

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-12 //2019-20

DATE:05-02-2020

1	Name and address of the appellant	Commissioner of Central Tax, Bangalore North Commissionerate, 59, HMT Bhavan, Bellary Road, Bangalore
2	Name and address of the person who had sought advance ruling.	M/s International Flower Auction Bangalore Ltd, No 24, Bellary Road, Hebbal, Bengaluru 560024
3	GSTIN or User ID of the person who had sought advance ruling.	GSTIN: 29AABC12041M2ZI
4	Advance Ruling Order against which appeal is filed	KAR/ADRG 87/2019 Dated: 26th Sept 2019
5	Date of filing appeal	07-11-2019
6	Represented by	Smt. Sashi Krishna, Superintendent of CGST, Range AND-8, Bangalore North Commissionerate, Authorized representative
7	Jurisdictional Authority- State	LGSTO-150A Bengaluru
8	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Not applicable

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and 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 would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by the Commissioner of Central Tax, Bangalore North Commissionerate, (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 87/2019 Dated: 26th Sept 2019.

Brief Facts of the case:

3. M/s International Flower Auction Bangalore Limited, having GSTIN 29AABCI2041M2ZI, (hereinafter referred to as 'Respondent Company') is a joint venture company of private and public shareholders established with a prime objective to auction high quality cut flowers of various flower crops on a daily basis. The respondent company is engaged in facilitating growers to auction their flowers at its platform and buyers would come in person and check quality and bid. The growers and the buyers are registered as members with the respondent company. The growers bring flowers to the premises of the respondent company and the same would be placed in lots and samples would be identified. The buyers would verify the lot and they would make their bids. The lowest rate at which the goods could be sold i.e. minimum price is fixed by the grower / supplier and the maximum price is fixed by the respondent company considering the demand for flowers.

4. The respondent company has deployed "Dutch Auction" System in which the Digital Auction Clock runs in the decreasing order and the price per stem reduces from maximum to minimum. The unsold flowers would be reauctioned on the next day after completing the auction of that day's flowers. Even after this, if they are unsold, they would be sent back to the growers with the delivery challan. The respondent company charges 3.5% from growers and 1.5% from buyers as commission for the services rendered, i.e. auctioning of flowers, which is the mainstream revenue. Other incomes earned or accrued include interest, packing charges, registration charges, etc.

5. The respondent company filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 in respect of the following question:

Whether the "commission earned from auctioning of flowers is covered under entry no. 54(g) of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 and entry no. 54(g) of Notification (12/2017) FD 48 CSL 2017 dated 29.06.2017?

6. The respondent company submitted before the Authority for Advance Ruling that the activities conducted by them falls within the definition of 'agent' as defined in clause (5) of Section 2 of the CGST Act, 2017; that the cut flowers are in the nature of the 'agriculture produce' as defined in para 2(d) of the explanation to Notification No 12/2017 CT (R) dt 28.06.2017 as it is a produce out of cultivation of plants on which no processing is done; that the services by a commission agent for sale or purchase of agricultural produce are exempt from levy of GST as per the entry No 54 (g) of the said Notification.

7. The Authority for Advance ruling examined the case of the respondent company and vide ruling No. KAR/ADRG 87/2019 Dated: 26th Sept 2019, arrived at the conclusion that the relationship between the respondent company and the growers is one of an agent and a principal and since the respondent company, as a commission agent is providing services for sale or purchase of agricultural produce viz. 'cut flowers', the same is covered under clause (g) of entry 54 of Notification No 12/2017 CT (R) dt 28.06.2017 and hence is exempted from GST.

8. The jurisdictional CGST officer reviewed the impugned order passed by the Authority and being aggrieved by the said order, filed an appeal before us on the following grounds:

8.1. The respondent is a Public Ltd Company providing a platform for buying and selling of flowers for both seller and buyers through Auctions. The prime objective of the said company is to "auction" high quality cut-flowers of various flower crops, every day in both export and domestic flower market. The respondent company also showcases the flower potential through auctioning of all kinds of flowers and floral accessories and provides link to reputed Auction Centres of the World through e-auctioning of flowers. Basically the respondent provides a forum wherein the flowers and other floriculture produces are bought and sold by the member of the IFAB through the auction process and applicant collects a commission at 3.5% from growers/ sellers and 1.5% from buyers on the transaction value for the transaction carried on by way of auction at IFAB. Apart from auctioning of flowers, the activity of the respondent company also includes receiving of flowers, grading and quality check, cold storage facility, Auction management, flower packing and processing, dispatch of flowers. Therefore, the respondent provides a host of services to the sellers and buyers of flowers viz., storage, packing, transport which are ancillary and incidental to the main service i.e, Auction service. They also submitted that the service rendered by the respondent does not

fit into any of the categories specified in Sl. No. 54 of the Notification No 12/2017 CT(R) dt 28.06.2017, because the respondent company does not cultivate plants; does not supply farm labour; does not carry out the 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; does not rent or lease agro machinery or land; does not offer services of loading, unloading, storage, etc.; does not offer agricultural extension services; and is not an Agricultural Produce Marketing Committee or Board.

8.2. The definition of “**agriculture produce**” as per para 2 (d) of the Notification 12/2017 CT-(rate) dated 28.06.2017, clearly states that “*agriculture produce*” means any produce out of cultivation of plants and rearing of all life forms of animals, except rearing of horses, for food, fiber, fuel, raw materials 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 marketable for the **primary market**.” The Appellant contended that the respondent company **is not a primary trader** or a wholesaler.

8.3. The Appellant submitted that primary markets are those markets which are located near centres of production of agricultural commodities and a major portion of the produce is brought for sale by the producer-farmers themselves. Transactions in these markets usually take place between farmers and primary traders. Secondary markets are those markets where specialized agencies deal with sale and purchase of bulk arrivals from neighbouring places / districts and states. These markets also constitute commission agents, brokers, etc. performing different marketing functions. The respondent company is one of the auction places in India where variety of flowers are being auctioned and buyers ranging from various exporters, wholesalers and retailers participate daily in the flower auctions to purchase flowers which are then repackaged and resold to end consumers or retail stores. The flowers are procured from the growers located in and around Bangalore and also from other states. Therefore, the Appellant submitted that the activity done by the respondent for sale and purchase of flowers including flower verification, cold room service and software service to the growers and also provision of Wi-fi software and flower display etc. for marketing in both domestic and international market does not constitute dealing of agriculture produce in primary market.

8.4. The Appellant further submitted that in terms of Section 2(5) of the CGST Act, 2017, an **agent** means a person, **including** a factor, broker, **Commission Agent**, arhatia, delcredere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.” As per Finance Act, 1994 “**Commission Agent**” means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration and includes any person who, while acting on behalf of another person

- i) Deals with goods or services or documents of title to such goods or services; or
- ii) Collects payment of sale price of such goods or services; or
- iii) Guarantees for collection or payment for such goods or services; or
- iv) Undertakes any activities relating to such sale or purchase of such goods or services.

It is submitted that in this case the respondent does not act on behalf of another person for auctioning the goods, but is acting only as a mediator between the buyer and seller of the products and for offering these facilities a percentage of the sale value is received as Auction fees. Therefore, the services provided by them falls under the category of Auctioneer Service and they do not get covered under Commission Agent.

8.5. They submitted that since the respondent company is not a Commission agent, he is not eligible for the exemption as per 54 (g) of Notfn. No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Further, it has been argued that, as the basic character of the service provided by the respondent is “Auctioneer Service”, the services provided by them gets more appropriately covered under SAC 9961(Entry No. 5 of Notfn No.11/2017 CT (Rate) dated 28.06.2017, as services of whole sale auctioning houses and hence liable to pay tax.

PERSONAL HEARING:

9. The Appellants were called for a personal hearing on 3rd Dec 2019 and were represented by Smt Sashi Krishna K.S, Superintendent of CGST, Range AND-8, Bangalore North Commissionerate, Authorized representative who reiterated the grounds of appeal. The respondent company was represented by Shri. M.K Manohar, Chartered Accountant who requested for time to file cross objections to the appeal filed by the Department.

10. The respondent company vide letter dated 7th Jan 2020 filed their cross objections to the appeal filed by the department against Advance Ruling No KAR/ADRG 87/2019 Dated: 26th Sept 2019. They also submitted a copy of the Standard Operation Procedures Manual adopted by their company IFAB, Invoices raised by them evidencing the principal agent relationship and proof of growers being 66.88% shareholders in IFAB. In the cross objections, the respondent submitted that they satisfy all the conditions for being an agent as defined under section 2(5) of the CGST Act, 2017; that since they have the authority to pass or receive the title of the goods on behalf of the principal, it shows that they act as a commission agent. They contend that Sl.No 54(g) of Notification No 12/2017 CT (R) dated 28.06.2017 is a beneficial provision and has to be construed liberally on compliance with the conditions stipulated therein.

10.1. They submitted that they squarely fall within the ambit of "Principal Agent" relationship; that they provide a platform for the growers of flowers to showcase their produce before the market using latest state of the art technology provided by them; that they provide the primary market space for the flower growers. They submitted that primary markets are those which are situated in the producing areas, commodities produced in the nearby surrounding areas are brought here and sold in these markets. The agricultural produce is purchased by intermediaries, which later they sell into wholesale markets. The very fact that more than 66.82% of the stakeholders are flower growers and balance held by the Govt of Karnataka show clearly the intention that the respondent company (IFAB) is created as a primary market and to exploit the state-of-the-art technology to showcase the flowers to a wide variety of market. Therefore, the Appellant's contention that they are not a primary market is incorrect.

10.2. They submitted that the exemption from levy of GTS on services provided by Agricultural Produce Marketing Committee or Board or services by a commission agent for sale or purchase of agricultural produce also includes the services provided by an auctioneer. The basic ingredient, whether the services are provided as factor, broker, commission agent, arhatia, del-credere agent, an auctioneer or any other mercantile agent is the principal agency relationship. The words used in the second leg of the definition of 'agent' under Section 2(5) of the CGST Act – "by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another" – lends support to this view. They submitted that the words 'commission agent' and 'auctioneer' are interchangeable, and the narrow interpretation of the Appellant is not sustainable. They relied on the Kerala High

Court decision in the case of T.V. Abdul Nazar and Anr. Vs P.K. Mohammed Kutty reported in 1985 (7) TMI 381 and the Supreme Court decision in the case of The Authorised Officer vs S. Naganatha Ayyar, in support of their above claim. In view of the above, they requested that the appeal be dismissed, and the order of the Authority be upheld.

DISCUSSION & FINDINGS:

11. We have gone through the records of the case. This is an appeal filed by the Department against the ruling given by the Authority for Advance Ruling in the case of M/s International Flower Auction Bangalore Ltd. We have considered the submissions made by the Appellant in their grounds of appeal and at the time of personal hearing. We have also gone through the cross objections and the documents filed by the respondent company.

12. Briefly stated, the facts are that M/s International Flower Auction Bangalore Ltd (IFAB – the respondent company) is a public limited company engaged in the activity of auctioning high quality cut flowers of different varieties. IFAB provides a forum wherein the flowers and other floriculture produce are bought and sold by the members of IFAB through the auction process. Every grower who desires to supply flowers and other floriculture products to IFAB and to be sold at the auction process in IFAB, has to be registered with IFAB by paying the stipulated membership fees. The grower should provide the land records for planting of flowers and a Grower's Certificate issued by the Horticulture Department. IFAB will make payments to the growers for the flowers supplied by them to IFAB after deducting the commission of 3.5% of the sale value of the flowers. The grower has the right to fix the minimum / base price for the flowers put up for auction while the maximum price is fixed by IFAB, considering the demand for flowers.

13. Every person/organization, who desires to purchase flowers and other floriculture products at IFAB by participating in the auction process, has to be registered with IFAB by paying the stipulated membership fees. Every person / organisation who has purchased flowers and other floriculture products at the IFAB auction, has to make the payment in cash at the cash counter for the purchase price and the commission at 1.5% of the purchase price and take the delivery of the flowers.

14. IFAB has deployed 'Dutch auction' system whereby the digital auction clock runs in decreasing order and the price per stem reduces from maximum to minimum. The auction process goes as follows:

- Flowers are received from the growers located in and around Bangalore and also different parts of South India
- Flowers are checked by the IFAB supervisor and a serial number is allotted, and the details are entered into the system.
- After inspection, flowers are stored in the cold storage room of IFAB.
- Flowers received between 10.30am and 5.30pm on a day are auctioned on the next day. Flowers received between 7.30am to 8.30am on a day are auctioned on the same day.
- Flowers are purchased through bidding for which each buyer is given a bidding mobile to use to bid for the flowers.
- Once the auction is completed, the flowers are sent immediately to the distribution hall.
- The buyers should pay the amount in cash once they bid for the flowers, then check the flowers in the distribution hall, pack their produce purchased in the auction in the packing hall and take them out of IFAB after showing the paid receipt to the security.
- Unsold flowers are sent back to the cold storage and reauctioned the next day. If unsold even on the next day, they are sent back to the growers with a delivery challan.

15. In the backdrop of the above activities, the question before us for determination is whether the commission earned by IFAB from the auctioning of flowers is exempted from GST in terms of the entry Sl.No 54(g) of Notification No 12/2017 CT (R) dated 28.06.2017. For ease of reference, we reproduce the relevant entry 54 of Notification No 12/2017 CT (R) dated 28.06.2019.

54	Heading 9986	<p>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,</p>	NIL	NIL
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		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;		
		(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;		
		(e) loading, unloading, packing, storage or warehousing of agricultural produce;		
		(f) agricultural extension services;		
		(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce		

16. The entry at Sl.No 54(g) refers to the services provided by any (a) Agricultural Produce Marketing Committee(APMC) or Board; and (b) a commission agent for sale or purchase of agricultural produce. It is not a case that IFAB is considered as an APMC or Board and hence what remains to be decided is whether IFAB is a 'commission agent' rendering services for the sale and purchase of 'agricultural produce'.

17. The term 'commission agent' has not been defined under the GST law. Rather, Section 2(5) of the CGST Act, 2017 defines 'agent' to include a commission agent. The said definition of 'agent' reads as under:

“agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

From the above definition it is clear that there are several kinds of mercantile agents, such as broker, factor, commission agent, Auctioneer, del creder agent, arhatia etc. The common factor is that all the above types of mercantile agents carry on the business of supply or receipt of goods and services on behalf of another person. However, the nature of activities done by each of the above-mentioned agents is different as mentioned below:

Broker: A broker is a mercantile agent who has been appointed to negotiate and enter into a contract for sale or purchase of goods while the possession and control of the goods is with

the principal.

Factor: A factor is a mercantile agent who has the authority to sell or dispose goods which are in his possession.

Auctioneer: An auctioneer is a mercantile agent who sells goods by way of public offer to the highest bidder for the principal.

Del Credere: A del credere is a mercantile agent who establishes contract between his principal and third party. The del credere agent also guarantees to the Principal the performance of the contract by the third party.

Commission Agent: A commission agent is one who is appointed by his principal to purchase goods in the market on behalf of the principal for which a commission is charged by the agent.

18. The case of the Appellant is that the services provided by the respondent company – IFAB falls under the category of ‘Auctioneer service’ and they do not get categorised as a ‘commission agent’. As can be seen from the above, the nature of activities done by an auctioneer and a commission agent are fundamentally different even though both perform their functions on behalf of the principal. The lower Authority has held that IFAB is a commission agent going merely by the invoices issued by IFAB and by applying the principal laid down in Board’s Circular No 57/31/2018-GST dated 04.09.2018. We find that the Circular does not have any relevance to the issue at hand. The said Circular clarifies the scope of the principal-agent relationship in the context of the entry No 3 in Schedule I to the CGST Act. In this case, we are in no doubt that IFAB is an ‘agent’ as defined under Section 2(5) of the CGST Act and their activities are carried out on behalf of the flower growers/sellers. However, the question whether IFAB is a ‘commission agent’ is what needs to be determined.

19. Going by the nature of activities performed by IFAB, they do not merely cause the sale of goods on behalf of their clients, the flower growers/sellers. They undertake the complete process of auction of the flowers and upon completion of the auction, the sales consideration is received not by the sellers but by IFAB. Thereafter, IFAB will make payments to the growers for the flowers supplied to them after deduction of the commission. The payments are made to the growers/sellers on the day following the end of the calendar week. IFAB themselves issue delivery orders which enables the buyers to take delivery of the flowers from the auction house. They do the billing work and collection of sale proceeds on

behalf of their clients. IFAB also invests a great deal in the system of sale through the clock. They offer dealers sophisticated facilities for online buying – remote buying. With the help of such services, IFAB is able to attract an increasing number of international buyers to the auction. It therefore appears to reason that this wide gamut of activities of IFAB would go far beyond the scope of a commission agent since the services rendered by them are not restricted only to sale of goods on behalf of the sellers for consideration, which is the main edifice of the definition of commission agent. We are of the view that the activities of the respondent company – IFAB are more appropriately classifiable as ‘Auctioneer service’.

20. As regards the eligibility to the exemption under Sl.No 54(g) of Notf No 12/2017 CT (R) dated 28.06.2017, it is seen that the exemption is available to the services provided by a commission agent for sale or purchase of agricultural produce. The respondent company have argued that the words ‘auctioneer’ and ‘commission agent’ are interchangeable and the reference to ‘commission agent’ in entry Sl.No 54(g) of Notf No 12/2017 CT (R) can include even an auctioneer. We are not impressed by this argument. It is trite law that exemption notifications are to be strictly interpreted. A notification has to be interpreted in the light of the words employed by it and not on any other basis. In the case of entry Sl.No 54(g) of Notf No 12/2017 CT (R), the exemption given is to the APMC or Board or commission agent. As mentioned by us earlier, a commission agent and an auctioneer are no doubt mercantile agents but the functions performed by them are vastly different. The services provided by IFAB fall within the ambit of Auctioneer service and not that of a commission agent. If the notification is read treating some words as surplus, the result would be to hold that exemption is available to all mercantile agents who sell or purchase agricultural produce. This is to almost re-write the notification according to one’s own purposes ignoring the intention of the legislature. If the legislature meant to grant exemption on an extended scale so as to include all agents, it would have stated so in plain terms. Further, this is not a case where intention is required to be ascertained through interpretation. The Notification, as it is worded, grants exemption to the services provided by a commission agent. Even if the absence of a definition of “commission agent” in the notification or in the GST statute causes some ambiguity, the notification’s applicability to a particular class of service providers is to be arrived at by a strict construction and the benefit must go to the State. Viewed from this principle, it is clear that the respondent company – IFAB is not eligible for the exemption under entry 54(g) of Notification No 12/2017 CT (R).

21. The Appellant has also contended that the respondent company – IFAB does not deal with 'agricultural produce' as defined in para 2(d) of the Explanation to the Notification No 12/2017 CT (R) dt 28.06.2017 for the reason that the respondents are not traders or wholesalers in the primary market. We however, are not inclined to dwell on this aspect since we have already held that the respondent company- IFAB by virtue of providing Auctioneer service is not eligible for the benefit of the said Notification. Having so concluded, it is of no relevance whether they are dealing with 'agricultural produce' or not.

22. In view of the above, we pass the following order:

ORDER

We set aside the Advance Ruling No KAR/ADRG 87/2019 dated 26-09-2019 and allow the appeal filed by the Commissioner of Central Tax, Bangalore North Commissionerate. The question on which the advance ruling was sought for is answered as follows:

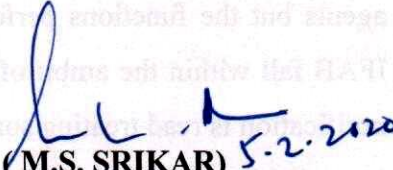
The commission earned from auctioning of flowers is not eligible for exemption under entry no. 54(g) of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 and entry no. 54(g) of Notification (12/2017) FD 48 CSL 2017 dated 29.06.2017.

The appeal is disposed off on the above terms.


(D.P.NAGENDRAKUMAR)

Member

Karnataka Appellate Authority
For Advance Ruling


(M.S. SRIKAR)

Member

Karnataka Appellate Authority
For Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, North Commissionerate, Bangalore
4. The Assistant Commissioner, LGSTO-150A, Bangalore
5. Office folder