

**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-14-I/2019-20

DATE:28-02-2020

Sl. No	Name and address of the appellant	M/s Karnataka Food & Civil Supplies Corporation, Millers Tank Bed Area, Vasanthanagar, Bengaluru - 560052
1	GSTIN or User ID	29AAACK8523F1ZI
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 112/2019 Dated: 30th Sept 2019
3	Date of filing appeal	30-11-2019
4	Represented by	Shri. Piyush Jain Advocate of M/s Guru & Jana
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Bangalore North Commissionerate.
6	Jurisdictional Authority- State	LGSTO 020, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No CNRB19112900475417 dated 30.11.2019 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 Karnataka Food & Civil Supplies Corporation, Millers Tank Bed Area, Vasanthanagar, Bengaluru - 560052 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 112/2019 dated 30th Sept 2019.

Brief Facts of the case:

3. The Appellant is a Government of Karnataka undertaking established with a mission to supply food grains and other essential commodities and services to the consumer under the Public Distribution System Scheme and other Government schemes to meet its consumer needs. The Appellant has entered into an agreement with Central Warehousing Corporation (CWC) for use of storage space at Central Warehouse, Belgaum for storage of Public Distribution System commodities belonging to the Appellant. As per the agreement, CWC has provided storage space of 488 sq metres at Belgaum for a consideration of Rs 126 per sq. metre per month or part thereof on gross area basis. CWC was charging GST on the storage charges but the Appellant have not paid the GST portion to CWC. Therefore, CWC has stopped godown operations on account of non-payment of GST.

4. In order to obtain clarity on applicability of GST on the storage charges for CWC storage space, the Appellant sought an advance ruling in respect of the following question:

Whether GST is payable on the Storage charges? Is GST liable to be paid on the entire amount paid as consideration for storage charges or is GST liable to be paid only on the storage of taxable food commodities like palm oil, etc?

5. The Karnataka Authority for Advance Ruling vide ruling No KAR ADRG NO 112/2019 dated 30-09-2019 held as follows:

*The services provided by the Central Warehousing Corporation to the applicant are covered under **renting of commercial space in immovable property** and not storage service of goods. The said service is covered under SAC 997212 & is liable to CGST of 9% under entry no.16 of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017. The said service is also liable to a tax of 9% under the Karnataka Goods and*

Services Tax Act, 2017 under entry no. 16 of Notification (11/2017) No. FD 48 CSL 2017 dated 28.06.2017.

6. Aggrieved by the said ruling, the appellant has filed this appeal on the following grounds.

6.1. The Central Warehousing Corporation is created under the Warehousing Corporation Act, 1962 with the objective to provide storage space for storage of food grains and other notified commodities under the Act; that the authorisation agreement between the CWC and the Appellant is primarily for the use of storage space at Belgaum on dedicated warehousing for which a consideration has been charged by CWC; that, under the erstwhile tax regime, they had sought for a clarification on applicability of service tax on storage of food grains, and the Commissioner of Service Tax had provided the clarification that storing/warehousing of food grains for PDS in state owned / Pvt owned Godown is specified in the negative list and hence the storage or warehousing of agricultural produce would not attract service tax w.e.f 01-07-2012.

6.2. They submitted that as per Sl.No 54 (d) and (e) of Notification No 12/2017 CT (R) dated 28-06-2017, the 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:

(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

are exempt from the levy of GST; that since the provisions of service tax and GST are same in nature, services relating to agriculture by way of renting or leasing of vacant land, with or without a structure would not be attract GST; that the invoices raised by CWC to the Appellant for storage of dedicated warehousing is categorised under the head PDS stock which is not liable to GST as per sl.no 54 of the said Notification. Alternatively, they claimed that, as per Sl.No 24 of Notification No 12/2017 CT (R) dated 28-06-2017, the services by way of loading, unloading, packing, storage or warehousing of rice is exempt from the levy of GST.

6.3. The Appellant contended that since the nature of their activity as was prevalent during the Service Tax regime has not changed even after GST was implemented, the services of storage of food commodities for public distribution system are exempt from the levy of GST under Sl.No 54 and alternatively Sl.No 24 of Notification No 12/2017 CT (R) dated 28-06-2017.

6.4. The Appellant also filed an application for condonation of delay of 19 days in filing the appeal on the grounds that management of the Company was in due consideration of whether the appeal was required to be filed or not and this resulted in a delay in filing the appeal.

PERSONAL HEARING:

7. The Appellants were called for a personal hearing on 31st January 2020 and were represented by Shri. Piyush Jain, Advocate who reiterated the submissions made in the grounds of appeal. He also drew attention to the Memorandum of Association of Karnataka Food and Civil Supplies Corporation Ltd wherein storage of food grains is one of the objectives of the Company.

DISCUSSIONS AND FINDINGS

8. 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. We find that this is an appeal filed by the Appellant as a recipient of the service rendered by CWC. They had sought an advance ruling on the applicability of GST on the service provided to them by CWC in terms of the authorisation agreement. The advance ruling was not sought on the supplies made by the applicant but rather on the supplies received by them. Section 95(a) of CGST Act defines 'advance ruling' as follows:

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) Of Section 97 or Sub-section (1) of Section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

From the above it is evident that the person who can seek an advance ruling is one who undertakes a supply of goods or services or both or proposes to undertake the supplies. In the present case, the applicant, M/s Karnataka Food and Civil Supplies Corporation Ltd is the recipient of the services and not supplier of services. The application for advance ruling made by a recipient of supplies should not have been admitted by the lower Authority. However, since a ruling has been given and the matter has come before us in appeal, we shall proceed to examine the matter on merits.

9. We find that the Appellant has sought for condonation of delay of 19 days in filing the present appeal. The impugned order of the lower Authority dated 30.09.2019 was received by the Appellant on 11.10.2019. 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 11-11-2019 but the Appellant has filed the appeal on the 30th November 2019 after a delay of 19 days from the due date for filing appeal. The Appellant has stated that the delay had occurred due to the management taking time to decide on filing the appeal. 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.

10. The issue in appeal is whether the service rendered by CWC to the Appellant is exempted in terms of entry Sl.Nos 54 or 24 of Rate Notification No 12/2017 CT (R) dated 28-06-2017. It is the contention of the Appellant that the service provided by CWC is the storage of agricultural produce. On the other hand, the lower Authority has held that the service provided by CWC is renting of immovable property. We have gone through the authorisation agreement dated 17-07-2015 entered into between CWC and the Appellant for use of storage space on dedicated warehousing.

11. In terms of the said agreement, the Appellant has requested the CWC for providing storage space at Central Warehouse, Belgaum for storage of PDS commodities belonging to the applicant or its clients. Accordingly, CWC has agreed to provide the storage space of 488 sqmetres at Central Warehouse, Belgaum for a period of five years from 20.06.2015 and the rate of storage charges shall be Rs.126 per sqmetre per month or part thereof on gross area basis. The service tax as applicable from time to time shall be

payable extra by the Appellant. The Appellant shall make their own arrangements for comprehensive insurance of stocks stored and the CWC shall not be responsible to make good any losses or damages to goods. The Appellant is required to take all clearances / permissions for storing the goods from the concerned authorities and CWC will not be responsible for the same. The Appellant is allowed to maintain their own stock accounting of the goods stored in the godown on dedicated warehousing basis. The Appellant is also allowed to deploy their own security personnel for storage space allotted subject to overall discipline and control of the Warehouse manager CWC, Belgaum. The Appellant will allow the CWC officials or its authorized representatives for inspection of the godown premises at any time. The CWC, based on the request of the Appellant, would consider providing separate water, telephone and Electricity connection wherever feasible. Cost of installation shall be borne by the Appellant and the payment for all utilities will be made by the Appellant with intimation and necessary proof to CWC. Separate sub-meter is to be installed by the Appellant at their own cost and the electricity charges to be paid on actual basis. The Appellant is entitled to remove its goods, fittings, fixtures etc. at their own cost and hand over the godown to CWC after restoring it in the same condition in which it existed at the time of commencement of the agreement. The Appellant is forbidden to sub-let the premises to any third party. No alteration, modification or structural changes in the godown/demised premises shall be undertaken by the Appellant without the prior permission of CWC. However, the Appellant may undertake whitewash/floor painting and install their furniture fixtures at their cost.

12. From the terms of the above agreement we observe that CWC is only providing the 488 sqmetres of space in the central warehouse for rent. The space has been taken on rent by the Appellant for storing the food grains. The activity which is under consideration here is the activity performed by CWC and not the activity undertaken by the Appellant. The supply made by CWC is merely a renting of space. We observe that there is difference between 'storage or warehousing' service and 'renting of storage premises' service. The 'storage and warehousing service' provider normally makes arrangement for space to keep the goods, loading, unloading and stacking of goods in the storage area, keeps inventory of goods, makes security arrangements and provides insurance cover etc. In a case where a person only rents the storage premises, he does not provide any service such as loading / unloading, stacking, security etc. Mere renting of space cannot be said to be in the nature of service

provided for storage or warehousing of goods.


13. The Appellant has referred to a clarification given by the Commissioner Service Tax to the effect that the storage of food grains would not attract service tax. They contend that the said clarification will apply to them even in the GST regime since the nature of their activity has not changed. At the risk of repetition, we again point out that the issue under consideration here is not about the taxability of the service supplied by the Appellant. It is regarding the service supplied by CWC to the Appellant. The clarification given by the Commissioner Service Tax was with reference to the service provided by the Appellant. Since we are considering the nature of the service supplied by CWC, the clarification given by the Commissioner Service Tax to the Appellant has no relevance.

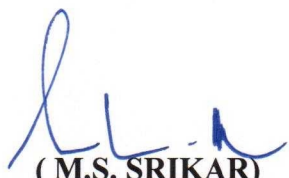
14. In view of the above, we agree with the findings of the lower Authority and hold that the service supplied by CWC to the Appellant is renting of immovable property. The amount of rent paid by the Appellant to CWC is taxable at the hands of CWC under the category 'Rental or leasing services involving own or leased non-residential property' (Service Accounting Code – 997212).

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

ORDER

We uphold the Advance Ruling No KAR/ADRG 112/2019 dated 30-09-2019 and dismiss the appeal filed by M/s Karnataka Food & Civil Supplies Corporation, Millers Tank Bed Area, Vasanthanagar, Bengaluru - 560052 on all counts.


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


(M.S. SRIKAR)
Member
Karnataka Appellate Authority
for Advance Ruling

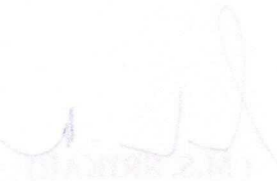
To,

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, Bangalore North Commissionerate
4. The Assistant Commissioner, LGSTO-020, Bangalore
5. Office folder

ORDER



Member (Central),
Advance Ruling Authority,
Karnataka



Member (State),
Advance Ruling Authority,
Karnataka