M/s The Nurserymen Co-operative Society, Lalbagh, Lalbagh Double Road Gate, Bengaluru 560004 (GSTIN 29AABAT4416F1ZK)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 81/2019, dated 25th September 2019 Dated **25.09.2019**

Q Questions Before the Authority

- Whether the landscape development and maintenance of garden work for State and Central Government Departments, all government local bodies (Municipalities and Corporations) etc. and other government undertakings through contract from sub-contracts attracts GST as inward supplies from those vendors?

F Facts

The applicant maintains gardens and carries out landscape development for State and Central Government departments, local bodies and government undertakings. It provides pure services (without goods) that it says are exempt under entry 3 of Notification No. 12/2017 Central Tax (Rate), and composite supplies of goods and services that it says fall under entry 3A. It now sub-contracts this work to sub-contractors and asks whether the sub-contract supplies are taxable.

H Ruling

Whether sub-contract garden and landscape work supplied by sub-contractors to the applicant, for government contracts, attracts GST as an inward supply	****Not exempt**; the sub-contractor's supply to the applicant is taxable. The order does not state a rate.**	This holds even assuming the applicant's own supply is covered by entry 3 or entry 3A of Notification No. 12/2017 CT(Rate), because the applicant is not a recipient covered by those entries.

The Authority held that, even assuming the applicant's own activity is covered by entry 3 or entry 3A, the sub-contractor's supply to the applicant is not exempt. The applicant is not one of the classes of recipients named in those entries, so the sub-contract service does not qualify for exemption. The ruling therefore answers the question on the basis that the sub-contract supplies are **not exempt from tax** .

R Reasoning

The Authority separated two categories of the applicant's work: pure services exempt under entry 3, and composite supplies of goods and services exempt under entry 3A where goods are no more than 25 per cent of the value and the supply is to government and relates to functions under Article 243G or 243W. For argument's sake it assumed the three conditions of entry 3A were met, noting that park maintenance falls under Article 243W while private gardens do not. It then found that the sub-contract supplies were made to the applicant, which is not a government body or governmental authority within the classes of recipients in entries 3 or 3A. Exemption attaches to the recipient class, so the sub-contract supplies are not exempt even if the head contract is.

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

P Provisions Relied On

- Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, entry 3 (pure services to government)
- Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, entry 3A (composite supply where goods do not exceed 25 per…
- Notification No. 2/2018 Central Tax (Rate) dated 25.01.2018, which amended entry 3A
- Article 243G of the Constitution (Panchayat functions)
- Article 243W of the Constitution (Municipality functions)
- Section 97 and Section 98(4) of the CGST Act, 2017 and the corresponding KGST Act, 2017 provisions
- Advance Ruling KAR ADRG 18/2018 dated 06.08.2018 (cited as clarifying the applicant's pure-service exemption)

! For the Practitioner

Government garden and landscape contractors who sub-contract work can use this ruling to see that a sub-contractor's supply to them is not exempt merely because the head contract to government may be exempt under entry 3 or 3A. It settles the recipient-class point for these entries. It does not decide whether the applicant's own supplies qualify, since the Authority only assumed the conditions were met, nor does it address the goods-value test or the rate of tax on the sub-contract services.

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 -> kar_aar_81_2019_25.09.2019_tncs.pdf

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