

WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING

AT 14, BELIAGHATA ROAD, KOLKATA-700015

Before:

Sri. A.P.S Suri, Member

Sri. Devi Prasad Karanam, Member

In the matter of

Appeal Case No. 13 /WBAAAR/APPEAL/2019 dated 26.09.2019

- 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 M/s T.P. Roy Chowdhury & Company Pvt. Ltd, 53B Mirza Ghalib Street, Kolkata-700016 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. 17/WBAAR/2019-20 dated 19.08.2019.

Present for the Appellant: Sri Amal Kanti Das, Advocate
Sri Sandip Banerjee, Accountant

Present for the Respondent: Sri Pandiyaraj G. V., Assistant Commissioner CGST & CX, Park Street Division

Matter heard on: 10.12.2019

Date of Order: 23.12.2019

1. This Appeal has been filed by M/s T.P. Roy Chowdhury & Company Pvt. Ltd (hereinafter referred to as "the Appellant") on 26.09.2019 against Advance Ruling Order No. 17/WBAAR/2019-20 dated 19.08.2019, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the "WBAAR")
2. The Appellant, holding GSTIN No. 19AAACT9370R1ZE, provides service as a stevedore. The Appellant provided loading and unloading services to imported raw whole yellow peas.
3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act") on the following questions:

- (i) whether imported raw whole yellow peas are agricultural produce, and
 - (ii) whether services by way of handling the imported raw whole yellow peas is eligible for exemption under Sl. 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 “the Exemption Notification”)
4. The WBAAR in its order dated 19.08.2019 ruled that Exemption Notification is not applicable to the Appellant’s service of loading, unloading, etc., after the cargo of yellow peas imported from foreign land reaches the port of entry.
5. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR 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) The percentage of broken grain or split kernel compared to the consignment volume is minor and insignificant and is a result of natural handling of the consignment. The imported raw whole yellow peas were not subjected to any process by any machinery or mill and so the Exemption Notification will apply in case of Appellant’s service.
 - (b) The WBAAR erred in interpreting the primary market as nowhere it is mentioned that the services covered under Sl. No. 54(e) of the Exemption Notification is restricted to the primary market or the farm level.
 - (c) The WBAAR erred in interpreting the meaning of “agricultural produce”. The conditions of being agricultural produce as defined under 2(d) of Notes to the Exemption Notification are mutually exclusive.
 - (d) The AAR, Andhra Pradesh in the matter of M/s SSSVK Cold Storage Pvt. Ltd. in order no. AAR/AP/02(GST)/2018 dated 28.03.2018 observed that the benefits of exemption under the Exemption Notification is not person specific. It is equally applicable for agricultural produce in case of farmers as well as traders. Raw whole yellow peas fall under serial no. 45 of Notification No. 2/2017 – Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1126 FT dated 28.06.2017), as amended from time to time (hereinafter collectively referred to as “the Rate Notification”) as “dried leguminous vegetables, shelled, whether or not skinned or split” in the exempted category. So services related to exempted goods are also eligible for exemption.
 - (e) No IGST is charged on the consignment as evident from the bill of entry justifying the imported goods to be agricultural produce and thus exempted from taxation.

6. During the course of hearing the Appellant reiterated the points as stated in the Grounds of Appeal. The Appellant submitted that as per test report, Certificate No.1903200148 dated 20.03.2019 issued by surveyor namely SGS India Pvt. Ltd., the consignment consisted of 1.45% broken grain and 10.86% of split kernel. The Appellant submitted that the presence of broken grain and split kernel was due to natural handling of the product while loading and unloading the same and is in line with Circular No. 16/16/2017-GST issued by the CBIC. The consignment has not undergone the process of de-husking or splitting which are also not carried out at the farm level but are carried out by millers.
7. The Appellant emphasized that its product is an agricultural produce and is exempted from taxation under the GST Act. Thus services associated in marketing such exempted product are also exempted under Sl. No. 54(e) of the Exemption Notification. Further the appellant submitted that the intention of the Government is to keep prices of food grains low and in this goal such farm products are included under the Exemption Notification. Services associated to farm products like transport, storage, loading and unloading all are included in the pricing of the farm products and levy of tax on such services will escalate prices which is not the spirit of the Exemption Notification.
8. The Appellant argued that the definition of agricultural produce cannot be restricted to the primary market and farm level. Services like “fumigation” or “warehousing” [included under Sl. No. 54(h) of the Exemption Notification] or services provided by a ‘commission agent for sale and purchase’ [included under Sl. No. 54(g) of the Exemption Notification] are generally carried out only after agricultural product leaves the farmer’s hand. They urged to read the Exemption Notification as a whole to reach at any logical conclusion.
9. The Respondent argued that percentage of split kernel is significant enough and so the essential characteristics of agricultural produce have been altered. The Respondent further submitted that the ruling by AAR, Andhra Pradesh is not applicable in the instant case as it is seen that M/s SSSVK Cold Storage Pvt. Ltd. provided storage space for both the farmers and the traders. Further these traders were those who purchased directly from the farmers. In the instant case the basic conditions of being “agricultural produce” and “primary market” were not adhered to.
10. The matter is examined and written and oral submissions made before us are considered. The moot question is that whether the Appellant’s service is eligible for exemption under Sl. No. 54(e) of the Exemption Notification.

11. There is no dispute that raw whole yellow peas are agricultural produce covered under serial no. 45 of the Rate Notification and are exempted goods. However, this particular consignment of raw whole yellow peas was harvested in foreign land and the concerned primary market or the farmers' market is located in that foreign land. We observe from a combined reading of entry number 54 of the Exemption Notification and definition 2(d) of the Exemption Notification that all services and processes are excluded beyond the primary market. For the sake of clarity definition under 2(d) the Exemption Notification is reproduced here as following:

"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, 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"

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.

In view of above discussion we find no infirmity in the ruling pronounced by the WBAAR.

The appeal thus fails and stands disposed accordingly.

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

स. प्र. क.

(Devi Prasad Karanam)

Member

West Bengal Appellate Authority
for Advance Ruling

ए. पी. एस. सुरी

(A.P.S Suri)

Member

West Bengal Appellate Authority
for Advance Ruling