

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI-600006**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/S.98 OF THE
GOODS AND SERVICES TAX ACT, 2017**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A. Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
--	--

ORDER No. 13/ARA/2024 Dated: 09.07.2024

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

GSTIN Number, if any / User id		33AABCL8259N1Z1
Legal Name of Applicant		M/s. LAST FOREST ENTERPRISES PRIVATE LIMITED
Registered Address / Address provided while obtaining user id		No. 41/111E, Groves Hill Road, Kotagiri, The Nilgiris, Tamil Nadu - 643 217
Details of Application		GST ARA – 01 Application Sl.No. 100/2023, dated 06-11-2023
Jurisdictional Officer		Center: Coimbatore Commissionrate; Division: Conoor Division
Concerned Officer		State: Coimbatore Division, Udagamandalam Zone, Kothagiri Assmt. Circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provider
B	Description (in brief)	<p>The applicant is a Private Limited Company incorporated under the erstwhile Companies Act, 1956 and engaged in the business of wholesale and retail trade of various Tribal, Non-timber Forest, Organic, Natural and Agro Foods, Human made Textile Items and such other similar products. The applicant is a Social Business Enterprise, that act as market intermediary and caters to the entire supply chain of procurement, quality check, brand, organic and fair trade for organic, natural, tribal and forest products and to create market for them within India and Outside India.</p> <p>The applicant has entered into an agreement with the Food and Agriculture Organisation of the United Nations, an autonomous organisation linked to the UN through special agreement on 16th February 2023 vide reference Number: 1/2023-GCP/GLO/015/MUL, which is titled as "Strengthening Conservation, Enterprise & Livelihoods in the Nilgiris Biosphere Reserve" Focus on Beeswax products and Coffee.</p>
Issue/s on which advance ruling required		<ol style="list-style-type: none"> 1. Classification of any goods or services or both. 2. Applicability of a notification issued under the provisions of this Act.

	<p>3. Determination of the liability to pay tax on any goods or services or both.</p> <p>4. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.</p>
Question(s) on which advance ruling is required	<p>1. Whether the grant from the Food and Agriculture Organisation of UN is a supply or not in accordance with the provisions of the GST Act?</p> <p>2. If the said grant is treated as supply, whether the receipt of the said grant is eligible to classify under the Export of Service as "Zero rated supply" under Section 16 of the Integrated Goods and Services Tax Act, 2017 or not?</p> <p>3. If the answers to the above questions are negative, whether the applicant is liable to pay GST under IGST (Integrated Goods and Services Tax) or under CGST (Central Goods and Services Tax) and TNGST (Tamil Nadu Goods and Services Tax) for the receipt of grant from the FAO of UN and what rate?</p> <p>4. If the grant provided by Food and Agriculture Organisation of UN is treated as taxable supply and liable to GST, whether the Food and Agriculture Organisation of United Nations is eligible to claim a refund of GST paid on grant provided to applicant in India under Section 55 of the CGST Act, 2017 or not?</p>

1) At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *parimateria* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. The applicant submitted a copy of challan dated 17-10-2023 evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The online application form for advance ruling dated 17.10.2023 was physically received on 06.11.2023 as mandated under Rule 107A.

3.1. M/s. Last Forest Enterprises Private Limited (hereinafter referred to as "Applicant") is a Private Limited Company incorporated under the erstwhile Companies Act, 1956 and its Registered Office and Principal place of Business situated at No. 41/111E, Groves Hill Road, Kotagiri, The Nilgiris, Tamil Nadu - 643 217.

3.2. The applicant is engaged in the business of wholesale and retail trade of various Tribal, Non-timber Forest, Organic, Natural and Agro Foods, Human made Textile Items and such other similar products within and outside India. Its main object is to strengthen the Self Help Groups among the Tribals and other Backward Communities in the Nilgiris Biosphere Reserve and to create opportunities for their livelihoods and upliftment.

3.3. The applicant is a Social Business Enterprise that act as market intermediary and caters to the entire supply chain of procurement, quality check, brand, organic and fair trade for organic, natural, tribal and forest products and to create market for them within India and Outside India.

3.4. The applicant is also engaged in executing the social welfare projects in the Nilgiris Biosphere Reserve on behalf of various NGOs to provide training and education to SHGs, Women SHGs and Tribals and other Backward Communities for effective use of resources available in the forest and make use of those for their livelihoods, for doing the organic agriculture, for establishment of production centres among the said groups and such other upliftment projects.

3.5. The applicant is also having the additional place of businesses by way of retail shops at Conoor and Kotagiri and production centre at Annur, Coimbatore. It also doing the E-Commerce Business on its own through the Company owned website and through other E-Commerce websites.

3.6. The applicant is doing the business through Amazon portal by registering it as FBA (Fulfilment by Amazon) Agent and for the said purpose it has registered additional places of business in the state of Karnataka, Maharashtra and Haryana.

Brief facts of the Transaction (Grant from FAO of UN) for which Advance Ruling is sought

3.7 The applicant has entered into a Grant Agreement with the Food and Agriculture Organisation of the United Nations, an autonomous organisation linked to the UN through special agreement (hereinafter referred to as "FAO of UN") and its office situated at Viale delle Terme di Caracalla, 00153, Rome, Italy for getting a Grant of

USD 24,893/- (Twenty four thousand eight hundred and ninety three) on 16th February 2023 vide reference Number: 1/2023 GCP/GLO/015/MUL, which is titled as "Strengthening Conservation, Enterprise & Livelihoods in the Nilgiris Biosphere Reserve" Focus on Beeswax products and Coffee.

3.8. The Food and Agriculture Organisation of the United Nations (FAO) is a specialized agency of the United Nations works to improve agricultural productivity and food security, and to better the living standards of rural populations. It also has an aim to defeat hunger and improve nutrition and food security with the help of international efforts.

3.9. The FAO of UN is a specified international organisation declared by the Government of India in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947).

3.10 The applicant had suffered the major losses by way of lack of capital, slowing down and stopping of cash flows and collapsing the distribution and marketing network due to Corona Pandemic Lockdowns in India and worldwide.

3.11 In order to re-imagining of running the green enterprise units of the Applicant in a sustained manner, the applicant Company was in urgent need of investments and hence, it had approached the FAO of UN for funding. Accordingly, the FAO of UN has sanctioned the USD 24,893/- by way of grant to the applicant Company for re-imagining, manage cash flow shortages and to overcome all other marketing obstacles they faced during the Pandemic Lockdowns.

3.12. The grant sanctioned by the FAO of UN is a gratuitous grant under the projects of the said UN organization and it has to be utilised according to the budget lines specified in the agreement within the time lines specified. The said budget lines were determined based on the proposal submitted by the applicant Company to the FAO of UN.

3.13. The said grant of USD 24 893 shall be released in two phases for achieving the two milestones:

Payment #1: USD 16,000/- upon verification by FAO of achievement of Milestones, to be completed by August 2023:

- Complete coffee and balms branding and design
- Complete quality assurance training (Phase 1)
- Implement PGS wild certification (Phase 1)

Payment #2: final payment of USD 8,893/- upon verification by FAO of achievement of Milestones 2, to be completed by February 2024:

Implement digital marketing, sales campaigns and participate in exhibitions (A1.2)

- Complete quality assurance training (Phase 2)
- Purchase products and packaging material (Phase 2)
- Implement PGS wild certification Phase 21

3.14. The said grant will focus on two product categories: beeswax and coffee, having high market potential due to its quality and versatility, and as part of the MPPI and Slow Food Coffee Coalition, respectively. The key activities will include:

- i. Strengthen the LFE's branding, marketing and sales, and operations unit, through strategic communication and marketing of beeswax products and coffee, focusing on local and discerning customers;
- ii. Streamline the production capacity and quality of products of the tribal FPO (APPCL), to ensure consistent supply to the market, by LFE;
- iii. Facilitate environmental, economic and social wellbeing through implementation of market-based value systems such as Fair Trade and PGS certifications.

3.15 Stating the grant's scheme of works and activities the applicant submitted that the said grant is purely a gratuitous one to strengthen the applicant Company in order to overcome the obstacles they have faced during the pandemic lockdowns, as no exchange of consideration between the recipient organisation and the payee organisation (FAO of UN). Main motive behind the grant is that the operation of the applicant Company can't be disturbed in lieu of the financial obstacles they have faced as it would have direct impact on the Tribals and other Backward Communities who depends on the applicant.

Applicant's submissions pertaining to interpretation of law

3.16 The applicant submitted that the grant receipt from the Food and Agriculture Organisation does not amount to the term "Supply" as defined under Section 7 of the CGST Act, 2017 and stated Section 7 of the CGST Act, 2017 and Schedule I & Schedule II to the CGST Act, 2017 in support of their claim.

3.17 The applicant further stated that as per the Oxford Advanced Learner's Dictionary, "Supply" as a verb is defined as "to make available for use or to provide something to someone" and in the Cambridge dictionary as "to provide something that is wanted or needed". Whereas, in the transaction between the applicant and the FAO of UN, nothing will be supplied to the FAO of UN for the grant given by them. It is purely a gratuitous grant from the overseas UN linked autonomous and Non- Profit Organisation for the use of the applicant to overcome the obstacles suffered in difficult situation and mainly concentrates on the indirect welfare of the people who depends on the applicant Company. Hence, the said transaction is out of the meaning provided in the Section 7 of the CGST Act and the normal parlance of the word "Supply" used in the dictionaries.

3.18 The applicant further submits that there must be an exchange of consideration between the parties involved in the transaction to constitute the transaction as "Supply". The term "Consideration" is defined under Section 2(31) of the CGST Act, 2017 as follows:

consideration in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government,

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply,

3.19 The applicant submitted that as per the above, there must be the transfer of goods or services for exchange of consideration. In the said transaction, no goods or services will be transferred to the FAO of UN, a donor organisation in lieu of grant provided to the applicant. Further, the said transaction not covered in the absence of consideration list as well provided in the Section 7 of the CGST Act and the Schedules under the said Act.

3.20. The applicant further submits that to constitute a "Supply", there must be a supplier and recipient relationship between the parties. The CGST Act defines the supplier and the recipient as under;

Section 2(93) - Recipient of Supply of Goods or Services

(93) -recipient of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied,

Section 2(105) - Supplier of Goods or Services

(105) -supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied,

3.21 The applicant submitted that in the instant case, the FAO of UN, the grantor organisation nothing will be received from the applicant Company in lieu of grant provided to it as stated under Section 2(93) of the CGST Act to constitute the FAO of UN as the recipient of Service. Similarly, the applicant Company will not supply anything to the grantor institution to bring it within the meaning of "Supplier" as defined in Section 2(105) of the Act. Hence, the absence of supplier and the recipient relationship between the parties involved in the transaction, the grant from the FAO of UN will not constitute a "Supply" within the meaning of Section 7 of the CGST Act.

3.22 The applicant further submits that to constitute a "Supply", there must be a furtherance of business in the transaction. FAO of UN is a NPO (Non-Profit and Autonomous Organisation linked to UN) and the grant sanctioned by them to the applicant is not for getting any benefit. This grant's main aim is to aid and compensate the financial obstacles and losses were faced and incurred by the applicant during the pandemic lockdowns and to prevent any business disruption further, as the applicant is a Social Business Enterprise and Tribals and such other backward communities depending on it for their livelihoods. Hence, this transaction can't be termed as furtherance of business and it failed the test of "Supply" as enumerated in the Section 7 of the CGST Act.

3.23. The applicant further submits that the receipt of grant can't be termed as provision of service as provided in Section 2(105) of the CGST Act, 2017, provided as under:

(102)-service means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

[Explanation. For the removal of doubts, it is hereby clarified that the expression -service includes facilitating or arranging transactions in securities;]

3.24 That as per the above definition, the receipt of the grant can't constitute the provision of service to the FAO of UN as it failed the test of conversion from one form to another enumerated in the Section 2(102) of the CGST Act.

3.25 The applicant submitted that the main ingredients of supply as per Section 7 of the CGST Act, 2017 is as follows:

- i. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
- ii. Supply should be made for a consideration.
- iii. Supply should be made in the course or furtherance of business
- iv Supply should be made by a taxable person
- v Supply should be a taxable supply
- vi Supply should be made within the taxable territory

Based on the above, the applicant stated that the grant receipt from the FAO of UN is not fulfilling the criteria specified in the Section 7 of the CGST Act, 2017. Accordingly, the said receipt can't be termed as "Supply" for the purpose of determination of taxable supply under the CGST Act.

3.26 The applicant summarized the following based on the definition of supply U/s. 7 of the CGST Act, 2017;

Sl No	Ingredients to constitute supply	Application in the facts of the said case
1	Supply of goods or services. Supply of anything other than goods or services does not attract GST	Here, nothing is supplied to the FAO of UN in lieu of grant provided by them. The receipt of grant from the FAO of UN is an aid to overcome the financial obstacles of the applicant and to strengthen its market base.
2	Supply should be made for a consideration	The receipt of grant is an assistance to the applicant and not for an exchange of consideration to the FAO of UN in lieu of Grant.
3	Supply should be made in the course or furtherance of business	The grant is an assistance to the applicant and not for the purpose of furtherance of business. Further the furtherance of business is not applicable in the said case as the FAO of UN is a NPO and autonomous organisation linked to the United Organisations.
4	Supply should be made by a taxable person	The applicant does not supply anything to the FAO of UN in lieu of grant.
5	Supply should be a taxable supply	There is no supply in lieu of receipt of grant.
6	Supply should be made within the taxable territory	Not applicable as there is no supply

3.27 The applicant stated that the overseas organisations like the FAO of UN providing funding to the Social Business Enterprises like applicant for their survival and upliftment of people who depends on the said enterprises. In this circumstance, the levy of GST on the grants of the United Nations and the other Organisations linked to it would discourage on the part of the said organisations and the recipient organisations are not able to utilise the grants towards the purpose for which the grant will be provided.

3.28. That based on the above, the applicant states that, in the absence of any specific provision in the taxing statutes shall be construed in favour of the Tax Payer. The Taxations Statues requires Strict Construction instead of Liberal Construction. But at the same time, if there is any ambiguity in the taxation laws, the benefit shall be given to the Tax payer. This rule was upheld by the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Versus M/s. Dilip Kumar and Company & Ors. 2018 (7) TMI 1826-Supreme Court.

3.29 The applicant further questioned that if the said grant is treated as supply, whether the receipt of the said grant is eligible to classify under the Export of Services as "Zero rated supply" under Section 16 of the Integrated Goods and Services Tax Act, 2017 or not? The applicant stated that the following conditions as specified in terms of Section 2(6) of the IGST Act, 2017 have to be satisfied, for a supply of service to qualify as Export of Services.

(6) "export of services" means the supply of any service when, -

(i) the supplier of service is located in India,

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; 1(or in Indian rupees wherever permitted by the Reserve Bank of India); and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

3.30 The applicant further stated that the grant from the FAO of UN would qualify as zero-rated supply in terms of Section 16 of the IGST Act, 2017; that Section 7(5) of the IGST Act, 2017 provides that the supply of service shall be treated as a supply of service in the course of inter-State trade or commerce when the supplier is located in India and the place of supply is outside India and that as per Section 2(23) of the IGST Act, zero-rated supply' shall have the meaning assigned to it in Section 16 of the IGST Act. Section 16 of the IGST Act, defines zero- rated supply as under;

16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:-

- (a) export of goods or services or both; or
 - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
- (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- (3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-
- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit, or
 - (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder"

3.31 The applicant stated that based on the above, the export of service (here grant) shall qualify as 'Zero rated supply' and can be supplied without payment of IGST and even if a supply is in the course of inter-state trade or commerce, the same can be supplied without payment of IGST if it qualifies as an export of service.

3.32 The applicant submitted that if the grant receipt from the FAO of UN is considered as "Supply" within the meaning of Section 7 of the CGST Act, 2017, then it will be eligible to qualify as an "Export of Service in accordance with the provisions of Section 2(6) of the IGST Act, 2017 and is eligible for "Zero rated Supply" in accordance with the provisions of Section 16 of the IGST Act, based on the following:

Sl No	Particulars of Section 2(6)	Relevant section to be referred	Application in the facts of the said case
1	The supplier of service is located in India	Section 2(93) of the CGST Act and 2(15) of the IGST Act	Applicant is located in India
2	The recipient of service is located outside India	Section 2(105) of GGST Act and Section 2(14) of the IGST Act	No service exchanged from the applicant to FAO of UN as the receipt is a grant and hence, it is not applicable

3	The place of supply of service is outside India	Section 13(2) of the IGST Act	No supply of service from the applicant to the FAO of UN grant provider. Hence, this is not applicable.
4	The payment for such service has been received by the supplier of service in convertible foreign exchange.		The applicant has received the grant in convertible foreign exchange
5	The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8.		Applicant (supplier of service) and Foreign university (recipient of service) are not merely establishment of a distinct person

3.33 The applicant submitted that based on the above, no service shall be provided either within India or Outside India to the FAO of UN, a provider of grant or on their behalf in lieu of grant received. Instead, the grant will be utilised for the purpose for which it was sanctioned as per the budget lines specified by the grantor. However, the grant received or will be received from the FAO of UN, an overseas organisation is in convertible Foreign Exchange. Hence, the said grant shall be eligible to classify as an "Export of Service and qualify for "Zero rated Supply within the meaning of Section 16 of the IGST Act, 2017.

3.34. The applicant further questioned that if the answers to the above questions are negative, whether the applicant is liable to pay GST under the head "IGST (Integrated Goods and Services Tax)" or under the head "CGST (Central Goods and Services Tax) and TNGST (Tamil Nadu Goods and Services Tax)" for the receipt of grant from the FAO of UN and what rate?

3.35 In this regard the applicant submitted that as in the absence of exchange of consideration between the applicant and the FAO of UN in lieu of grant provided by the FAO of UN and no place of supply involved in the said transaction, whether the place of supply is assumed to be based on the location of the recipient of grant i.e., within the state of Tamil Nadu (applicant's state) or is assumed to be as an interstate supply in lieu of grant provided by the overseas entity and received in convertible Foreign Exchange.

3.36 The applicant further submitted that they request ruling as to under which head the applicant is liable to pay GST either under the "Integrated Goods and Services Tax (IGST) or under the "Central Goods and Services Tax Act (CGST) and Tamil Nadu Goods and Services Tax Act (SGST)" and what rate if the grant from the FAO of UN is considered as Taxable Supply and liable to GST under the provisions of the GST Act.

3.37 The applicant also raised a question that if the grant provided by Food and Agriculture Organisation of UN is treated as taxable supply and liable to GST, whether the Food and Agriculture Organisation of United Nations is eligible to claim a refund of GST paid on grant provided to applicant in India under Section 55 of the CGST Act, 2017 or not? That if the said grant from the FAO of UN is treated as a taxable supply in India and liable to GST in India, whether the FAO of UN is eligible to apply for refund as specified in the Section 55 of the CGST Act 2017 by following the procedure enumerated in the Notification No. 13/2017 Integrated Tax, Dated 28th June 2017 as the Food and Agriculture Organisation of United Nations is a specified international organisation defined in Section 3 of the United Nations (Privileges and Immunities Act) 1947 (46 of 1947) and reproduced the same as follows;

3. Power to confer certain privileges and immunities on other international organisation and their representatives and officers.-

Where in pursuance of any international agreement, convention or other instrument it is necessary to accord to any international organisation and its representatives and officers privileges and immunities in India similar to those contained in the provisions set out in the Schedule, the Central Government may, by notification 2 in the Official Gazette, declare that the provisions set out in the Schedule shall, subject to such modifications, if any, as it may consider necessary or expedient for giving effect to the said agreement, convention or other instrument, apply mutatis mutandis to the international organisation specified in the notification and its representatives and officers, and thereupon the said provisions shall apply accordingly and, notwithstanding anything to the contrary contained in any other law, shall in such application have the force of law in India.

1 Provisions set out in the Schedule have been extended with certain modifications to the following organisations by various notifications:-

- (1) International Civil Aviation Organisation.*
- (2) World Health Organisation.*
- (3) International Labour Organisation.*
- (4) Food and Agriculture Organisation of the United Nations.*
- (5) United Nations Educational, Scientific and Cultural Organisation.*
- (6) International Monetary Fund.*
- (7) International Bank of Reconstruction and Development*
- (8) Universal Postal Union.*
- (9) International Telecommunication Union.*
- (10) World Meteorological Organisation,*
- (11) Permanent Central Opium Board.*

4.0 The applicant is under the administrative control of Central Tax Authorities. The concerned authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

5.1 The concerned Central authority vide letter GEXCOM/TECH/GST/4363/ 2023-TECH dated 05.01.2024, stated that;

- Upon perusal of the Grant agreement, it is seen that the FAO is providing grant to the applicant on completion of certain predefined obligations on the part of the applicant. Further, from the grant agreement, it is seen that the obligations are such that the applicant is required to create a brand name to forest produce i.e. beeswax & coffee, procure from tribes, obtain certain certification for those products and market the same. Thus it appears from the grant agreement that FAO is neither receiving any goods nor any services from the applicant. Further, from the definition of supply in the CGST Act, 2017, it is seen that there is no supply involved in lieu of the grant received by the applicant from the Food and Agriculture Organisation of UN. Further the grant received by the applicant from the Food and Agriculture Organisation of UN does not fall under the activities specified in Schedule I, made or agreed to be made without a consideration. Hence, it is opined that the grant received by the applicant from the Food and Agriculture Organisation of UN is not towards a supply in accordance with the provisions of the CGST Act, 2017.

The questions raised in the application are not pending or has not been decided in any proceedings in the case of the applicant.

5.2 The State jurisdictional officer, Kothagiri Assessment Circle stated that there is no proceedings pending in relation to the issue raised in the application by the Applicant and the Joint Commissioner(ST), Intelligence, Coimbatore stated that there is no pending proceeding in their office against the Applicant.

6. PERSONAL HEARING

The applicant, was given an opportunity to be heard on 26.03.2024. Mohamed Abubecker Sidhick, Chartered Accountant, appeared in virtual mode, for the personal hearing as the Authorised Representative (AR) of the Applicant. The AR explained in brief about the business of the applicant and submitted that they have received grant from Food and Agriculture Organisation of United Nations. The AR stated that since Food and Agriculture Organisation of United Nations is a specified international organization within the meaning of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947) they have sought advance ruling as to whether the amount received in convertible Foreign Exchange by the applicant from FAO an overseas NPO (Non-Profit Organisation) is liable to GST or not.

DISCUSSION AND FINDINGS

7.1 We have carefully considered the submissions made by the applicant in the advance ruling application and also the submissions made during the personal hearing.

7.2 The Applicant is before us seeking Advance ruling on the following questions;

1. Whether the grant from the Food and Agriculture Organisation of UN is a supply or not in accordance with the provisions of the GST Act?

2. If the said grant is treated as supply, whether the receipt of the said grant is eligible to classify under the Export of Service as "Zero rated supply" under Section 16 of the Integrated Goods and Services Tax Act, 2017 or not?

3. If the answers to the above questions are negative, whether the applicant is liable to pay GST under IGST (Integrated Goods and Services Tax) or under CGST (Central Goods and Services Tax) and TNGST (Tamil Nadu Goods and Services Tax) for the receipt of grant from the FAO of UN and what rate?

4. If the grant provided by Food and Agriculture Organisation of UN is treated as taxable supply and liable to GST, whether the Food and Agriculture Organisation of United Nations is eligible to claim a refund of GST paid on grant provided to applicant in India under Section 55 of the CGST Act, 2017 or not?

7.3. We find that the applicant is a private limited company and has submitted that they are a social business enterprise engaged in the business of wholesale and retail trade of various Tribal, Non-timber Forest, Organic, Natural and Agro Foods, Human made Textile Items and such other similar products within and outside India. The applicant submits that their main object is to strengthen the Self Help Groups among the Tribals and other Backward Communities in the Nilgiris Biosphere Reserve and to create opportunities for their livelihoods and upliftment and they act as market intermediary and cater to the entire supply chain of procurement, quality check, brand, organic and fair trade for organic, natural, tribal and forest products and to create market for them within India and outside India. The applicant has also submitted that they are engaged in executing the social welfare projects in the Nilgiris Biosphere Reserve on behalf of various NGOs to provide training and education to SHGs, Women SHGs and Tribals and other Backward Communities for effective use of resources available in the forest and make use of those for their livelihoods, for doing the organic agriculture, for establishment of production centres among the said groups and such other upliftment projects.

7.4. We find that the applicant has submitted that they suffered major losses by way of lack of capital, slowing down and stopping of cash flows and collapsing of

distribution and marketing network due to Corona Pandemic Lockdowns in India and worldwide and that they were in urgent need of investments and hence, they had approached the FAO of UN for funding. Accordingly, the FAO of UN has sanctioned the USD 24,893/- by way of grant to the applicant for re-imagining, manage cash flow shortages and to overcome all other marketing obstacles they faced during the Pandemic Lockdowns. The applicant has also submitted that the grant sanctioned by the FAO of UN is a gratuitous grant under the projects of the said UN organization and it has to be utilised according to the budget lines specified in the agreement within the time lines specified. The said budget lines were determined based on the proposal submitted by the applicant Company to the FAO of UN.

7.5. In view of the above facts it becomes imperative to dwell into the provisions of GST law regarding 'levy' 'supply' and 'consideration' to decide the moot issue *whether the grant from the Food and Agriculture Organisation of UN is towards any supply or not in accordance with the provisions of the GST Act.*

7.6 The provisions regarding Levy and collection is provided under section 9 of the CGST Act, 2017, and Section 5 of the IGST Act, 2017. The extracts of the relevant provisions are reproduced below;

Section 9 of the CGST Act, 2017

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
- (2)

Section 5 of the IGST Act, 2017

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

7.7 Hence, on perusal of the above provisions of the GST law we find that the incidence to pay tax on goods or Services or both arise at the time of supply and 'supply is the taxable event as far as GST law is concerned. For levying GST on a

particular transaction, it has to first fall under the scope of 'Supply'. Supply has been defined under Section 7(1) of the CGST Act, 2017. The same is reproduced below:

Section 7. Scope of supply.-

(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;**

¹[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; ²[and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; ³[****]

(d) ⁴[****].

⁵[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either 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 ⁶[sub-sections (1), (1A) 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.

7.8 On perusal of the above provision of scope of levy provided under the CGST Act, 2017 it can be seen that the *scope of supply* is an inclusive one and is not a specific one making the scope of supply much more broad-based. So long as an activity is made for a consideration and is in the course or furtherance of business, it shall be a supply unless specifically excluded. We find that the GST flyer issued by the Central Board of Indirect Taxes and Customs pertaining to 'Meaning and Scope of Supply' provides as follows;

The term, "supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.

2. Supply should be made for a consideration

*3. Supply should be made **in the course or furtherance of business***

4. Supply should be made by a taxable person

5. Supply should be a taxable supply

6. While these six parameters describe the concept of supply, there are a few exceptions to the requirement of supply being made for a consideration and in the course or furtherance of business. Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration. Further import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

7.9 In the instant case we find the applicant has submitted that in the transaction between the applicant and the FAO of UN, **nothing will be supplied** to the FAO of UN for the grant given by them. It is purely a gratuitous grant from the overseas UN linked autonomous and Non- Profit Organisation for the use of the applicant to overcome the obstacles suffered in difficult situation and mainly concentrates on the indirect welfare of the people who depends on the applicant Company. We find that the applicant submits that an amount of USD 24,893/- was sanctioned, by way of grant to the applicant Company for re-imagining, manage cash flow shortages and to overcome all other marketing obstacles they faced during the Pandemic Lockdowns. That the grant sanctioned by the FAO of UN is a gratuitous grant under the projects of the said UN organization and it has to be utilised according to the budget lines specified in the agreement within the time lines specified. The said budget lines were determined based on the proposal submitted by the applicant Company to the FAO of UN.

7.10 We find the applicant submits that the grant received by the applicant shall be released in two phases for achieving the two milestones:

Payment #1: USD 16,000/- upon verification by FAO of achievement of Milestones, to be completed by August 2023:

- Complete coffee and balms branding and design
- Complete quality assurance training (Phase 1)
- Implement PGS wild certification (Phase 1)

Payment #2: final payment of USD 8,893/- upon verification by FAO of achievement of Milestones 2, to be completed by February 2024:

Implement digital marketing, sales campaigns and participate in exhibitions (A1.2)

- Complete quality assurance training (Phase 2)
- Purchase products and packaging material (Phase 2)
- Implement PGS wild certification Phase 2

7.11 Further, the said grant will focus on two product categories: beeswax and coffee, having high market potential due to its quality and versatility, and as part of the MPPI and Slow Food Coffee Coalition, respectively. The key activities will include:

- i. Strengthen the LFE's branding, marketing and sales, and operations unit, through strategic communication and marketing of beeswax products and coffee, focusing on local and discerning customers;
- ii. Streamline the production capacity and quality of products of the tribal FPO (APPCL), to ensure consistent supply to the market, by LFE;
- iii. Facilitate environmental, economic and social wellbeing through implementation of market-based value systems such as Fair Trade and PGS certifications.

7.12 Hence from the perusal of the provisions of the CGST Act, 2017 regarding Scope of Supply and the submissions made by the applicant regarding the activities to be undertaken by the applicant as mandated by the grant providing organization we find that there is no supply of Goods or services to the grant providing organization, and hence we are of the opinion that the activities undertaken by the applicant in lieu of receipt of the Grant from FAO **is not covered under the meaning of 'scope of supply'**.

7.13 Without prejudice to the above discussions and findings, even if the activities to be undertaken by the applicant as mandated by the grant providing organization i.e FAO is viewed as supply, we find that the transaction between the parties concerned in the instant case is not in the course or furtherance of business, as the same does not have any commercial connotation to it.

7.14 Further, consideration is defined in Section 2(31) of the CGST Act, 2017 as follows;

"consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

***Provided** that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;*

7.15 Hence, consideration refers to payment made towards supply of goods or services or both. However in the instant case we find that there is no supply of goods or services or both involved in the transaction between the applicant and the FAO and we are of the opinion that the amount of USD 24,893/- received by the applicant cannot be held as consideration.

7.16 We find that the **Food and Agriculture Organization of the United Nations (FAO)** is a specialized agency of the United Nations that leads international efforts to defeat hunger and improve nutrition and food security. On perusal of the GRANT AGREEMENT Number: 1/2023- GCP/GLO/015/MUL submitted by the applicant it is seen that the FAO is providing Grant Support through project GCP/GLO/015/MUL, with funds provided by **Terra del Terzo Mondo** (the "Resource Partner") and the grant agreement is titled as **"For the project: Strengthening Conservation, Enterprise & Livelihoods in the Nilgiri Biosphere Reserve: Focus on Beeswax products and Coffee."**

7.17 Further we also find that under the heading **"Description of the Investment"** the following is mentioned;

LAST FOREST ENTERPRISES PVT LTD (LFE) is a social business enterprise that works as a market intermediary and caters to the entire supply chain of procurement, quality check, brand, organic, fair trade, and indigenous products such as honey, a range of beeswax products and coffee among others, in one the unique biosphere reserves in India: Nilgiri biosphere reserve. Following the pandemic lockdown, LFE suffered major losses due to lack of capital, slowing down and stopping of cash flows, and collapsing of the distribution network due to similar situations elsewhere.

Urgent investments are required for strategic re-imagining of running these green enterprise units, in a sustained manner. Therefore, the propose of the investment is to strengthen the local green enterprise for sustained livelihood of vulnerable communities, and contribute to positive environmental outcomes, using an inclusive approach that focuses on enhancing the capacities of women in forest-based enterprises. Improved livelihood capacities of women are reported to have a positive impact in terms of income and nutritional security.

LFE will also promote innovative market approaches such as PGS certification towards improved livelihood security and environmental conservation.

The vision is for a sustained green enterprise that will transform the lives of indigenous youth, through ecology-focused green entrepreneurship, closely linked to their traditional forest-based livelihood, and strengthen livelihood security, and the local economy. Positive impacts on the environment through strict compliance with ecological standards and indicators are also expected.

The interventions will focus on forest-based livelihood, leveraging the existing knowledge, and experience, along with the partner institutions (Keystone Foundation and APPCL), and strengthen key "satellite" units that are part of the enterprise network for the NBR. KP is a not-for-profit trust established in November 1993, based in Nilgiris district of Tamil Nadu, with Conservation, Enterprise & Livelihoods as its central pillars. It has incubated two social marketing organizations -APPCL that looks at production and procurement at the village level, and LFE that focuses on marketing of agro and forest based, fair trade products.

7.18 On perusal of the description of the investment as mentioned in the Grant Agreement we find that the purpose of the investment is to help the applicant company overcome the losses due to lack of capital, slowing down and stopping of cash flows and collapsing of the distribution network due to the pandemic lockdown and the activities to be undertaken by the applicant are towards strengthening the local green enterprise for sustained livelihood of vulnerable communities, and contribute to positive environmental outcomes, using an inclusive approach that focuses on enhancing the capacities of women in forest-based enterprises as envisioned by FAO.

7.19. In view of the foregoing we find that neither the grant received by the applicant can be construed to be consideration under the provisions of the GST law nor the activities to be undertaken by the applicant, as per the work plan developed and agreed upon jointly by the FAO and the applicant qualify to be supply under the provisions of GST law.

7.20. Since the answer to Question No. 1 raised by the applicant is answered in the affirmative we find that Questions 2, 3 & 4 need not be answered as they cease to

exist. Also, we find that the Question No. 4 has been raised on behalf of the FAO. In this regard, the relevant provisions of Section 95 (a) and Section 103 (a) of the CGST Act, 2017 are reproduced below;

Section 95. Definitions.

- (a) "advance ruling" means a decision provided by the Authority or the Appellate Authority [or the National 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 [or of section 101C], in relation to the supply of goods or services or both **being undertaken or proposed to be undertaken by the applicant**;

Section 103- Applicability of advance Ruling

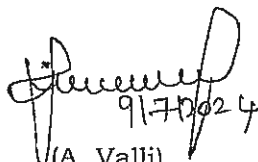
- (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only-
- (a) **on the applicant who had sought it in respect of any matter referred to in sub section (2) of section 97 for advance ruling;**
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

7.21 On perusal of the provisions of Section 95 (a) and Section 103 (a) of the CGST Act, 2017 we are of the opinion that the Question No. 4 is also out of purview of Section 97 of the CGST Act, 2017.

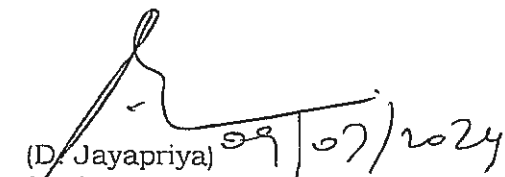
8. In view of the above, we rule as under,

RULING

1. The grant from the Food and Agriculture Organization of UN is not a supply in accordance with the provisions of the GST Act.
2. Questions 2 & 3 are not answered as the same cease to exist as Question no. 1 is answered in the affirmative.
3. Question No. 4 is not answered as the same is out of purview of Section 97 of the CGST Act, 2017, as discussed in para 7.20.


(A. Valli)
Member(SGST)




(D. Jayapriya)
Member (CGST)

To

M/s. Last Forest Enterprise Private Limited,
No. 41/111E, Groves Hill Road,
Kotagiri, The Nilgiris, Tamil Nadu – 643 217

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.
3. The Commissioner of GST & C. Ex.,
6/7, A.T.D. Street, Race Course,
Coimbatore Commissionerate.

Copy to:

1. The State Tax Officer,
Kothagiri Assessment Circle,
Door No. 135H, 128G, 129D, Queen Hills Road,
Kothagiri - 643 217.
2. Master File / Spare – 1.