

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:

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	RAJ MOHAN SESHAMANI
Address	P-41, 2 ND FLOOR, ROOM NO. 213, PRINCEP STREET, KOLKATA-700072
GSTIN	19AUNPS1847E1Z7
Case Number	WBAAR 08 of 2022
ARN	AD190422008350K
Date of application	April 19, 2022
Jurisdictional Authority (State)	Esplanade Charge, Chowranghee Circle
Jurisdictional Authority (Central)	BBD Bag II Division, Kolkata North Commissionerate
Order number and date	06/WBAAR/2022-23 dated 18.08.2022
Applicant's representative heard	Mr. Rip Das, CA

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 is stated to be engaged in the business of cultivation, planting and nurturing of fruit trees like citrus lemon, pomegranate etc in marginalised areas and mangrove seeds and seedlings in coastal areas across different states of the country with

the sole aim of environmental protection against climate change. The applicant carries out these activities pursuant to the contracts awarded by internationally acclaimed environmental organizations.

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:

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

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

1.5 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.

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

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits that he is engaged in planting and nurturing of mangrove seeds and seedlings along with fruit trees in marginalized areas for environment protection against the climatic changes. Contracts for carrying out this activity are awarded by the internationally acclaimed environmental organizations.

2.2 The applicant performs this activity under the outsourced arrangements for seeds collection, developing the seeds into seedlings in nurseries, pre-planting activities, planting of seeds, species and seedlings with the objective of protecting the nature and a fight against global warming.

2.3 The applicant claims that while aiming to enhance biodiversity and re-establish ecosystem function to protect the islands and the populace from erosion by way of planting of mangrove seeds and seedlings, he also aims to create sustainable livelihoods and provide nutritious food to the families and community residing in the nearby planting activities.

2.4 For the purpose of carrying out the activities with respect to planting of fruit trees, the applicant connects with small farmers in marginalized communities of different states of India and nurtures such fruit trees which in turn help the participating farmers to create sustainable livelihoods and provide nutritious food to their families and the community at large.

2.5 Processes involved in executing plantation of fruit trees, as submitted by the applicant, are as under:

- (i) Initially, the land identification is made for planting activity and also people are identified who would nurture and take care of such activities.
- (ii) Along with this, viability check report is procured by the expert team of the applicant in terms of water availability for fruit trees and identification of small and marginal farmers who will be benefitted from the produce of the trees planted.
- (iii) Thereafter, a nursery is set up in nearby locality or near the identified area where saplings are grown from seeds to be planted in this arena. Nursery lands are taken on lease for 3 to 5 years from the local farmers. The applicant assists the farmers by providing quality saplings which are developed in the said nurseries or purchased from nearby nurseries.
- (iv) Just after the Rabi and Kharif harvest season, the farmers are encouraged and helped to plant fruit trees in a small part of their land holdings. The applicant provides them all resources and infrastructure, both in terms of monetary as well as non-monetary.
- (v) The applicant assists the farmers with organic fertilizers and pesticides as required from time to time and also imparts training to the farmers in horticulture.
- (vi) The applicant also helps the farmers with getting their land holdings wherein the trees are planted been fenced across to protect from stray cattle or wild animals.
- (vii) Further, the applicant assists the farmers in preparing small water tanks, ponds, bore well and other items required for irrigation to ensure survival and nurturing outer fruit trees planted in these areas.
- (viii) This process is continued for a period of 1 to 3 years to ensure that 90% or more of the fruit trees survive and become a source of sustainable income and livelihood for the farmers.

2.6 Processes involved in executing plantation of mangrove trees, as submitted by the applicant, are as under:

- (i) The applicant identifies the land for plantation of mangrove trees in the same manner as it is done for plantation of fruit trees.
- (ii) Thereafter, trenches are dug fortnight in advance on the identified lands 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 and planted into the trenches dug by the local people appointed by the applicant.
- (iv) The planting activity for the mangroves is done during monsoons and in low tide.
- (v) Post plantations of seeds, local people are engaged to safeguard the fenced area and mangroves are monitored for 3 to 5 years to ensure its survival.

2.7 The applicant submits 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 u/s 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)].

2.8 The applicant submits 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 word, 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.

2.9 The applicant submits 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:

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

2.10 The applicant contends that he is engaged in pure agricultural related activities in respect of plantation and nurturing of fruit trees and mangrove trees. As mentioned in the judgment referred earlier, agriculture is raising a product which is fruits in case of fruit trees and oxygen 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 fruits or oxygen, both are vital for human beings and other living creatures. Thus, these fall under “operations” or “results” of “agriculture”.

2.11 The applicant further contends that cultivation of land is predominantly a major activity mentioned in details under the process explained above for both fruit trees and mangrove trees by way of irrigation, fencing, ploughing, digging trenches, etc and the ultimate item being fruits and oxygen in respective cases is an essential item of consumption.

2.12 In the light of aforesaid submission and interpretation of law, the applicant concludes that both the activities carried out by him is covered under the term “Agricultural Services” as described in Notification No. 11/2017 – Central Tax (Rate) being Serial No 24 with Heading 9986 and read as “Support Service to agriculture, forestry, etc.” having NIL rate of GST.

3. Submission of the Revenue

The submission of the officer concerned from the revenue is reproduced herein under:

3.1 The applicant has sought for an advance ruling on HSN code and rate of tax applicable on the supply of cultivation of fruit trees and nurturing of mangrove seeds and seedlings.

As per the application, the applicant is engaged in the business of cultivation, planting and nurturing of :

- (a) fruit trees like citrus, punica granatum etc. in marginalized area and
- (b) mangrove seeds and seedlings like Viviparous and Pseudoviviparous groups in coastal areas across different states of the country with the sole aim of environmental protection against climate change as contracts are awarded by the internationally acclaimed environmental organizations.

3.2 The applicant claims that the nature of work carried out by him is to be covered under “Agricultural Services” as described in serial No.24 of Notification-11/2017 Central Tax (Rate) and therefore would attract NIL rate of GST. However, as per serial number 4(vii) of Explanation appended to the said notification, “agriculture 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 usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

No such essence of cultivator activities is found in the nature of work of the applicant.

3.3 Moreover, the Telangana Authority of Advance Ruling, in the cases of Ganga Kaveri Seeds Pvt Ltd and Narasimha Reddy & Sons respectively, has applied the principle of *ejusdem generies*, that is general words should take colour of the specific words and accordingly these rules held that raw material used in definition of agricultural produce is confined to food, fibre and fuel, which can be consumed but seeds are not consumed but cultivated. The specific words indicate direct consumption by humans or in industry but not in cultivation i.e. supply of seeds does not fall under the definition of agricultural produce as the seeds do not fulfill the utilities as prescribed above. So, any service providing for seeds i.e storage, packaging, loading & unloading or nurturing etc. are not exempt from payment of GST.

3.4 On going through the submission, it is observed that the applicant is mainly providing service for environmental protection and fight against climate change and global warming i.e. environmental service which fall under SAC Code **999490** which is described as “other-

environmental protection services nowhere as classified” as per serial no.651 in NOTIFICATION No.1135–F.T., the28th.day of June, 2017.

Relevant portion is reproduced as under-

Chapter / Heading / Sub-heading / Tariff item	Description of Goods	CGST Rate (%)	SGST / UTGST Rate (%)	IGST Rate (%)	Compensation Cess
999490	Other environmental protection services nowhere else classified	9	9	18	

3.5 In the statement containing the applicant’s interpretation of law, the applicant has submitted that the instant supply should be classified under chapter sub heading Serial No.24. Heading 9986 read as “Support Services to agriculture, forestry etc. having NIL rate of GST.

Upon consideration of the nature of business of the applicant and sole objective of the doing business or as contract awarded to the applicant by different organization as per statement submitted in para 12(B), 15 & 16, the revenue is of the view that the service provided for “Other environmental protection services nowhere else classified” will fall under chapter sub-heading 999490 and will attract GST @18% [CGST @9% + SGST @9%].

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 representative 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 applicant has entered into contracts with internationally acclaimed environmental organizations for cultivation, planting and nurturing of fruit trees like citrus, lemon, pomegranate etc in marginalised areas and also for plantation of mangrove seeds and seedlings in coastal areas across different states of the country with the sole aim of environmental protection against climate change. According to the applicant, while planting and nurturing of different fruit trees aims to create sustainable livelihoods and provide nutritious food to the families and community residing in the nearby planting activities, the sole object of plantation of mangrove seeds is to enhance biodiversity and re-establish ecosystem function to protect the islands and the populace from erosion.

4.3 The applicant is of the opinion that both the aforesaid activities is covered under the term “Agricultural Services” as described in Notification No. 11/2017 – Central Tax (Rate) under Serial No 24 with Heading 9986 and read as “Support Service to agriculture, forestry, etc.” having NIL rate of GST.

4.4 The relevant extract of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 is given below for ease of reference:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
24	Heading 9986	<p>Support services to agriculture, forestry, fishing, animal husbandry.</p> <p>Explanation. – “Support services to agriculture, forestry, fishing, animal husbandry” mean –</p> <p>(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—</p> <p>(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) agricultural extension services;</p> <p>(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a</p>	Nil	

		<p>commission agent for sale or purchase of agricultural produce.</p> <p>(ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.</p> <p>(iii) Carrying out an intermediate production process as job work in relation 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.</p>		
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4.5 ‘Agricultural produce’, as per serial number 4(vii) of Explanation appended to the said notification 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 usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

4.6 The term *Agriculture* is derived from two Latin words ‘ager’ or ‘agri’ meaning soil, and ‘cultura’ meaning cultivation. Agriculture is a very broad term encompassing all aspects of crop production, livestock farming, fisheries, forestry, etc. We find that the term "Agriculture" is not defined under the GST Act. However, section 2(a) of the National Bank for Agriculture and Rural Development Act, 1981 defines ‘agriculture’ in an inclusive manner as follows:

“agriculture” includes horticulture, animal husbandry, forestry, dairy and poultry farming, pisciculture, and other allied activities, whether or not undertaken jointly with agriculture and the expression “agricultural operations” shall be construed accordingly .

Explanation :- For the purposes of this clause, “pisciculture” includes the development of fisheries, both inland and marine, catching of fish and all activities connected therewith or incidental thereto;

4.7 On perusal of the aforesaid definition of ‘agriculture’, it transpires that horticulture is covered under agriculture. Horticulture is the branch of plant agriculture dealing with garden crops, generally fruits, vegetables, and ornamental plants. The word is derived from the Latin *hortus*, “garden,” and *colere*, “to cultivate.” As a general term, it covers all forms of garden management, but in ordinary use it refers to intensive commercial production. In terms of scale, horticulture falls between domestic gardening and field agriculture, though all forms of cultivation naturally have close links. Horticulture is divided into the cultivation of plants for food (pomology and olericulture) and plants for ornament (floriculture and landscape horticulture). Pomology deals with fruit and nut crops. Olericulture deals with herbaceous plants for the kitchen.

4.8 The applicant submits that he is engaged in supplying of services for cultivation, planting and nurturing of fruit trees that provides nutritious food to the families and community residing in the nearby planting activities. We are of the view that the applicant, by way of cultivation, planting and nurturing of fruit trees, thus provides support services to agriculture which is directly related to production of agricultural produce.

4.9 We now come to the other activities carried out by the applicant for plantation of mangrove seeds and seedlings in coastal areas. The issue in our hand is to decide whether the aforesaid activities may be treated as support services to agriculture, forestry, fishing, animal husbandry so that such supply of services get covered under serial number 24 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as claimed by the applicant.

4.10 As per Wikipedia, 'Forestry' is the science and craft of creating, managing, planting, using, conserving and repairing forests, woodlands, and associated resources for human and environmental benefits. Forestry is practiced in plantations and natural stands. The science of forestry has elements that belong to the biological, physical, social, political and managerial sciences. The applicant submits that the slow degradation of the coastal ecosystem, now being hastened by global warming that is creating constant cyclones and storms, has resulted in huge losses of mangrove cover. This has in turn led to losses in productive fisheries and crustacean species which thrive in the mangroves. Mangrove loss has led to the reduction of the much needed bio-shield functions which these mangroves serve by dissipating wind and wave energy. According to the applicant, while this reforestation activity will offer an immediate economic stimulus, it will also help protecting important livelihood functions of local communities.

4.11 It is thus evident that the applicant doesn't provide such services for food, fibre, fuel, raw material or other similar products or agricultural 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. We are therefore of the opinion that such supply of services may be treated as 'environmental protection services' under chapter Heading 9994 and shall not get covered under chapter Heading 9986 being 'Support services to agriculture, forestry, fishing, animal husbandry'. We agree with the view of the officer concerned from the revenue on this point.

4.12 Serial number 32 of 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'.

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

RULING

Question: What would be the SAC Code & GST Rate for the outward supply made by the applicant, in case of fruit trees being cultivated and nurtured at marginalised communities?

Answer: Supply of services for cultivation, planting and nurturing of fruit trees shall be covered under serial number 24 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 having SAC 9986 and therefore shall attract Nil rate of tax.

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

Answer: 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 therefore shall attract tax @ 18% (CGST @ 9% + WBGST @ 9% or IGST @ 18%).

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

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 18.08.2022

To

RAJ MOHAN SESHAMANI
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Copy to:

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- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Sr. Joint/Joint Commissioner, Esplanade Charge, 14, Beliaghata Road, Kolkata-700015
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