility either for consumption, for trade and commerce. The term “Agriculture” receives a wider interpretation both with regard to its “operations” as well as the “results” of such operation.

(c) The appellant submitted that in the light of the definition given in the Income Tax Act and above referred landmark decision of the Hon’ble Supreme Court of India on the matter, following ingredients must exist in an Agricultural Income:

- (i) Existence of Land,
- (ii) Ownership of Land is immaterial,
- (iii) Cultivation of land is must,
- (iv) The resultant items through basic operation should be in a shape of products either for consumption or for trade.

(d) The appellant contends that In case of mangrove trees, it is predominantly clear that the revenue is being derived from land which is situated in India. He is engaged in pure agricultural related activities in respect of plantation and nurturing of mangrove trees. As mentioned in the judgment referred earlier, agriculture is raising a product which is fuel and also environmental protection in case of mangrove trees. These products are raised using human skill and labour as explained in detail for the processes. Also, the product has an essence utility for consumption, be it used as “Fuel” for consumption or by marketing the same a

person earns his livelihood. Further, it provides oxygen to both human beings and other living creatures. Thus, these products fall under “operations” or “results” of “agriculture”.

- (e) The appellant further contends that cultivation of land is predominantly a major activity mentioned in details under the process explained above for mangrove trees by way of irrigation, fencing, ploughing, digging trenches, etc and the ultimate item being firewood and oxygen in respective cases are essential items of consumption.

11. The submissions of concerned officer of Revenue is given as under:

- (a) The appellant in GST ARA-01 (Application Form for Advance Ruling) under Sl. No. 15 has stated that he is engaged in nurturing of mangrove seeds and seedlings in coastal areas with the sole objective of environmental protection and fight against climate change and global warming as per contract awarded by the different environmental organization. The appellant undertakes any work, in the instant case, that of planting and nurturing of mangrove seeds and seedlings at coastal areas, only upon receipt of any contract; with the sole objective of environmental protection.
- (b) The claim of the appellant that planting of mangroves produces oxygen via photosynthesis is undisputed. However, the same has to be seen and understood in the light of the Explanation provided to Sl. No. 24 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, as to whether the services provided by him will fall within the ambit of the said entry as claimed by the appellant. Explanation provided to Sl. No. 24 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 is reproduced as under:

“Support services to agriculture, forestry, fishing, animal husbandry” mean-
*(i) services relating to 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 –*

- (a) _ _ _
- (b) _ _ _
- (c) _ _ _
- (d) _ _ _
- (e) _ _ _
- (f) _ _ _
- (g) _ _ _

Plain reading of the aforesaid entry reveals that cultivation of plants and rearing of all life forms of animals (except rearing of horses) has to be for food, fibre, fuel, raw material or other similar products or agricultural produce, only then it can be classified as support services to agriculture, forestry, fishing, animal husbandry.

In other words, cultivation of plants and rearing of all life forms of animals (except rearing of horses) other than for food, fibre, fuel, raw material or other similar products or agricultural produce shall not fall within the meaning of support services to agriculture, forestry, fishing, animal husbandry as meant by the aforesaid entry.

Oxygen produced by the mangroves do not fall within the category of food, fibre, fuel, raw material as understood in common parlance, neither is a similar product and definitely is not an agricultural produce within the meaning provided for in serial no. 4(vii) appended to the said notification or even by means of far-fetched imagination.

- (c) The environment protection activities as carried out by the appellant with the sole objective for the environmental protection and fight against climate change shall be covered under Sl. No. 32 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 having SAC 9994 and therefore shall attract tax @ 18% (CGST @ 9% + WBGST @ 9% or IGST @ 18%) as has been rightly decided by the WBAAR.

12. During the course of hearing held on 22.11.2022, the Appellant's authorised representative reiterated the points as stated in the Grounds of Appeal as well as written submissions. The matter has been carefully examined and written and oral submissions made before us are considered.

13. During the course of hearing, **agreement between the applicant and M/s One Tree Planted** was also examined in detail. It is seen that as per '**Project details**' of the said agreement, the aim of the project is "*to enhance biodiversity and re-establish ecosystem function to protect the islands and the populace from erosion. While this reforestation activity will offer an immediate economic stimulus, it will also help protect important livelihood functions of local communities while addressing climate adaptation benefits and addressing climate change impact*".

Thus, it is clear that the appellant has entered into contract with foreign organizations for plantation of mangrove seeds and seedlings in coastal areas of the country with the sole purpose of enhancing biodiversity and re-establish ecosystem function to protect the islands and the populace from erosion.

14. The appellant has claimed that the activity is covered under Sl. No. 24 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. However, as per the explanation to the said Sl. No. of the said Notification, it is to be noted that this service will be classified as ‘Support services to agriculture, forestry, fishing, animal husbandry’ only if it is relating to 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.**
15. It is evident that the appellant is engaged in business of cultivation, planting and nurturing of mangrove seeds and seedlings for the primary purpose of environmental protection by way of enhancing biodiversity and re-establishing the ecosystem functions and such services are not related to cultivation of plants for food, fibre, fuel, raw material or other similar products. Therefore, none of the activities carried out by the appellant for the purpose as laid down in the agreement qualifies to be agriculture as claimed by him which is essential to be classified under SAC 9986. In our opinion, the services rendered by the appellant can be classified as ‘Other environmental protection services’ and not as ‘Support services to agriculture, forestry, fishing, animal husbandry’.

In view of above discussion, we find no infirmity in the ruling pronounced by the WBAAR being that the supply of services for plantation of mangrove seeds and seedlings in coastal areas shall be covered under Serial Number 32 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 having SAC 9994 and shall attract GST @ 18% (CGST @ 9% + WBGST @ 9% or IGST @ 18%).

The WBAAR Ruling No. 06/WBAAR/2022-23 dated 18.08.2022 is confirmed. The appeal thus fails and stands disposed.

Send a copy of this order to the Appellant and the Respondent for information.

Sd/-
Member, West Bengal Appellate
Authority for Advance Ruling

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