Divisional Forest Officer, 5-Tilak Road, Dehradun (appellant, represented by Rajesh Gupta, F.C.A., LLB, Authorised Representative)

Appellate Authority for Advance Ruling — Uttarakhand

Order No. 01/2018-19 dated 07.09.2018 (handwritten date; the Appeal No.… Dated **07.09.2018**

Q Questions Before the Authority

- Whether the Abhivahan Shulk (transit fee) collected by the Uttarakhand Forest Department under the Uttarakhand Transit of Timber and Other Forest Produce Rules 2012 is exigible to GST under SAC 9997 as other services, or not.
- Alternatively, if the fee is taxable, whether GST is payable by the recipient of the service under reverse charge (Notification 13/2017-CT(R)) and whether the recipient is entitled to the exemption in Entry 9 of Notification 12/2017-CT(R). The appellate authority did not decide this point.

F Facts

The Forest Department collects Abhivahan Shulk, a transit fee calculated on the quantity and quality of forest produce, at check posts when forest produce is moved under transit passes issued under the Uttarakhand Transit Rules 2012. The fee is deposited as Government revenue and has been collected since 1978. The Authority for Advance Ruling had held that the fee is consideration for a service and is taxable under SAC 9997 at 18%, and the department appealed against that holding.

H Ruling

Exigibility of Abhivahan Shulk (transit fee) to GST, and classification and rate	**Taxable under SAC 9997 as other services; CGST 9%, SGST 9%, IGST 18%**	The answer is taken from the Discussions and Findings, because the order has no separate RULING section with numbered Q and Ans entries. Reverse-charge liability and the Entry 9 exemption were not decided; the appellate authority left them to the assessee.

The Appellate Authority dismissed the appeal and upheld the Advance Ruling Authority's decision. It held that Abhivahan Shulk is a fee for a service, that it is supply under Section 7 CGST Act, and that it falls within the residuary heading 9997 for other services. The reverse-charge and exemption plea was not considered because it was not part of the original application, and the assessee must decide for itself whether the conditions for reverse charge are met.

R Reasoning

The Authority applied the Supreme Court tests for a fee (State of Rajasthan v. Sajjan Lal; Kishan Lal v. State of Haryana; P. Kannadasan) and found that the transit fee has a reasonable quid pro quo with the forest-produce regulation services, is levied on quantity and quality, and is paid only by those who use the transit system. It then

held that Government fees are not excluded from the definition of service in Section 2(102), that the fee is not a Schedule III activity or an exempt activity under Section 7(2)(b), and that it is not covered by the NIL-rate entries of Notification 12/2017-CT(R), so it falls under residuary heading 9997. The reverse-charge plea was rejected as a new point not raised in the original application.

P Provisions Relied On

- Section 2(102) CGST Act 2017 (definition of services)
- Section 7(1)(a), (b), (c), (d), 7(2)(a), (b) and 7(3) CGST Act 2017 (scope of supply)
- Schedules I, II and III to the CGST Act 2017
- Notification 11/2017-Central Tax (Rate) dated 28.06.2017, heading 9997 at entry 35
- Notification 12/2017-CT(R) dated 28.06.2017, Sl. No. 4, 5 and 6 and Entry 9 (as cited in the order)
- Notification 13/2017-CT(R) dated 28.06.2017, Entry 5 (reverse charge, as cited in the order)
- Indian Forest Act 1927, Sections 41, 42, 45, 51, 52 and 76
- Uttarakhand Transit of Timber and Other Forest Produce Rules 2012, Rules 3, 5 and 28
- State of Rajasthan v. Sajjan Lal, AIR 1975 SC 706
- Kishan Lal v. State of Haryana (1993) Supp 4 SCC 461
- P. Kannadasan v. State of Tamil Nadu, JT 1996 (7) SC 16

! For the Practitioner

The order holds that forest transit fees are taxable under SAC 9997 at the residuary rate , which is useful for any government body that collects a regulatory fee tied to a service. A practitioner would cite it for the fee-versus-tax analysis and for the point that Government fees are not excluded from the definition of services. It does not decide whether reverse charge applies to such fees, since that plea was not before the Advance Ruling Authority, so the question remains open for the assessee to determine.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> ukaaar_01-2018_dtd_07-09-18_dfo.pdf

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