



BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING

For the State of Andhra Pradesh (Goods and Service Tax)

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,
Andhra Pradesh – 521144)

Present:

Sri. B.HARERAM, (Member)(Central Tax)

Sri. J.SYAMALA RAO, (Member)(State Tax)

The 12TH day of April, 2019

Order /AAAR/AP/ 01 (GST)/2019

In

Application No.AAAR/04(GST)/2019

1	Applicant	M/s . Divisional Forest Officer, Logging Division, Chintur, East Godavari District , (A.P) (GSTIN: 37AAAGD0764M1ZA)
2	Present for the Applicant	Sri R. Kondala Rao, DFO, Logging Division, Chintur
3	Date of Personal hearing	12 th April, 2019

ORDER :

M/s Divisional Forest Officer, Logging Division, Chintur, East Godavari District (hereinafter referred to as the Applicant) is engaged in the activities of extraction / cutting of timber & bamboo from natural forest, its transportation to the Government depots, and the maintenance works like grading / classification of timber & bamboo and the sale of the same at Government depots. The applicant mentioned that they were collecting 18% GST from bidders and depositing the same in GST Account 9% SGST + 9% CGST on the sale of timber as per the HSN Code 4403, while collecting 5% GST from the bidders (2.5% SGST + 2.5% CGST) on the sale of bamboo as per HSN Code 1401.

The applicant further submitted that, the works of extraction / cutting of timber & bamboo from natural forest, transportation of the same to the government depots, maintenance of government depots like grading / classification of timber & bamboo at Government depots were being carried out by the open tender system /piece work contract method / combination method / Departmental method / lumpsum contract method. Subsequently the works were entrusted to the lowest bidder of the registered contractors in the Division, who in turn engage local tribal laborers to carry out the activities.

The appellant had filed an application before the Appellate Authority for Advance Ruling dated 25.01.2019, contending the Ruling passed by the Authority for Advance Ruling vide Ruling AAR NO.30 /AP/GST/2018, Dated:28.12.2018.

The plea presented by the appellant before the Appellate Authority for Advance Ruling , Andhra Pradesh is as follows:

The appellant under takes the forestry works (Logging Activities) and he requests the applicability of GST to the following works :

1. **Extraction of timber / bamboo in Natural Forest** : The Forest Department entrusts this work, which is 100% labour oriented, to the lowest bidder of the registered contractors in the open tender system / nomination / piece work contract and the lowest bidder engages the local tribal labourers for cutting / extraction of timber & bamboo and the bills as per the FSR (Rates Fixed in the Forest Schedule of Rates) rates paid to the contractor, which in turn are paid as wages to the local tribal labourers.

The question is whether GST is applicable for the above works or not. If applicable what percentage and under what item / HSN Code of GST Act.

2. **Transportation of Timber / bamboo from Natural Forest to the Government depots**: This work which is partly labour oriented (for loading and unloading of timber & bamboo) and partly transportation of timber & bamboo on road using lorry / truck, is entrusted to the lowest bidder of the registered contractors in the open tender system / nomination / piece work contract. The bills as per FSR rates will be paid to the contractor, which in turn will be paid to the local tribal labourers and the lorry owners by the contractor.

The question is whether GST is applicable for the above works or not. If applicable what percentage and under what item / HSN Code of GST Act.

3. **Maintenance of Government depots like classification / grading of timber & bamboo and wages to mastris for supervision**: This work which is 100% labour oriented is entrusted to the lowest bidder in the open tender system / nomination / piece work contract. The bills as per FSR rates will be paid to the contractor, which in turn will be paid to the local tribal labourers.

The question is whether GST is applicable for the above works or not. If applicable what percentage and under what item / HSN Code of GST Act.

The Authority for Advance Ruling, AP disposed the appeal vide orders **AAR No.**

30/AP/GST/2018 dt 28-12-2018 stating that the applicant does not make any of the supplies in question, but is in fact the recipient of the various supplies made to him by the contractors as stated in his application. Thus the questions raised are on the liability to pay tax on the services supplied to them and not on the supplies made by them.

Thus, the Authority for Advance Ruling rejected their application as the applicant is not the service provider and as per Sec.98(2) applicant is not the eligible party to seek for Advance Ruling.

Grounds of appeal:

1) The orders of the Authority for Advance Ruling are arbitrary, illegal and against the spirit of the APGST Act, 2017 and the purpose of the APGST Act, as the DFO, Logging Division, Chintur (Applicant) is undertaking the above works.

(2) The applicant is the authority who is preparing and sanctioning the estimate, duly providing tax provision in the estimate, and responsible authority for applying the tax provisions of APGST Act, 2017, and stake holder of the above services and having right to file the application and getting the advance ruling order as per the APGST Act, 2017.

3) The applicant is undertaking the above services and stake holder of the above services and comes under the purview of Section 95(A) of APGST Act, 2017.

4) The interpretation of the Authority for Advance Ruling that the applicant is recipient of the services and not supplier of services is arbitrary, illegal, against the APGST Act, 2017 as the applicant is stake holder and the services are undertaken by the Applicant.

5) The applicant who is the Authority for undertaking the above works, providing and sanctioning taxes in the estimates on behalf of Govt. authority for implementation of APGST Act, 2017. He is also an authority for applying TDS under APGST Act, 2017 and it cannot be said that the applicant is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken as per definition of Advance Ruling under Section 95(a).

6) The applicant who is also an authority for applying TDS under APGST Act, 2017 has no other option to get clarification on the above applicability of GST for the said works other than from the Authority for Advance Ruling / Appellate Authority for Advance Ruling.

7) As per the Section 95(a) of CGST & APGST Act , ;

(a) "Advance Ruling" is a decision provided by the authority or the Appellate Authority to an applicant on matters or on questions specified in sub section 2 of 97 or sub section 1 of Section 100, in relation to the supply of goods and services or both being undertaken or proposed to be undertaken by the applicant.

The Authority for Advance Ruling misinterpreted the above definition and attributed that the applicant is a recipient of the service and not service provider and not related to the service and concluded that the applicant is not having relation to the service which is arbitrary, illegal and against the provisions and spirit of the CGST and APGST Act,2017.

As per the definition it is very clear that the application can be made by the person who is in relation to the Goods or services taken up or proposed to be taken up.

Thus, the applicant contends that he is taking up the above service /goods by planning, preparing estimate, sanctioning estimate, executiving the above works/ services under complete supervision and the tax are paid by the applicant (though it is indirectly). The applicant states that he, being a DDO, is the Authority responsible for implementation of the CGST / APGST Act,2017 and is completely in relation to the service. He further adds that the application is made in accordance with the CGST / APGST Act,2017 and has a right to get clarification / advance ruling as per the CGST / APGST Act,2017.

On verification of the application filed by the applicant ,the following **procedural lapses** are noticed :

The applicant failed to comply with the provisions of Rule 106 of the APGST Act which reads as under:

1.

Rule 106: Form & Manner of appeal to the appellate authority for advance ruling :

"An appeal against the advance ruling issued under sub section 6 of Sec.98 shall be made by an applicant on the common portal in Form GST ARA -02 and shall be accompanied by a fee of Rs.10000/- to be deposited in the manner specified in section 49."

1. The appeal made by the applicant to the Appellate Authority for Advance Ruling is not submitted in prescribed proforma i.e. in Form GST ARA-02.
2. The appeal is not accompanied by prescribed fees of Rs. 10,000/- in the manner specified in Section 49 of CGST /SGST Acts.

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Accordingly the DFO, Chintur was informed vide this office ref. No.CCST/AAAR/01/2019, dt:05-03-2019 to comply with the requirement as per the Act, but no response has been received by this office from the applicant. However, a notice for personal hearing on 12.03.2019 has been sent to the applicant vide this office reference dated 03.04.2019, duly providing an opportunity for hearing.

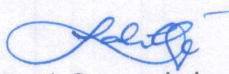
In this regard, the Appellate Authority for Advance Ruling after thorough examination of the facts presented and procedural lapses noticed, reject the appeal without going into the merits of the case.

Sd/- J.Syamala Rao
Chief Commissioner (State Taxes)
Member

Sd/-B.Hararam
Chief Commissioner (Central Taxes)
Member



// t.c.f.b.o //


Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

1. M/s Divisional Forest Officer, Logging Division, Chintur, East Godavari District, A.P, **(By Regd Post)**

Copy to

1. The Assistant Commissioner (ST), Chittoor-II Circle, Chittoor Division. **(By Regd Post)**
2. The Assistant Commissioner (CT) O/o the Deputy Commissioner of Central Tax, Central GST Division, Srinagar, Morampudi Road, Rajamahendravaram-530017. **(By Regd Post)**
3. The Authority for Advance Ruling, A.P O/o the Chief Commissioner (ST), Edupugallu, Vijayawada