M/s T.P. Roy Chowdhury & Company Pvt. Ltd. (Appellant)

Appellate Authority for Advance Ruling — West Bengal

Appeal Case No. 13/WBAAAR/APPEAL/2019 dated 26.09.2019 (appeal fil… Dated **26.09.2019**

Q Questions Before the Authority

- Whether imported raw whole yellow peas are agricultural produce.
- Whether services by way of handling (loading, unloading and related services) of imported raw whole yellow peas are eligible for exemption under Sl. No. 54(e) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1136 FT dated 28.06.2017).

F Facts

The appellant is a stevedore that provided loading and unloading services for a consignment of imported raw whole yellow peas. The surveyor's test report showed 1.45% broken grain and 10.86% split kernel, which the appellant attributed to natural handling. The goods were harvested abroad, and the appellant argued that the services were exempt because the peas are agricultural produce.

H Ruling

Whether imported raw whole yellow peas are agricultural produce	**Yes, treated as not disputed. Covered under Sl. No. 45 of Notification No. 2/2017-Central Tax (Rate) and an exempt good**	The order does not make a separate finding on this question. It is accepted as common ground, and the decision turns on the second question.
Whether handling services on the imported yellow peas are eligible for exemption under Sl. No. 54(e) of Notification No. 12/2017-Central Tax (Rate)	**No. The exemption is not available for the appellant's loading, unloading and related services after the cargo reached the port of entry**	The exemption is confined to the primary market. The primary market here was in a foreign country, so the definition under Note 2(d) was not satisfied. The appeal was dismissed.

The Appellate Authority dismissed the appeal and upheld the WBAAR ruling that the exemption does not cover the appellant's loading and unloading services after the imported peas reached the port of entry. It did not dispute that raw whole yellow peas are agricultural produce listed at Sl. No. 45 of the Rate Notification and are exempt goods. It held, however, that the primary-market condition in the definition of agricultural produce was not met because the primary market was in a foreign country and there was no evidence the grains had undergone any treatment abroad.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

R Reasoning

The Authority read entry 54 of the Exemption Notification together with the definition of agricultural produce in Note 2(d), and found that the services in entry 54 are excluded beyond the primary market. It reproduced the Note 2(d) definition, which requires processing to be done as is usually done by a cultivator or producer and the produce to be marketable for the primary market. It construed the term primary market as a farmers' market such as a mandi or arhat, where farmers sell directly to buyers such as wholesalers and millers, and held that the legislative intent was to boost Indian agriculture rather than foreign agriculture. It distinguished the Andhra Pradesh AAR ruling in the SSSVK Cold Storage case as not applicable.

P Provisions Relied On

- Section 97 of the WBGST Act / CGST Act, 2017 (advance ruling)
- Section 100(1) of the WBGST Act / CGST Act, 2017 (appeal to the Appellate Authority)
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, entry 54(e), and Note 2(d) defining agricultural produce
- Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 45 (dried leguminous vegetables, shelled)
- Corresponding State Notifications (1136 FT and 1126 FT, dated 28.06.2017), as printed
- CBIC Circular No. 16/16/2017-GST, relied on by the appellant on handling-related breakage
- AAR Andhra Pradesh ruling in M/s SSSVK Cold Storage Pvt. Ltd., order dated 28.03.2018 (distinguished, not followed)

! For the Practitioner

This order is useful for stevedores and handlers at Indian ports dealing with imported farm produce. It settles that the entry 54 services exemption is tied to the primary market in India, so handling of foreign-origin goods after import is unlikely to qualify even where the goods are listed as exempt. It does not decide whether the quantum of broken grain and split kernel alters the essential characteristics of the produce, and it does not address the appellant's point that no IGST was charged on the bill of entry.

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 -> wb_aaar_13_2019_26.09.2019.pdf

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