

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING**  
**6<sup>TH</sup> 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-18//2019-20**

**DATE:19-03-2020**

Sl. No	Name and address of the appellant	M/s TATA COFFEE LIMITED, No 57, Railway Parallel Road, Kumara Park West, Bangalore 560020
1	GSTIN or User ID	29AABCC0241R1ZH
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 99/2019 Dated 27th Sept 2019
3	Date of filing appeal	19-12-2019
4	Represented by	Shri. Ravi Raghavan, Advocate.
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Bangalore North Commissionerate.
6	Jurisdictional Authority- State	LGSTO 301, Virajpete
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No HDFC19122900275888dated 19.12.2019 for Rs 20,000/-

**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 *parimateria* 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 M/s TATA COFFEE LIMITED, No 57, Railway Parallel Road, Kumara Park West, Bangalore 560020 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 99/2019 dated 27th Sept 2019.

**Brief Facts of the case:**

3. The Appellant is a part of the Tata Group of Companies and is engaged in the business of Coffee /Tea / Pepper plantation. In the plantation, certain trees are grown for the purpose of “shade” of coffee crop. Shade trees are absolutely necessary for the protection of coffee bushes. It is not possible to grow coffee in India without the necessary shade trees. However, excessive shade trees are also not suitable for coffee growing. The Appellant identifies such trees as part of its shade management policy and the same is cut down to protect the coffee bushes surrounding them. Such trees other than silver oak timber, along with dead standing/ wind fallen trees and Rose wood will be transported to Government Auction Depots as mandated by the provision of the Forest Act for its disposal.

4. The Appellant supplies the Rosewood and Jungle timber (hereinafter collectively called “Timber / wood”) to the Government Timber Depots (GTD) at Thithimathi and Kushalanagara (both located in Kodagu District) as mandated under section 104 A of the Karnataka Forest Act read with Rule 127A of Karnataka Forest Rules made thereunder. The process of selling the timber/wood to the GTD is as follows:

- Appellant transports the cut trees to the GTD
- The trees transported will be accepted and a Depot Receipt will be provided in Form FAC26. However, the sale (from appellant) or purchase (by GTD) does not happen on the same date. The Appellant neither knows the rate nor knows the time at which the timber will be purchased. Appellant also does not receive any payments towards the timber deposited.
- Upon receipt of the timber from the appellant, GTD puts those timbers in auction at the time decided by them.
- When in auction the timber is bought by someone, the GTD purchases the timber from the Appellant and sells it to the bidder. It may so happen that only a portion of ‘a lot’ of timber is sold in auction and the rest is unsold. In such cases, GTD only purchases that portion of the lot which is sold in auction and the rest will be kept in deposit and no amount is paid towards the timber not sold.



- It may so happen that date of deposit and the date of auction have a difference of six months, one year or more. In such cases, the Appellant will be in ambiguity about the time at which the timber will be sold and rate at which the timber will be sold.
- When the timber is sold in auction the GTD issues an invoice to bidder and collects the amount from them. After collecting the amount from bidder, GTD deducts an amount of 10% of the sale value towards “Supervision charges” (the charges for overseeing the timber from date of deposit to date of sale in auction) and pays the remaining to the Appellant.

5. In this connection the Appellant sought an advance ruling in respect of the following question:

- (a) Whether the legally binding and prescribed activity of depositing the timber / wood by the applicant with the Government Timber Depot for disposal as per the provision of Section 104 of the Karnataka Forest Act will constitute a “supply” and therefore subject to payment of GST for keeping the goods at the custody of the auctioneer i.e. Government Timber Depot?
- b) If GST applicable on depositing timber with the auctioneer, on what value GST is chargeable in the invoice by the applicant?
- c) Whether the payment of GST on the full amount by the auctioneer i.e. Government Depot, will be the complete discharge of liability in the hands of the applicant and hence the applicant is not required to charge any GST while depositing as well as receiving the net consideration from the auctioneer?
- d) If the transaction is supply in the hands of the applicant, what is the time of supply of timber?
- e) If the transaction is considered as “supply” in the hands of the applicant when consideration is not fixed / known at the time of supply, when would be the time of supply and when the applicant has to remit the tax on what value? This is especially where the Government Timber Depot decides the time of auction and the applicant does not have any control on this process.

f) Should GST be paid by the applicant on supervision charges collected by the Government Timber Depot under Reverse Charge as per the SI.No.5 of Notification No.13/2017?

6. The Karnataka Authority for Advance Ruling vide ruling No KAR ADRG NO 99/2019 dated 27-09-2019 held as follows:

1. The transaction of depositing timber with the Government Timber depot for disposal would amount to “supply” within the meaning assigned to it under the GST Act and GST is chargeable on the value of such supply.

2. The value of supply of timber to the Depot by the applicant shall be the open market value or the value as may be determined under Rule 30 or Rule 31 in that order.

3. There is no provision in the GST Act for shifting of the tax liability and considering that as a deemed discharge of liability. There are two supplies of timber involved in the chain of transactions, one when the timber is handed over to the depot by the applicant and the second when the timber is sold by the depot. Both are independent supplies in the eyes of the GST Act and hence the tax needs to be discharged at both stages.

4. The time of supply is the time of removal of timber/ wood by the applicant for supply to the depot.

5. The time of second supply involving timber i.e. by the depot (agent) to the third party does not have any impact on the value or time of supply of the first supply, i.e. supply of timber/ wood by the applicant to the depot for sale.

6. The activity of providing supervision services is not covered under the exceptions in entry 5 of Notification No.13/2017- Central Tax (Rate) dated 28.06.2017, the same is liable to tax under reverse charge and this is subject to the condition that the Government Timber Depots are Government Departments, the applicant is liable pay tax on the receipt of supervision services. In case the Government Timber Depots are not Government Department then the transaction would not be covered under Notification No.13/2017- Central Tax (Rate) dated 28.06.2017 and such reverse



charge mechanism shall not be applicable and the Government Timber Depot shall collect the GST and issue invoice to the applicant.

7. Aggrieved by the above ruling, the appellant has filed this appeal on the following grounds.

7.1. The Appellant submitted that the lower Authority has erred in considering the GTD as an agent of the Appellant; that a reading of Section 104A of the Karnataka Forest Act, 1963 makes it clear that the Appellant cannot sell the timber to anyone other than the State Government or GTD. When such is the case, the GTD is acting in the capacity of a principal and not in the capacity of an agent. They claim that they are not selling through the GTD but are selling to the GTD; that there is no alternative option available to the Appellants except to sell to the GTD. When the Karnataka Forest Act, 1963 has a very specific restriction that the timber cannot be sold to anyone else than GTD, the sale of timber is made by the Appellant to GTD and not to the bidders in the auction. In such cases, the method adopted by GTD to sell the timber is of no relevance to determine the nature of relationship between Appellant and the GTD; that GTD is not an auctioneer acting on behalf of the Appellant but is a seller by himself. What method GTD adopts to sell cannot have a bearing on the principal to principal relationship between the GTD and the Appellant.

7.2. They submitted that GTD charges an amount of 10% of the sale value of the timber as supervision charges towards supervising the goods or keeping the safe custody of the goods from the date of deposit to the date of sale. If the supply/sale happens on the date of deposit, there would be no need to charge the supervision charges as GTD will be supervising their own goods. However, it is because the sale/supply doesn't occur till the date of auction/sale to the bidder, the GTD is charging a fee for overseeing the goods. Thus they contended that GTD neither acts as an agent nor the sale occurs on the date of deposition. They submitted that GTD acts as a supervisor or custodian for the timber deposited by the appellant till the time of sale and charges a consideration of 10% of the sale amount; that the only supply involved is supply of supervision service by GTD to appellant and not the supply of timber from Appellant to GTD.

7.3. The Appellant argued that drawing a conclusion on the time of supply based on the erroneous assumption that GTD is an agent of the Appellant is not correct. They submitted that there are three parts in the entire set of transaction, viz:

Part One: Deposition of timber with GTD for custody. GTD renders supervision service in return for a consideration named 'supervision charges'.

Part Two: Sale of timber from Appellant to GTD on the day of auction. For this sale of timber, the appellant receives sale amount as consideration.

Part Three: Sale of timber from GTD to bidders. This leg of the transaction is not relevant to the Appellant.

The Appellant submitted that the sale of timber to GTD on the date of auction is a supply within the meaning of Section 7 of the CGST Act; that the time of supply of the sale of timber to GTD on the day of auction is to be decided in accordance with the provisions of Section 12(2)(a) of the CGST Act wherein the time of supply of goods shall be the date of issue of invoice by the supplier or the last date on which he is required to issue the invoice in terms of Section 31(1) of the said Act. They submitted that as per Section 31(1), they are required to issue the invoice before or at the time of removal for supply to the recipient; that in their case, the removal of timber for deposition is not removal for supply to the GTD; that removal happens only for the purpose of supervision/custody. Hence the time of supply would be the date of auction/sale to the bidder on which date the goods will be sold to GTD by the Appellant.

7.4. They also submitted that the valuation arrived at by treating the deposition of timber with GTD as a supply is not correct; that the ruling on valuation is vague and inconclusive as it does not address the practical difficulties; that the market value cannot be decided as there is no market except the GTD; that the rate at which GTD sells the goods also cannot be decided as the price is determined through auction. Further, the 90% of the price charged by GTD can also not be decided as at the time of deposition, even GTD does not know the price at which it will sell. They submitted that the ruling does not explain how value has to be determined as per Rule 30 or 31 of the CGST Rules. Rule 30 puts up a method of valuation wherein 110% of the cost of production will be considered as value of supply; that in the present case, the cost of production cannot be measured reliably. Even if it can be measured reliably, the said cost will be very negligible amount when considered in the light of the sale value as in order to produce that timber, the Appellant would have only incurred the cost of planting, cost of saplings and cost of cutting down the tree. The value addition in tree happens when it grows and for that the Appellant would not have incurred cost. Hence there



will be a big difference between the value of supply determined at the time of deposition and amount received at the time of sale on the day of auction. They argued that the ruling of the lower Authority does not address this difference. Further, they submitted that the ruling does not specify what is the reasonableness for determining the value under Rule 31.

7.5. The Appellant contended that GTD is not an agent of the appellant; that the appellant cannot sell the goods to anyone else other than GTD in view of the restriction imposed in Section 104A of the Karnataka Forest Act, 1963; that GTD will be acting on principal to principal basis and hence it cannot be considered as agent; that the deposition of timber for custody till actual sale is not a supply – it is only a delivery of goods for availing the supervision service / custodian service; that even if the delivery is assumed to be a supply, there is no consideration received for the said supply and hence not taxable; that the sale of timber by the Appellants to GTD on the day of auction is supply and attracts tax; that the tax has to be discharged on the transaction value i.e the sale price, in accordance with the provisions of Section 15(1) of the CGST Act; that the time of supply is the date on which sale occurs and has to be determined in accordance with the provisions of Section 12(2)(a) read with Section 31(7) of the CGST Act.

7.6. The Appellant also sought for condonation of delay in filing the present appeal. They submitted that the impugned order was received by them on 21-10-2019; that as per Section 100(2) of the CGST Act, they are required to file the appeal within 30 days; that since they wanted to take proper legal advice, they could not file the appeal within the required time; the GST audit also led to the delay in filing the appeal. They requested that the delay in filing the appeal be condoned in terms of Section 100(2) in the interest of justice.

#### **PERSONAL HEARING:**

8. The Appellants were called for a personal hearing on 31st January 2020 and were represented by Shri. Ravi Raghavan, Advocate who reiterated the submissions made in the grounds of appeal. They also made a detailed submission regarding the process involved towards extraction and transportation of wind fallen/dead standing Rosewood/Jungle kind trees from various estates and sale of timber material from the GTD.

## DISCUSSIONS AND FINDINGS

9. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing.

10. We find that the Appellant has sought for condonation of delay of 29 days in filing the present appeal. The impugned order of the lower Authority dated 30.09.2019 was received by the Appellant on 21.10.2019. In terms of Section 100(2) of the CGST Act, every appeal to this Authority should be filed within a period of 30 days from the date on which the Advance Ruling order is communicated to the aggrieved party. The proviso to Section 100(2) empowers this Authority to condone the delay in filing the appeal by another period of 30 days. In this case, the due date for filing the appeal was 21-11-2019 but the Appellant has filed the appeal on the 19th December 2019 after a delay of 29 days from the due date for filing appeal. The Appellant has stated that the delay had occurred since they wanted to take proper legal advice before filing the appeal and that they were busy with the GST audit. Considering the submissions made by the Appellant, the delay in filing the appeal is hereby condoned in exercise of the power vested in terms of the proviso to Section 100(2) of the CGST Act.

11. We now take up the main issues in appeal. The primary point which has to be decided is whether the activity of depositing the timber by the Appellant to the Government Timber Depot is a 'supply' in terms of Section 7 of the CGST Act. Under GST, Supply is considered a taxable event for charging tax. Thus, determining whether or not a transaction falls under the meaning of supply, is important to decide GST's applicability. In order to construe what is 'supply' one starts with the layman's understanding of the expression as meaning 'to make something available to another or to fulfil the want of another'. Under the GST law, the word 'supply' has not been explicitly defined but rather the scope of what constitutes 'supply' is stated in Section 7 of the CGST Act in an inclusive manner, which reads as under:

*7. (1) For the purposes of this Act, the expression "supply" includes -*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*



*(b) import of services for a consideration whether or not in the course or furtherance of business;*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*

*(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

*(2) Notwithstanding anything contained in sub-section ( 1),-*

*(a) activities or transactions specified in Schedule III; or*

*(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*

*(3) Subject to the provisions of sub-sections (1) and ( 2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—*

*(a) a supply of goods and not as a supply of services; or*

*(b) a supply of services and not as a supply of goods.*

12. Therefore, for an activity to qualify as "supply" in terms of Section 7 of the CGST Act, the following conditions are to be fulfilled:

- (i) The activity has to involve a transaction in either 'goods' or 'services' or both;
- (ii) The activity should be undertaken for a consideration
- (iii) There should be agreement to engage in the transactions of the nature specified;
- (iv) The activity should be in course or furtherance of business

Broadly speaking, when the above circumstances are accomplished by (at least) the two persons involved in the transactions, then it can be inferred that the activity is a 'supply' under GST law and thereby chargeable to GST. In the instant case, there is a transaction in goods in as much as timber is being deposited by the Appellant to the GTD. This transaction is mandated by a statute i.e the Karnataka Forest Act, 1963 whereby the purchase and sale of timber is restricted to only the State Government. Further, the activity of felling the timber trees is part of the shade management policy of the Appellant in the course of their business of Coffee/Tea/Pepper plantations. However, the activity of depositing the timber into the

GTD does not result in realisation of consideration immediately. The timber is deposited at GTD for which a Deposit Receipt is given by GTD. Where the consideration is not extant in a transaction, such a transaction does not fall within the ambit of supply. But, in certain scenarios, as elucidated in Schedule I of the CGST Act, the key element of consideration is not required to be present for treating certain activities as supply. One such activity which has been detailed in para 3 of Schedule I is reproduced hereunder:

*3. Supply of goods—*

*(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or*

*(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.*

13. Thus, the question is whether the Government Timer Depot is an agent of the Appellant. As per Section 182 of the Indian Contract Act, 1872, an “agent” is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the “principal”. The term “agent” has been defined under sub-section (5) of section 2 of the CGST Act as follows:

*“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”*

In this case the Depots are set up by the State Government in terms of Section 104-A(5) of the Karnataka Forest Act for the purchase and sale of timber since the Act mandates that timber can only be purchased and sold by the State Government. The sale of the timber by the Depot is done by way of auction. The proceeds of the sale are remitted to the Appellant. Therefore, notwithstanding the fact that the Depot is set up under the aegis of a statute, it functions in the capacity of an agent. We draw reference to the CBIC Circular No 57/2018 dated 4-09-2018 wherein the scope of principal-agent relationship was explained. In terms of the said Circular, the key ingredient for determining the principal-agent relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall



within the fold of the said entry. In the instant case, once a lot of timber is sold to a successful bidder in the auction, the purchaser is required to pay 1/4<sup>th</sup> value of the timber purchased along with applicable taxes to the Principal Chief Conservator of Forests (PCCF). On receipt of the amount, the forest department will send a sale confirmation letter to the Purchaser at which time the purchaser will pay the balance dues. Once the material is lifted by the Purchaser after payment of the sale value plus taxes, the concerned Range Forest Officer will raise a bill which will be forwarded to the Deputy Conservator of Forest (DCF). The DCF will prepare a separate bill and send the same to the Chief Conservator of Forests (CCF) who will issue the letter of credit (LOC). The LOC will be forwarded to the treasury who will issue the cheque to the DCF and the DCF will issue the same to the Appellant. Therefore, it is observed that the sale of timber happens through the GTD and not to the GTD as claimed by the Appellant. The proceeds of the timber sold through the auction process by the GTD is given to the Appellant on completion of the auction process. As such, the GTD acts in the capacity of agent of the Appellant and this transaction of depositing of timber by the Appellant in the GTD amounts to a supply in terms of clause 3 of Schedule I of the CGST Act.

14. The Appellant has also sought a ruling on what will be the value of supply if the activity of depositing timber to the GTD is held to be a 'supply'. Section 15 of CGST Act, 2017 provides the provisions for determining the value of goods and services. However, in the case of supply of goods through an agent, the value of supply shall be determined in terms of Rule 29 of the CGST Rules, which states that where supply is made through an agent then value of supply is

- Open market value of goods. Open Market Value means the full value in money which is paid to obtain such supply at the same time when the supply being valued is made.
- Or supplier has an option to take 90% of the price charged for the supply of goods of like kind and quality by the recipient from his unrelated customers as value of goods. Supply of goods or services of like kind and quality means any other supply of goods or services made under the same circumstances. Same circumstances mean that the supply is same in respect of the characteristics, quality, quantity, functional components, materials and reputation of the goods or services or both or closely or substantially resembles.

- If the value of supply is not determinable as per above points then the value of supply of goods or services will be calculated as per rules 30 or 31

15. As regards the time of supply, Section 12 of the CGST Act, lays down that the time of supply of goods would be the earliest of:

Date of Issue of Invoice

Due Date for Issue of Invoice

Date of Receipt of Payment

These provisions must be contemplated considering that where there is a movement of goods, the invoice must be issued on or before the time of removal of goods. Therefore, in this case, the time of supply will be the date of issue of invoice which will be at the time of removal of the timber by the Appellant to the Depot.

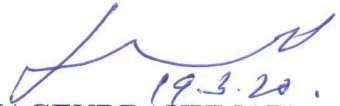
16. The Appellant has argued that if the act of depositing the timber at GTD is held to be a supply, then the question of charging supervision charges by GTD will not arise since they will be supervising their own goods. This is not correct. The act of depositing the timber at GTD is a supply in terms of clause 3 of Schedule I of the CGST Act. It is a supply of goods that is made without consideration by the Appellant as a principal to his agent. The Depot acting as an agent, renders a service of being the custodian of the timber at the depot till such time the timber is sold by the Depot in the auction process. Further, the depot also does the measurement and classification of the timber received from the Appellant since the Depot also stores the timber belonging to the Govt and other private parties. The Depot officials also give lot numbers to the timber logs according to the classification. It is for this service that the Depot charges 'supervision charges'. This service rendered is outside the scope of clause 3 of Schedule I and hence the consideration received by the depot in the form of supervisions charges are liable to tax as a supply of service. We find that the Appellant has not disputed the ruling with regard to taxability of supervision charges. We uphold the ruling given by the lower Authority on this aspect.

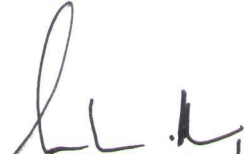


17. In view of the above discussion, we pass the following order

### ORDER

We uphold the Advance Ruling No KAR/ADRG 99/2019 dated 27-09-2019 and dismiss the appeal filed by M/s TATA COFFEE LIMITED, No 57, Railway Parallel Road, Kumara Park West, Bangalore 560020 on all counts.

  
(D.P.NAGENDRAKUMAR)  
Member  
Karnataka Appellate Authority  
for Advance Ruling

  
(M.S. SRIKAR) 19.3.2020  
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, Bangalore North Commissionerate
4. The Assistant Commissioner, LGSTO-301, Virajpete
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