

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

Before:
Mr Navneet Goel, Member
Mr Khalid Aizaz Anwar, Member

In the matter of

Appeal Case No. 05/WBAAAR/APPEAL/2023 dated 03.02.2023

- 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. Sona Ship Management Pvt. Ltd, 19/1, Ground Floor, Camac Street, Park Street, Kolkata-700017 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. ZD190523033780F (07/WBAAR/2023-24) dated 30.05.2023.

Present for the Appellant: Ms. Neha Agarwal, Advocate

Present for the Respondent: Mr Santanu Sengupta,
Assistant Commissioner, CGST & CX.

Matter heard on: 27.09.2023

Date of Order: 24.01.2024

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'SGST Act, 2017') are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the SGST Act, 2017.

1. This Appeal has been filed by M/s. Sona Ship Management Pvt. Ltd (hereinafter referred to as "the Appellant") on 28.06.2023 against Advance Ruling Order No. 07/WBAAR/2023-24 dated 30.05.2023, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the 'WBAAR').
2. The appellant is engaged in the business of stevedoring and cargo handling in the Kolkata Dock Complex and are specialized in handling cargo such as food grain, fertilizers, coal, iron ore, break bulk/project cargo, etc.

3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act") on the following questions:

(i) Whether the service of loading and unloading of imported unprocessed 'toor' and 'whole pulses' and 'black matpe' is exempt under Sl No. 54 (e) of the Notification No. 12/2017-Central Tax (Rate), Sl. No. 24 of notification No. 11/2017-Central Tax (Rate) both dated 28.06.2017? Whether charging of tax by the agents from your applicant is in violation to the Notification No. 12/2017 dated 28.06.2017 serial No.3?

(ii) Whether the services in relation to loading and unloading of imported unprocessed toor and whole pulses and black matpe are agricultural produce or not and covered under the circular No. 16/16/2017 – GST dated 15.11.2017 and the Circular is binding or not?

4. While passing the advance ruling, reliance was placed by the Authority on the fact that in the definition of agricultural produce there is no clarity on the term primary market. The ruling, relying on agricultural marketing – concept and definition (Jawaharlal Nehru Krishi Vishwa Vidyalaya) held that primary markets in relation to agricultural produce are located in towns near the centres of production of agricultural commodities. Transactions, according to the ruling, in these markets usually take place between the farmers and primary traders. Reliance was also placed on the judgement in the case of T.P. Roychowdhury and Co. (P) Ltd., reported in (2020) 113 taxman.com 100/2020 (32) GSTL 661 (AAR), wherein the West Bengal Appellate Authority had held that primary market for such imported products is located in foreign shores and therefore, do not fit the definition of primary market which, in common parlance, refers to farmers market like "Mandi" or "Arhat" being a place where farmers directly sell it to the buyers. The ruling concluded that services by way of loading and unloading of imported unprocessed products like "Toor, Whole Pulses and Black Matpe" as involved in the instant case does not qualify for exemption under Notfn. No. 12/2017-Central Tax (Rate) date 28.06.2017.

5. The applicant had also sought for an advance ruling on applicability of clarification given in circular No. 16/16/2017-GST dated 15.11.2017 in his case. Circular No. 16/16/2017-GST dated 15.11.2017 issued by CBIC clarifies that pulses (de-husked or split) are not considered as agricultural produce since the process of de-husking or splitting of pulses is usually not carried out by farmers or at farm level but by the pulse millers. However, it was mentioned in the Ruling passed by the WBAAR that sub-section (2) of section 97 of the GST Act speaks that the question on which an advance ruling might be sought shall be in respect of matters covered under clause (a) to (g) of the said sub-section. It was held by WBAAR that this question was related to applicability of clarification given in a circular and thus was not covered under the aforesaid clauses. Accordingly, the WBAAR did not proceed to pronounce any ruling on this issue.

Submissions of the appellant and Grounds of Appeal:

6. The Appellant has filed the instant appeal against the above-mentioned Advance Ruling dated 28.06.2023 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.
7. The appellant has stated that the impugned order dated 30.05.2023 has been passed by the said authority by observing that taxes should be imposed on agricultural produces namely unprocessed “toor” and ‘whole pulses’ and ‘black matpe’ and not allowing the services by way of loading and unloading of imported unprocessed “toor” and ‘whole pulses’ and ‘black matpe’ to qualify under Sl No. 54(e) of the Exemption Notification GST notification No. 11/2017-Central Tax (Rate), Sl. No. 24 and notification No. 12/2017-Central Tax (Rate), Sl. No. 54, both dated 28.06.2017 are in contravention of the provisions of the law and settled principals regarding taxing on agricultural produces. It was prayed by the appellant that the order dated 30.05.2023 is required to be annulled as it is devoid of the true spirit of the said notification and in violation of the principles of natural justice.
8. The appellant has further stated that the said Authority had acted illegally and without and / or in excess of jurisdiction to pronounce a ruling which, as admitted by the representative of the Revenue, could not be expressed without physical verification of samples of imported items. It has been submitted that it was apparent from the face of the order that the officer concerned for the revenue has expressed his views without making any physical verification of samples of imported items and that the exact taxability or exemption of the related services like loading and unloading was not possible to ascertain and as such the ruling dated 30.05.2023, which has been passed relying upon the submissions of revenue is erroneous and liable to be quashed.
9. The appellant has further added that the said authority was unjust, unfair, unreasonable, unlawful and had utterly violated the principles of natural justice to bifurcate agricultural produce on basis of land of produce. Also, the said authority erred in law as well as in fact while interpreting the term “Agricultural Produce” which is defined under explanation 2(d) of Notification No. 12/2017 – CT (Rate) as under: 2(d) “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, fiber, 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 appellant further claimed that unprocessed “toor” and ‘whole pulses’ and ‘black matpe’ are falling under the category of agricultural produce and that the term ‘primary market’ has not been defined in the GST Act. The definition

from “Agricultural Marketing: Concept and definition” from the website of Jawarharlal Nehru Krishi Vishwa Bidhalaya, considered by the authority, which says that “*These markets are located in towns near the centers of production of agricultural commodities. In these markets, a major part of the produce brought for sale by the producer-farmers themselves. Transactions in these markets usually take place between farmers and primary traders. In these markets, a major part of the produce is brought for sale by the producer-farmers themselves*” did not discriminate the primary market by the land of production, whether Indian or Foreign market.

10. The Appellant has further stated that, it was apparent from the Pt. no. 4.6 of the said ruling that the said authority was pre-determined and has miserably failed in considering that the spirit of the legislature was intended to boost the agricultural sector of the home country and not that of a foreign land. The Appellant stated that the spirit of legislature is always to boost agricultural sector and reduce crisis of agricultural goods. Moreover, the Appellant expressed its view that agricultural produce is very much dependent on soil and weather conditions and climate change is the key factor of plant biotic and abiotic stresses, which has an adverse influence on global agriculture production. The appellant emphasized that legislature cannot intend to impose restrictions on the agricultural production requirements.
11. According to the Appellant, the said authority in its order had not discussed nature and type of the documents produced by the appellant and has ignored the clarifications and submissions made and could have asked for the invoices/bills in respect of the services relating to unprocessed “toor” and ‘whole pulses’ and ‘black matpe’ from the farmers of foreign land to Indian market for comparative and judicious analysis.
12. The Appellant craved leave to rely on and refer to further grounds along with documentary evidence at the time of hearing of the instant Appeal.

Personal Hearing:

13. During the course of hearing held on 27.09.2023, the Appellant’s authorised representative reiterated the points as stated in the Grounds of Appeal. The matter has been examined and written and oral submissions made before us are considered.
14. The Appellant subsequently had submitted Samples of Black Matpe, Red Lentil and Analysis Report of Black Matpe, Toor Whole and Red Lentil vide their letter dated 03.10.2023.
15. This Appellate Authority asked the appellant vide its mail dated 21.11.2023,
 - (i) *Whether the samples were drawn from the import consignments in question;*

- (ii) *Whether the samples were drawn in requisite number;*
- (iii) *Whether a set of the same said samples were provided to WBAAAR authorities; and,*
- (iv) *Whether the samples were drawn in the presence of Independent witnesses/Government.*

It was also enquired from the NMCI Inspections & Survey Company Pvt. Ltd, the marine surveyor of the appellant, by the said mail, that in what exact state or form the sample of pulses were sent to them and whether those were whole pulse grains as brought by a farmer to local “mandi” or “arhat”.

16. The appellant vide their letter and affidavit, both dated 11.12.2023 had inter alia submitted that the samples of Black Matpe, Toor Whole and Red Lentils were drawn from the import consignments in requisite numbers by NMCI Inspections & Survey Company Pvt Ltd and such samples were drawn within Port/Dock for survey and report.

Discussion and Findings:

17.1 In brief, the appellant has submitted that:

- (i) in term of Sl No. 54(e) to the table annexed to Notification No. 12/2017 - Central Tax (Rate) dt. 28.06.2017 and Sl No. 24 to the Table annexed to Notification No. 11/20217 - Central Tax (Rate), loading, unloading, packing, storage or warehousing of agricultural produce are exempt from the levy to tax;
- (ii) the Advance Authority’s ruling to bifurcate agricultural produce on the basis of ‘land of produce’ and their restrictive interpretation of ‘primary market’ was discriminatory in as much as the definition of ‘primary market’ does not distinguish the market as from a land whether Indian or foreign;
- (iii) The Advance Ruling Authority did not discuss the nature and type of the documents produced by the appellant and did not seek any additional documents to compare and conclude that the farmers of foreign land were not the same as those in India;
- (iv) the Analysis Report of Black Matpe, Toor, whole and Red Lentil issued by NMCI Inspections & Survey Company Pvt Ltd, contained observation to the effect that these pluses are unprocessed and unhusked;
- (v) the samples of Red Lentils, Black Matpe and Toor Whole produced by them before the Appellate Authority were drawn by the NMCI Inspections & Survey Company Pvt Ltd, as their marine surveyor, from the shipments of Red Lentils, Black Matpe and Toor Whole.

17.2 The revenue, on the other hand, stated that:

- (i) without physical verification of samples of imported items, the exact taxability or exemption of the related services like loading and unloading is difficult to ascertain;
- (ii) as evident from the documents such as photocopies of 'bill of lading' and 'bill of entry' for home consumption the goods have been imported from outside the country, hence, the impugned goods were cultivated in a foreign country and subsequently imported into India;
- (iii) the expressions 'makes it marketable for primary market' in the definition of 'agricultural produce' bears a significant importance, the term 'primary market' has not been defined in the GST Act, however, on the basis of location of place of operation, such markets in relation to agricultural produce are located in town near the centres of production of agricultural commodities. In these markets, a major part of the produce is brought for sale by the producer farmer themselves. Transactions in these markets take place between the farmers and primary traders. The contents of 'Agricultural Marketing: Concept and definitions' from the website of Jawaharlal Nehru Krishi Vishwa Vidyalaya was relied upon by the revenue.

17.3 We have considered the rival submissions carefully. We find that the issue to deliberate upon is whether the items imported and the services rendered by the applicant is in relation to loading, unloading, packing, storage and warehousing of 'agricultural produce'.

17.1 In this connection 'agricultural produce' as defined in Sl. No. 2(d) of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 and as explained in Sl. No. 4(vii) of Notification No. 11/2017 – Central Tax (Rate) are reproduced below:

*“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.**”*

17.2 Also, we find that the Circular No. 16/16/2017-GST dated 15.11.2017, in point 6, further clarifies that

“Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of dehusking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.”

17.3 It is evident from a conjoint reading of the definition and explanation provided in the notifications and circular referred above, that in order to

determine whether a product qualifies as "agricultural produce," a correlation must be established between the stipulations outlined in the aforementioned circular and notifications. Rather than examining each of these stipulations separately, a holistic approach is required for such ascertainment. It can therefore be concluded that 'agricultural produce' denotes any produce **out of cultivation** (emphasis added) of plants for food, fibre, raw material on which either no further processing is done or such processing is done as is usually done by a **cultivator or producer** (emphasis added) which does not alter its essential characteristics but **makes it marketable for primary market**. Additionally, Circular No. 16/16/2017-GST dated 15.11.2017 clarifies that dehusked or spilt pulses are not "agricultural produce."

17.4 The revenue, though had submitted that without physical verification of samples of imported items, the exact taxability or exemption of the related services like loading and unloading is difficult to ascertain but also, has emphasised in their submission that in the instant case the impugned goods were cultivated in a foreign country and subsequently were imported into India. We have also taken into account the Revenue's submissions made before the WBAAR and recorded in the Order dated 30.05.2023, which inter alia states that the expressions 'makes it marketable for primary market' in the definition of 'agricultural produce' bears a significant importance.

17.5 We further find that the term 'Primary Market' has not been defined in the GST Act. The WBAAR has relied on the definition provided in the website of Jawaharlal Nehru Krishi Vishwa Vidyalaya, which inter alia says that on the basis of location or place of operation, primary markets in relation to agricultural produce are located in towns near the centres of production of agricultural commodities. In these markets, a major part of the produce is brought for sale by the producer-farmers themselves. Transactions in these markets usually take place between the farmers and primary traders.

17.6 As regards the inspection report submitted by the appellant, there is nothing in record to show that proper procedure was followed for collection of samples from the imported consignment of the pulses and sealing thereof. Further, the inspecting Agency's accreditation with the concerned Government authority for the said purpose is also not provided or clarified. Therefore, these inspection reports cannot be taken into cognizance for procedural infirmity and for not being issued by an approved Government agency.

17.7 From the appellant's submissions made in their letter and affidavit dated 11.12.2023, we conclude that the appellant has failed to provide any further evidence in support of the fact that the samples they have submitted before us were representative samples taken from the import consignments and were drawn in adherence to lawful procedures. Hence,

the samples submitted by the appellant are also disregarded while passing this Order.

17.8 It is observed from the Notifications and Circular mentioned supra, that 'Agricultural Produce,' as defined, is required to contain the following components:

- (i) That it must result from the cultivation of plants and the raising of all animal life forms.
- (ii) That it must not undergo any additional processing, other than those made by the cultivator or producer and its fundamental attributes must not be modified or altered.
- (iii) That such processing shall contribute exclusively to the product's marketability in the primary market.

17.9 For instance, toor (pigeon pea) after harvesting is subject to threshing by beating the goods. The clean seeds are then sun dried for 3-4 days for safe storage. Similarly for other pulses, harvesting and drying etc are done by the cultivator or producer themselves in a manner that does not alter its essential characteristics but only enhances its marketability in the primary market. This example reveals that it is the cultivator/producer who carries out certain post-harvest activity to make the goods marketable for primary market and thereby resulting in those goods being defined as 'agricultural produce'.

17.10 The activities of loading/unloading/storage by the cultivator/producer of such 'agricultural produce' have been granted exemption from the levy of tax in the cited notifications.

17.11 Also, once a product attains initial marketability for the primary market, any subsequent value addition/operations and/or sales on the secondary market disqualify it from meeting the criteria for "Agricultural Produce" in terms of the notifications and circular, quoted supra. Prior to their exportation to India, pulses originating from overseas must have undergone an extensive series of processing procedures, such as winnowing, cleansing, packaging, labelling, and various exchanges of ownership and value enhancements. Further, after importation, the pulses also undergo process of Fumigation, Plant Quarantine and FASSAI compliance procedure. These processes, therefore, render the imported pulses disqualified to be treated as "Agricultural Produce", even for undehusked and whole pulses.

17.12 Besides, the packaged foodgrains, that are completely processed and sanitised upon importation, will in all probability never reach the primary market in India. Instead, they will likely be acquired by wholesalers, who will repackage and distribute the pulses to retailers.

17.13 Furthermore, it is observed that there is an absence of substantiating evidence suggesting that the products had not been altered or had not undergone any changes in the overseas, by any entity other than the producers or cultivators, prior to their importation into India.

17.14 It, therefore, is evident that when products are imported, their primary market is situated on foreign shores. However, after enduring multiple value additions and sales, the goods when imported into India, forfeits the quality to be considered as 'marketable for primary market'. Consequently, these goods become no longer eligible to be treated as "Agricultural Produce" in terms of the afore-mentioned notifications and circular.

Ruling:

18.1 The service of loading and unloading of imported unprocessed TOOR and WHOLE PULSES and BLACK MATPE is not exempt under Sl. No. 54(e) of the Exemption Notification GST notification No. 11/2017-Central Tax (Rate), Sl. No. 24 and notification No. 12/2017. Central Tax (Rate), Sl. No. 54, both dated 28.06.2017.

18.2 The services in relation to loading and unloading of imported unprocessed TOOR and WHOLE PULSES and BLACK MATPE are not agricultural produce and not covered under the circular No. 16/16/2017 – GST dated 15.11.2017.

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

Sd/-
(Khalid Aizaz Anwar)
Member, West Bengal Appellate
Authority for Advance Ruling

Sd/-
(Navneet Goel)
Member, West Bengal Appellate
Authority for Advance Ruling