



**TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Goods and Services Tax)
1st Floor, Commercial Taxes Complex, M.J. Road, Nampally,
Hyderabad 500 001**

AAAR.COM/03/2022

Dated:19.10.2022

Order-in-Appeal No. AAAR/09/2022

*(Passed under Section 101 (1) of the Telangana Goods and Services Tax Act,
2017)*

Preamble

1. In terms of Section 102 of the Telangana Goods and Services Tax Act, 2017 (TGST Act, 2017 or the Act), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the applicant or the appellant has been given an opportunity of being heard.
2. Under Section 103 (1) of the Act, this advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a) On the applicant who had sought it in respect of any matter referred to in sub-Section (2) of Section 97 for advance ruling;
 - (b) On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Under Section 104 (1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

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Subject: GST – Appeal filed by M/s Ganga Kaveri Seeds Pvt Ltd., Flat No. 1406 and 1407, 14th floor, Babukhan Estates, Basheerbagh, Hyderabad – Telangana – 500 001, under

Section 100 (1) of TGST Act, 2017 against Advance Ruling TSAAR Order No.05/2022, dated 11.2.2022 passed by the Telangana State Authority for Advance Ruling - Order-in-Appeal passed – Regarding.

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1. The subject appeal has been filed under Section 100 (1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as “TGST Act, 2017” or “the Act”, in short) M/s Ganga Kaveri Seeds Pvt Ltd., Flat No. 1406 and 1407, 14th floor, Babukhan Estates, Basheerbagh, Hyderabad – Telangana – 500 001(hereinafter referred in short as “the appellant”).

2. The appellant is registered under GST having GSTIN number 36 AAACG3220D1ZB. M/s. Ganga Kaveri Seeds P Ltd are primarily engaged in production and sale of agricultural seeds viz maize, paddy, sunflower, bajra, wheat, cotton, jute, sorghum, mustard etc. In the process of production, the applicant outsources certain services such as cleaning, drying, grading and packing to the job workers and stores the seed in various facilities after processing them. In the process they also transport the seeds by engaging a GTA. The appeal is filed against the Order No.05/2022 dated 11.2.2022 (“impugned order”) passed by the Telangana State Authority for Advance Ruling (Goods and Services Tax) (“Advance Ruling Authority” / “AAR” / “lower Authority”).

Brief Facts:

3. The applicant has sought clarification before the lower authority in respect of following activities vis a vis their taxability under Goods and Services Tax Act:

4. The lower authority, after following the due process of law, has interalia, held that as under:

- All grains do not qualify to be seed. Under ST law, seed is treated separately from grain. Therefore, seed is included at Sl.No. 79 of Nof No. 02/2017, dt. 28.6.2017 wherein exemption is accorded to all goods of seed quality. Therefore, seed and grain are not one and the same. The law applicable to grain and seed will be different and therefore concessions applicable to grain produced by a cultivator will not be applicable to seed.
- The applicant is supplying goods which are produce of cultivation of plants. However, they are of seed quality and not grain, therefore further they are not meant for food, fibre, fuel or raw material for further processing.

- Supply by the applicant does not fall under the definition of agricultural produce as the seed does not fulfil the utilities prescribed therein.
- The facts presented by the applicant clearly indicate that the processing done by them to turn grain into seed quality goods is different from the processing done by a cultivator or producer of grain for primary market. Therefore, the seed quality goods produced by them cannot be treated as agricultural produce.
- Sl.Nos. 54E and 54(c)(h) of Notfn No. 12/2017-CT(R), dt. 28.6.2017 relate to exemption of services engaged by a cultivator or an agriculturist and not to services engaged by a seed company.
- Sl.Nos. 24(i)(e) and 24(i)(c) and (h) of Notfn No. 11/2017-CT(R), dt. 28.6.2017 pertains to support services to agriculture, forestry, fishing, animal husbandry engaged by a cultivator and not to services engaged by a seed company.
- Transportation of seeds from farm to storage facility and then transportation of packed seed from storage facility to distributors is not exempt under sl.no. 21(a) of Notfn No. 12/2017 as this entry provides exemption on transportation services to agricultural produce.
- If processing is undertaken by an applicant himself for in house seed production, there is no supply and hence exempt.

5. Based on the above observations, the lower authority has ruled as under:

| Questions | Ruling |
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| 1) Whether the seeds produced/ procured and processed, packed and sold by the Applicant as seeds for sowing are agricultural produce in terms of the definition under the Notification No. 12/2017- Central Tax (Rate) dated 28-06-2017 and 11/2017- Central Tax (Rate) dated 28-06-2017. | Seed is not an agricultural produce in terms of the definition in the said notifications. |
| 2) Whether the storage of the seeds in the leased storage facility/godowns, loading, unloading and packing of the seeds (heading No.9986) by the job worker on job work basis are exempt from payment of GST in terms of Sl.No.54(e) of the Notification No. 12/2017- Central Tax (Rate)dated 28-06 2017 and Sl.No.24(1)(e) of the Notification No. 11/2017- Central Tax (Ret)dated 28-06-2017 or any other entry/entries of the above notifications. | Not exempt as discussed above. |
| 3) Whether the processes, namely, cleaning, drying, grading and treatment with chemicals (heading No.9986) carried out by the job worker on job work basis are exempt from payment of GST in terms of Sl.No.54(c), (h) of the Notification No. 12/2017- Central Tax (Rate)dated 28-06-2017 read with the definition of "agricultural produce" there under and | Not exempt as discussed above. |

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| Sl.No.24(1)(c), (h) and (ill) of the Notification No. 11/2017- Central Tax (Rate)dated 28-06-2017 read with the definition of "agricultural produce" thereunderor any other entry/entries of the above notifications. | |
| 4) Whether the transport of seeds from the farm lands to storage facility/godown of the applicant, transport of seeds from one storage facility/godown of the applicant to the other storage facility/godown of the applicant, transport of packed seeds from storage facility/godown of the applicant to the distributor and transport of sales-returns, if any, (heading No.9965 or 9967) is exempt from payment of GST in terms of Sl.No. 21(a) of the Notification No. 12/2017- Central Tax (Rate)dated 20-06-2017 or any other entry/entries of the above notifications. | Not exempt as discussed above. |
| 5) In respect of the processes undertaken by the applicant, namely, cleaning, drying, grading, treatment with chemicals and packing (heading No.9986), for himself, whether any 'supply is involved in terms of section 7(a) of the CGST Act, 2017,so as to be taxable | Supply to self is exempt. |

6. Aggrieved by the above rulings, the appellant is before this Authority.

The grounds of appeal on which the appellant relies, interalia, are as under:

- All the produce in result of cultivation is essentially an agriculture produce and the seed is nothing but the best quality of the agricultural produce graded from out of the agriculture produce basing on its germination;
- They relied on the decision of the Hon'ble Apex Court in the case of The State Of Rajasthan Etc vs Rajasthan Agriculture Input Dealers Association etc., dated 9-7-1996 wherein it was held that "It is undoubtedly true that food grains per se could be used as seeds for being sown and achieving germination, but in that form they retain the dual utility of being as well as seeds. By process of coating and applying insecticides, other chemicals and poisonous substances to food grain meant to be utilized as seed, one of its basic characters, i.e., its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such processed seeds become a commodity distinct form food grains as commonly understood." This observation of the Hon'ble Apex Court makes it clear that the chemically treated seed may not be useful for consumption by human beings or animals as a food grain and may be distinct from the food grain due to its restricted and specified utility, but it does not lose the character of an agriculture produce.
- Till the chemical processing is taken up the seed retains the character of the agriculture produce on par with any agriculture produce and the appellant is

entitled for exemption in respect of services availed by the appellant as the recipient.

- The Advance Ruling Authority grossly erred by stating that appellant being the seed company cannot be equated to cultivator or producer of agriculture produce ignoring the fact that the language of the exemption notifications only refers 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 agricultural operations and the exemption is not restricted to only to individual farmers.”
- The process under taken by the appellant in treating the resultant produce out of cultivation under taken by it to make the seed fit for cultivation on account of its germination ability and to increase the shelf life of the seed does not make the seed as distinct from the agriculture produce though it may be distinct from a food grain. Since the exemption is in relation to the agriculture produce and not the food grain, the restriction of the exemption only to the agriculture produce grown by the individual farmers amounts to discrimination and not intended by the statute.
- The exemption provided to the agriculture produce is with an intent and with a noble cause that food grains should be available to the general public at a lessor cost since it is the basic necessity to life. Similarly, when the seed for sowing purpose is exempted the reason behind the exemption is that the seed should be made available to the growers/ farmers/cultivators at a lessor or subsidised cost.
- The storage of the seeds in the leased storage facility/godowns, loading, unloading and packing of the seeds (heading No.9986) by the job worker on job work basis are exempt from payment of GST in terms of Sl.No.54(e) of the Notification No. 12/2017- Central Tax (Rate)dated 28-06 2017 and Sl.No.24(1)(e) of the Notification No. 11/2017- Central Tax (Ret)dated 28-06-2017 or any other entry/entries of the above notifications. And also the processes, namely, cleaning, drying, grading and treatment with chemicals (heading No.9986) carried out by the job worker on job work basis are exempt from payment of GST in terms of Sl.No.54(c), (h) of the Notification No. 12/2017- Central Tax (Rate)dated 28-06-2017 read with the definition of "agricultural produce" there under and Sl.No.24(1)(c), (h) and (iii) of the Notification No. 11/2017- Central Tax (Rate)dated 28-06-2017 read with the definition of "agricultural produce" thereunder or any other entry/entries of the above notifications. Apart from the transport of seeds from the farm lands to storage facility/godown of the Appellant, transport of seeds from one storage facility/godown of the Appellant to the other storage facility/godown of the Appellant, transport of packed seeds

from storage facility/godown of the Appellant to the distributor and transport of sales-returns, if any, (heading No.9965 or 9967) is exempt from payment of GST in terms of Sl.No. 21(a) of the Notification No. 12/2017- Central Tax (Rate)dated 20-06-2017 or any other entry/entries of the above notifications. Therefore, processes undertaken by the applicant, namely, cleaning, drying, grading, treatment with chemicals and packing (heading No.9986), for himself also are generally exempted.

Whether the appeal filed in time

7. As per the application, the date of the impugned order is 18.2.2022 and the appeal is filed on 4.3.2022. Hence, the appeal is found to be filed in time.

Personal Hearing

8. A personal hearing was held on 19.9.2022. Shri V.Bhaskar Reddy, Advocate and Shri D. BhanuPratap, Advocate & Authorised Representative appeared for the personal hearing. The Ld. Advocates reiterated the written submissions made and requested to consider the same.

DISCUSSIONS & FINDINGS

9. This authority has carefully gone through the case records and submissions made by the appellant.

10. As brought out above, the appellants are in the business of production and sale of agricultural seeds. In the process of production, the applicant outsources certain services such as cleaning, drying, grading and packing to the job workers and stores the seeds in various facilities after processing them. In the process they also transport the seeds by engaging a GTA. The applicant filed an application before the lower authority for a ruling on their activities with reference to exemption / taxability under Goods and Services Tax Act. Since, the ruling of the lower authority was pronounced against the interests of the applicant, they filed the present appeal before this authority.

11. This authority observes that the whole gamut of dispute is around exemption contained in the two Notifications i.e. No. 11/2017-CT(R), dt. 28.6.2017 and No. 12/2017-CT(R), dt. 28.6.2017. Both the notifications have defined "agriculture produce" as 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.

12. The appellant contends that their activities falls under the definition of 'agriculture produce', and hence, they are eligible for exemption under the

above two notifications. As against this contention, the lower authority held that the activities are outside the purview of definition of 'agriculture produce' and hence, no exemption is available to the applicant.

13. Hence, it becomes imperative to analyse the definition of 'agriculture produce'. The primary factor which needs to be understood is that to get into the bracket of agriculture produce for claiming exemption, the main condition is that either no processing is done on the produce 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.

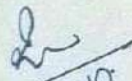
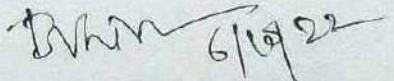
14. In the present case, as per the written submissions, the applicant takes land on lease and produces agriculture seeds, food grains / vegetables / green vegetables and fruits out of cultivation and out of the produce through harvesting, it segregates part of the agriculture produce based on its quality and germination strength and undertakes preservation process such as cleaning, drying, grading and chemical processing to make the seed fit for sowing purpose and to have better shelf life. The applicant has pleaded that till the chemical processing is taken up the seed retains the character of the agriculture produce on par with any agriculture produce and they are entitled for exemption in respect of services availed by them. If the activities of the applicant are only cleaning, drying, grading without involving any chemical processing on the subject produce, then the services would be on agriculture produce and exemption would be available. However, since in this case it is not proved beyond doubt by the applicant that their activities get exempted under the said two notifications, we are not inclined to accept the plea of the applicant.

15. Further, the case law relied by them is not applicable on hand in as much as the issue dealt therein was relating to supply of milk and the issue in the present case is services with relation to seed.

16. In view of the above, we pass the following order.

ORDER

The order passed by the lower authority is upheld. The subject appeal is disposed accordingly.

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|  (NEETU PRASAD) Commissioner State Tax, Telangana State |  (B.V. SIVA NAGA KUMARI) Chief Commissioner Central Tax Hyderabad Zone |
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To
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Babukhan Estates, Basheerbagh,
Hyderabad – Telangana – 500 001

Copy submitted to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.
2. Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for information and for forwarding copies of the order to the concerned / jurisdictional officer of Central tax.
3. Commissioner of State Tax, Telangana State – for information and for forwarding copies of the order to the concerned / jurisdictional officer of State tax.