

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 87/2019

Dated: 26th September, 2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s International Flower Auction Bangalore Ltd., No.24, Bellary Road, Hebbal, Bengaluru 560024
2.	GSTIN or User ID	29AABCI2041M2ZI
3.	Date of filing of Form GST ARA-01	28.02.2019
4.	Represented by	Sri Manohar.M.K., Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central tax, Bangalore North Commissionerate.
6.	Jurisdictional Authority - State	LGSTO-150A, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN SBIN19022900379706 dated 27.02.2019 2. Rs.5,000-00 under KGST Act Rs.3,100/- vide CIN SBIN19022900371600 dated 26.02.2019 and Rs.1,900/- on 26.02.2019 vide Reference DC2902190271747 in Cash Ledger

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s International Flower Auction Bangalore Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AABCI2041M2ZI, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



International flower Auction

2. The Applicant is a Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

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

3. The applicant furnishes the following facts relevant to the stated activity:

- a. The applicant states that they are in the business of auctioning flowers and are a commission agent for the flower growers. It is a joint venture company of private and public shareholders established to strike the potential of both export and domestic flower market, with a prime objective to auction high quality cut flowers of various flower crops on a daily basis. It is engaged in facilitating growers to auction their flowers at its company and buyers would come in person and check quality and bid.
- b. The applicant creates a platform for both growers and buyers who can earn great profits. It is funded by Centre and State to facilitate auction service and develop floriculture.
- c. The applicant takes 3.5% from growers and 1.5% from buyers as commission for the services rendered, i.e. auctioning of flowers, which is the main stream of revenue. Other incomes earned or accrued include interest, packing charges, registration charges, etc.

4. The applicant submits as under regarding the nature of his activities:

4.1 The flower growers and the buyers are all registered members of the applicant and only registered members can take part in the auction process. The growers bring flowers to the premises of the applicant and would be placed in lots and samples 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 buyer and the maximum price is fixed by the applicant considering the demand for flowers. The applicant 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 immediately 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.

4.2 The applicant issues invoice in his name with the details of the lot and the receivables are deducted from that amount. The amount due to the growers is distributed at the earliest. The collection of amount from the buyer is also done by the applicant.

5. Regarding the issue before the Authority, the applicant states that as under:

5.1 The activities conducted by the applicant falls within the definition of "Agent" as defined in clause (5) of section 2 of the CGST Act, 2017.

5.2 Entry no. 54 of the Notification No.12/2017 – Central Tax (Rate) states that services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw materials or other similar products or agricultural produce by way of

- (i) *agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;*
- (ii) *supply of farm labour*
- (iii) *process 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 which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market*
- (iv) *renting or leasing of agro machinery or vacant land with or without a structure incidental to its use*
- (v) *loading, unloading, packing, storage or warehousing of agricultural produce*
- (vi) *agricultural extension services*
- (vii) *services by any Agricultural Produce Marketing Committee or Board or **services provided by a Commission Agent for sale or purchase of agricultural produce.***

5.3 The term agricultural produce is defined in para 2(d) of the Explanation to the above said Notification and it reads as under:



"agricultural 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 it marketable for primary market."

The cut flowers are in the nature of agricultural produce as it is a produce out of cultivation of plants on which no processing is done.

5.4 A combined reading of the above makes it clear that the services by any APMC or Board or services by a commission agent for sale or purchase of agricultural produce are exempt from levy of GST. The applicant is not an APMC or a Board. However, it falls under the third limb – "a commission agent". It collects 3.5% commission from the growers and 1.5% commission from the buyers as commission for the services rendered, i.e. for facilitating growers to auction their flowers and the buyers to purchase.

5.5 The applicant states that they are a non-profit organisation providing facilities of flower verification, cold room service and software service to the growers and also provide Wi-fi software and flower display and same day payment clearance facilities to the buyers, out of the commission collected. The applicant, while registering the member as a grower, collects the documents in support of the claim that he is a grower of flowers and hence only agriculturists can become members as growers.

5.6 The applicant withdraws the ruling sought on entry no. 54(e) as they are not per se providing any storage facility to growers as a standalone service. The storage facility is part and parcel of flower auctioning services and the applicant does not insist on any ruling on this issue.

6. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri. Manohar, CA, during the personal hearing. We have also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

6.1 In the subject matter the Office of the Commissioner of Central Tax, Bangalore-North has provided their views in the matter. Letter dated 30.04.2019 and the views expressed by the Assistant Commissioner of Central tax in letter dated 29.04.2019 have been examined. The view expressed by the aforesaid office is that the stated activity is not covered under Sl. No. 54(g) of Notification No. 12/2017- Central Tax(Rate) dated 28.06.2017 and is more appropriately covered under SAC 9961 which relates to services in wholesale trade and includes services of whole sale auctioning houses. These contentions of Revenue are examined in the succeeding paragraphs at the appropriate instant.

6.2 The activity of the applicant is examined and found that the applicant is an auction house where the growers of the flowers bring the flowers to auction them and the buyers come and buy the produce. On successful auction, the applicant issues invoice on behalf of the growers and collect the sale price from the buyers and pays the consideration to the growers. Hence the applicant is acting as a Selling Commission Agent of the Growers. At the same time, he is also collecting commission for the services rendered to the buyer in providing the facilities etc. in connection with the flower auction.

6.3 In this regard we draw reference to Circular No. 57/31/2018-GST dated 04th September 2018 issued by CBIC. The Circular examines the scope of Principal-agent relationship in the context of Schedule I of the CGST Act. Para 7 of the said Circular is critical to the issue. The same is reproduced below for reference:

*It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not. Thus, **the key ingredient for determining 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. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act.*



Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

In the present case the applicant has presented sample copies of invoices where the applicant issues the invoices for further supply of goods on behalf of the principal. This shows that the provision of the goods by the growers to the applicant is covered under Entry 3 of Schedule I of the CGST Act, 2017. Accordingly the relationship between the applicant and the growers is that between a principal and its agent. No doubt the applicant is engaged in organizing the auction of the goods. However the fact that the applicant has the authority to pass or receive the title of the goods on behalf of the principal shows that the applicant predominantly acts as the commission agent. Thus the contention of Revenue is not acceptable.

6.4 Since the applicant is a "commission agent" within the meaning of the term, he also falls under the definition of agent.

6.5 The "cut flowers" are covered under the definition of "agricultural produce" as is defined in the para 2(d) to the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

6.6 Entry No.54 of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 prescribes exemption for the "services relating to agricultural produce by way of services by a commission agent for sale or purchase of agricultural produce".

Since the applicant is a commission agent within the meaning of the term and he is providing services for sale or purchase of agricultural produce, the same is covered under clause (g) of entry no.54 of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 and hence the services provided by the applicant is exempted from CGST. Similarly, the services are covered under clause (g) of entry no.54 of the Notification (12/2017) No. FD 48 CSL 2017 dated 29.06.2017 and hence are exempted from tax under the Karnataka Goods and Services Tax Act, 2017.

7. In view of the foregoing, we pass the following

R U L I N G

The commission received by the applicant for facilitating the purchase and sale of cut flowers is covered under clause (g) of the entry 54 of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 and hence exempted from CGST. Similarly, the services are covered under clause (g) of entry no.54 of the Notification (12/2017) No. FD 48 CSL 2017 dated 29.06.2017 and hence are exempted from tax under the Karnataka Goods and Services Tax Act, 2017.



[Signature]
26/09/2019

(Harish Dharnia)
Member

[Signature]

(Dr. Ravi Prasad.M.P.)
Member

Place: Bengaluru,

Date: 26.09.2019

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Pr. Commissioner of Central Tax, Bangalore North Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-150 A, Bengaluru.
5. Office Folder.