

**BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)**

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)

Present:

Shri Vipin Chandra (Member)

श्री विपिन चन्द्र (सदस्य)

Shri Amit Gupta (Member)

श्री अमित गुप्ता (सदस्य)

The 10Th day of June, 2019

Ruling No- 01 /2019-20

अग्रिम विनिर्णय संख्या.

In

Application No: 19

आवेदन संख्या-19

1	Applicant आवेदक	M/s Parvatiya Plywood (P) Limited, Kashipur Road, Ramnagar, Nainital Uttarakhand
2	Jurisdictional Officer अधिकारिता अधिकारी	Rang-III Ramnagar CGST
3	Present for the Applicant आवेदक की ओर से उपस्थित	Shri Rakesh Gupta (CA).
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None कोई नहीं
5	Concerned Officer	Ms Preeti Manral, Deputy Commissioner, SGST-Dehradun
6	Date of receipt of application आवेदन प्राप्ति की तिथि	26.03.2019
7	Date of Personal Hearing सुनवाई की तिथि	02.05.2019

Note : Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

नोट : इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवा कर अधिनियम 2017 की धारा- 99 के अन्तर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTRAKHAND**

RULING

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (herein after referred to as Act) and the rules made thereunder filed by M/s Parvatiya Udyog (P) Ltd, Kashipur Road , Ramnagar, Nainital, Uttarakhand seeking an advance ruling on following issues:
 - (a) applicability of GST rate and HSN/classification of wood scrap.
 - (b) applicability of GST rate on security forfeited by Uttarakhand Forest Corporation
 - (c) refund of GST on supply turned in to bad debts and supply lost/destroyed in transit
 - (d) applicability of GST on mandi fees on local purchase of wood and whether the same is covered under Reverse Charge Mechanism (herein after referred to as RCM) in terms of section 9(3) of the Act. Whether exemption can be claimed if amount of mandi fee is below Rs. 5000/- in individual consignment
 - (e) applicability of GST on penalty
2. Advance Ruling under GST 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.
3. As per the said subsection (2) of Section 97 of the CGST/SGST Act, 2017 advance ruling can be sought by an applicant in respect of :
 - (a) Classification of any goods or services or both
 - (b) Applicability of a notification issued under the provisions of this Act,
 - (c) Determination of time and value of supply of goods or services or both,
 - (d) Admissibility of input tax credit of tax paid or deemed to have been paid
 - (e) Determination of the liability to pay tax on any goods or services or both
 - (f) Whether the applicant is required to be registered
 - (g) 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

4. In the present case applicant has sought advance ruling on applicability of GST rate on supply of goods & their classification and any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply. Therefore, in terms of said Section 97(2)(a), (b) & (e) of CGST/SGST Act, 2017, the present application is hereby admitted.
5. Accordingly opportunity of personal hearing was granted to the applicant on 02.05.2019. Shri Rakesh Gupta (CA), on behalf of the applicant appeared for personal hearing on the said date and re-iterated the submissions already filed with the application. He also invited attention to para 8 of Circular No. 80 dated 31.12.2018. Ms Preeti Manral, Deputy Commissioner, SGST-Dehradun, concerned officer appointed by the State Authority, also present during the hearing proceedings.
6. From the record submitted by the applicant we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AAACP4522H1ZS and are engaged in the manufacturing of plywood, block board and flush doors falling under HSN 44123190, 44129400 & 44182010 respectively. Before proceeding in the present case, we would first go through the submissions filed by the applicant and the same is summarized as under:
 - (i) in the manufacturing of plywood, they use wood (poplar & eucalyptus) for producing core veneer which is an intermediate product for them. Core Veneer is produced by putting wood log between the peeling machines. Peeling machines peel 80% to 90% wood log and rest of the wood is sold by them as wood scrap. This wood scrap is sold to paper industries for pulping and various other customers which is used in cricket wicket manufacturing, decorative fencing and firewood. Wood scrap should be classified as wood waste and scrap under GST Tariff 4401.
 - (ii) they purchase wood from Uttarakhand Forest Corporation in auction. They deposit certain amount at the time of auction and pay the balance after approval. Sometimes they are unable to deposit balance amount for the wood purchased in auction, then Uttarakhand Forest Corporation forfeit the amount deposited by them and this forfeited amount is no more supply in terms of amendment made in section 7 of the Act retrospectively by the amendment Act, 2018 and will not attract GST.

- (iii) mandi fee is not a supply therefore no GST is payable on the same.
- (iv) Penalty recoverable for damage of material by labour is not chargeable to GST being neither a supply of goods or service as per serial no. 06 of Schedule III of the Act.

7. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which were filed for our consideration in the application. Now we proceed by taking the issue one by one:

(A) Applicability of GST rate and HSN/classification of wood scrap.

A.1 In this context we find that Chapter 44 of the GST Tariff Act, 2017 deals with "wood and articles of wood; wood charcoal". Chapter heading 4401 further deals with fuel woods, in logs, in billets, in twigs, in faggots or in similar form; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms.

A.2 On perusal of Chapter heading 4401 of the GST Tariff Act, 2017 we observe as under:

- i. Fuel wood is classified under sub-heading code 440111 (coniferous) or 440112 (non-coniferous) but it is generally in the form of short pieces of logs, split logs or billets. Fuel wood may also be in the form of twigs & faggots.
- ii. Wood in chips or particles is classified under sub-heading 440121 and 440122. However, the following types of wood are not classified under these subheading :
 - a. wood in chips used in perfumery, in pharmacy etc.
 - b. wood in chips used in dyeing or in tanning
- iii. Sawdust, wood waste and scrap wood agglomerated in logs, briquettes, pellets or similar forms are classified under subheading code 440131 (wood pellets) and 440139 (Other). They consist of wood that is not usable as timber and include:
 - a. saw mill or planning mill rejects
 - b. manufacturing waste
 - c. broken planks
 - d. waste and scrap joinery and carpentry
 - e. spent dyewood and tanning wood bark

A.3 We observe that the wood left after peeling process is not usable as timber rather the same is to be treated as manufacturing waste which is used in paper manufacturing, particle board and fibre board manufacturing as well as for fuel. Therefore the same may be classified under chapter heading 44013100 or 44013900 (supra) and will attract GST @ 5%.

(B) Applicability of GST rate on security forfeited by Uttarakhand Forest Corporation.

B.1 In this context, we reproduce section 7 of the Act as under:

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

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

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

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

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

B.2 Section 7 of the Act was further amended on 29.08.2018 by the Central Goods and Service Tax Amendment Act, 2018. The relevant portion of the same is reproduced as under:

(a) in sub-section (1), —

(i) in clause (b), after the words "or furtherance of business;", the word "and" shall be inserted and shall always be deemed to have been inserted;

(ii) in clause (c), after the words "a consideration", the word "and" shall be omitted and shall always be deemed to have been omitted;

(iii) clause (d) shall be omitted and shall always be deemed to have been omitted;

(b) after sub-section (1), the following sub-section shall be inserted and shall always be deemed to have been inserted, namely:

“(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”;

(c)-----

B.3 On perusal of legal provisions (supra), we find that section 7 of the Act deals with the terms “supply”. We also find that section 7 of the Act was amended by the CGST (Amendment) Act, 2018 vide which it has been clarified that by merely falling of an activity or transactions falls under ‘Schedule II (which specifies if an activity or transactions is to be treated as goods or service), it does not necessarily qualify as a supply. First an activity has to be supply as per section 7(1) of the Act, and then only it will be tested as per Schedule II and this amendment has been given a retrospective effect w.e.f 01.07.2017.

B.4 We find that section 7(1)(a) of the Act is relevant to the issue in hand which provides that it covers all forms of supply of goods or services made for a consideration by a person in the course or furtherance of business. In this context we observe that supply of goods viz wood, in consideration of payment is one set of mutual transactions and forfeiture of an amount for not depositing the balance amount for the wood purchased is another set of mutual transactions. Thus indeed there is supply of goods as well as supply of services also. Therefore it satisfy the conditions of section 7(1)(a) of the Act. Now comes the test in terms of Schedule II appended to the Act in respect of forfeited amount. We find that the agreement for tolerating an act or situation which is unable to deposit balance amount for the wood purchased is a provision of service in terms of entry no. 5(e) of Schedule-II appended to the Act which provides that agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Accordingly we observe that forfeited amount is covered under Service Code (Tariff) 999794 as “agreeing to tolerate an act” and leviable to GST @ 18%.

(C) Refund of GST on supply turned in to bad debts and supply lost/destroyed in transit .

C.1 The said issue does not cover under subsection (2) of Section 97 of the CGST/SGST Act, 2017 (supra) and thus no ruling can be given on this issue.

(D) As per the provisions of section 15 (2) (a) of the CGST/SGST Act 2017, value of supply also includes any fee levied under any law other than CGST/SGST/UTGST Act. Therefore, mandi fee levied under Agricultural produce marketing (development And Regulation) Act 2011 (uttarakhand Act No. 09 of 2011) will become the part of the value of supply and will attract GST rate specified for a particular good under the relevant chapter/Heading/Sub-Heading irrespective of the fact that whether GST is paid on forward charge basis or reverse charge basis. It is relevant to mention that under Section 9(3) of CGST/SGST Act, 2017, wood has not been notified as such good supplied by unregistered person/farmer/Agriculturist, in respect of which GST shall be paid on reverse charge basis by the recipient. Further under Section 9(4) of CGST/SGST Act, 2017, which came into force from 1st of February, 2019, wood has not been specified as a category of good received from an unregistered supplier on which the tax is to be paid on the reverse charge basis. Moreover prior to 1st February 2019, in pursuance of the provision to tax the supply of taxable goods or services or both by an unregistered supplier to a registered person on reverse charge basis, an exemption to the extent of the aggregate value of such supplies of goods or services or both upto five thousand rupees in a day was made effective from the 1st of July, 2017. The said restriction of five thousand rupees was withdrawn on 13th October, 2017 and a blanket exemption was provided till the 31st March 2018 which was further extended to 30th September 2019. However in between from 1st of February, 2019 an amended Section 9(4) of CGST/SGST Act, 2017, came into the effect which have been discussed at length above and by virtue of coming into force of the amended Section 9(4) of CGST/SGST Act, 2017, the said exemption notification was rescinded with effect from 1st of February, 2019.

Therefore in view of the aforesaid facts the applicant is not liable to pay GST on the mandi fee paid on the purchase of wood from the unregistered person/farmer.

(E). Applicability of GST on penalty as the same is recovered for damage of material by labour.

E.1 The legal provisions on this issue has been discussed at para B (supra). we observe that the penalty recovered is covered under Service Code (Tariff) 999794 as "agreeing to tolerate an act" and leviable to GST @ 18%.

ORDER

In view of the above discussion & findings we hold as under:

(i) The residue left after peeling of wood is to be called as wood waste/scrap & is classifiable under chapter heading 44013100 or 44013900 and will attract GST @ 5% as on date.

(ii) The forfeited amount pertains to service & is covered under Service Code (Tariff) 999794 as "agreeing to tolerate an act" and leviable to GST @ 18% as on date.

(iii) Refund of GST on supply turned in to bad debts and supply lost/destroyed in transit are not covered under subsection (2) of Section 97 of the CGST/SGST Act, 2017 and thus no ruling can be given on this issue.

(iv) Mandi fee paid on the purchase of wood from the unregistered person does not attract GST under section 9(3) and section 9(4) of the CGST/SGST Act 2017.

(v) The penalty amount pertains to service & is covered under Service Code (Tariff) 999794 as "agreeing to tolerate an act" and leviable to GST @ 18% as on date.


VIPIN CHANDRA (MEMBER)


AMIT GUPTA (MEMBER)

To

M/s Parvatiya Plywood (P) Limited,
Kashipur Road, Ramnagar, Nainital Uttarakhand

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX, UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F.NO. 19 /State Tax -UK /GST/Sec-97/2019-20/D.dun/ 868 Dated: 10, Jun 2019

Copy to :

1. The Chief Commissioner, CGST, Meerut Zone, Meerut
2. The Commissioner, CGST, Commissionerate Dehradun
3. The Commissioner, SGST, Commissionerate Uttarakhand
4. Assistant Commissioner, CGST, Division Haldwani
5. Joint Commissioner, SGST, Haldwani
6. Ms Preeti Manral (Concerned Officer), Deputy Commissioner, SGST, Dehradun
7. The Registrar -Appellate Authority for Advance ruling
8. Guard File.