THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/AM-RM/02/2022-23 **Date- 01.04.2022**

BEFORE THE BENCH OF

(1) Shri Ashok Kumar Mehta, MEMBER (Central Tax)

(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Rashtriya Chemicals and Fertilizers Limited, 9th floor, PRIYADARSHINI, Eastern Express Highway, Sion, Mumbai- 400 022
GSTIN Number:	27AAACR2831H1ZK
Clause(s) of Section 97, under which the question(s) raised:	(b) applicability of a notification issued under the provisions of this Act;
Date of Personal Hearing:	25.02.2022
Present for the Appellant:	Shri Santosh Sonar
Details of appeal:	Appeal No. MAH/GST-AAAR/06/2021-22 dated 01.12.2021 against Advance Ruling No. GST-ARA-67/2019-20/B-57 dated 08.09.2021
Jurisdictional Officer:	Deputy/Assistant Commissioner, Division -I, Mumbai East CGST & Central Excise Commissionerate.

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [**hereinafter referred to as "CGST Act" and "MGST Act"**] by M/s. Rashtriya Chemicals and Fertilizers Limited, 9th floor, PRIYADARSHINI, Eastern Express Highway, Sion, Mumbai- 400 022, Maharashtra (**"hereinafter referred to as "Appellant"**) against the Advance Ruling No. GST-ARA-67/2019-20/B-57 dated 09.09.2021, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as "MAAR").

BRIEF FACTS OF THE CASE

3.1 Rashtriya Chemicals and Fertilizers Limited (hereinafter referred to as the **"Appellant"**) is engaged in the business of manufacture and sale of fertilizers and industrial chemicals. The Appellant have its head office in Mumbai and have two manufacturing plants located in Maharashtra and have warehouses/ distribution networks across various states in India.

3.2 The Appellant have a **Sewage Treatment Plant ('STP')** at its Trombay premises. This plant uses sewage water and converts it into water for use in the factory for manufacture of the fertilizers.

3..3 The Appellant have set up a New Sewage Treatment Plant which became operational on 10 September 2019 (hereinafter referred to as '**New STP**') with an objective of becoming self-dependent in meeting daily process water requirements of Trombay unit.

3.4 The Appellant have agreed to supply such treated water to Bharat Petroleum Corporation Limited (hereinafter referred to as '**BPCL**') for use in refinery. The key terms of arrangement between the parties are stated below:

- Quality of treated water shall be in accordance with the parameters set by BPCL;
- The Appellant is under obligation to provide daily analysis report of the treated

water.

3.5 The process involved in treatment of sewage water is stated below for ease of reference:

Steps	Process involved
Step 1	Receipt of sewage
Step 2	Removal of suspended particles through screen chamber
Step 3	Inorganic grit having higher specific gravity is removed from sewage
Step 4	Remove floating and grit like impurities from sewage and increase the life of rotating equipment
Step 5	Removal of Nitrogen and Phosphorous called pre-anoxic tank
Step 6	Biological process that uses oxygen to break down organic matter and remove other pollutants like nitrogen and phosphorus
Step 7	Converts the organic matter into carbon dioxide and new biomass
Step 8	Air blower is mixed with the waste water where the aerobic bacteria feed on the waste in the water
Step 9	Membranes are immersed in an aerated tank, in direct contact with mixed liquor
Step 10	R.O. system to reduce the dissolved solids present in water.
Step 11	Removal of dissolved Carbon Dioxide
Step 12	Water from the R.O. shall be treated for pH adjustment and then flows to Final Storage Tank.

3.6 From the above process, it can be observed that the sewage water is converted into treated water by treating the sewage through various processes to make it suitable for industrial use and as per the specific quality parameter agreed between the parties. As the water is not purified, it is not fit for human consumption and contains certain impurities such as bacteria, virus, and e-coli.

3.7 In order to determine how treated water is different from normal drinking water, a comparative statement of quality of new STP treated water and MCGM drinking water

is given below for ease of reference.

Sr. No	Parameter	New STP treated water parameters	MCGM drinking water
1	pH	6.8-7.2	7.1-7.3
2	Total Suspended Solids (TSS), ppm	Nil	10-20
3	Total dissolved solids (TDS), ppm	Max.25	80-120
4	Total Hardness as CaCO3,ppm	Max.50	60-80
5	Chemical Oxygen Demand (COD), ppm	Not traceable	Not traceable
6	Biological oxygen Demand (BOD) ppm	Not traceable	Not traceable
7	Chlorides as Cl, ppm	Max.15	15-30
8	Sulphates as SO4, ppm	Max.15	15-25
9	Silica as SiO2, ppm	<1	7-8
10	Oil and Grease, ppm	Not traceable	Not traceable
11	Ammonical Nitrogen as N, ppm	Not traceable	Not traceable
12	Bacteria	Traceable	Not traceable
13	Virus	Traceable	Not traceable
14	E-coli	Traceable	Not traceable

3.8 From the above parameters, it can be seen that while MCGM water can be used for drinking purposes as well as for other purposes, the treated water can be used only for specified industrial use as the same contains impurities making it unfit for drinking purpose. It is pertinent to note that the Appellant would have to undertake ultraviolet treatment on such treated water to make it free from all impurities and make it suitable for drinking purpose.

3.9 With the above background of facts, the Appellant had preferred an application for Advance Ruling under Section 97 of CGST Act, 2017 before the MAAR on the following questions of law as to -

Q. Whether "Treated Water" obtained from STP [classifiable under Chapter 2201] will be eligible for exemption from GST by virtue of Sl. No. 99 of the Exemption Notification No. 02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended) having entry as "Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]"? or

Q. Whether "Treated Water" obtained from STP [classifiable under Chapter 2201] is taxable at 18% by virtue of Sl. No. 24 of Schedule -III of Notification No. 01/2017- Integrated Tax (Rate) dated 28th June 2017 (as amended) as "Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured [other than Drinking water packed in 20 litres bottles]"?

4. In pursuance to the aforesaid application, the Maharashtra Authority for Advance Ruling has passed the order bearing number GST-ARA-67/2019-20/B-57 dated 9th September 2021 (hereinafter referred to as the "Impugned Order") wherein it has been held that "Treated Water" obtained from STP [classifiable under Chapter 2201] will not be eligible for exemption from GST by virtue of Sl. No. 99 of the Exemption Notification No. 02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended) and the same will be taxable at the rate of 18% in terms of the entry at the Sl. No. 24 of the Schedule III to the Notification No. 1/2017- I.T. (Rate) dated 28.06.2017. The Maharashtra ARA has passed the aforesaid ruling on the following grounds:

(a) The Appellant have processed the sewage water which contains various kinds of organic and inorganic impurities like sand, slit, clay, chemicals, organisms, etc. The processes undertaken by the Appellant essentially involves removing bio-waste, grit and removing undesirable chemicals, biological contaminants, suspended solids, and gases from sewage water.

(b) The sewage water cannot be used, in any way, in its original form. Sewage water can be used only after it is purified and even the purified sewage water is not used for drinking purpose. It is, however, found to have industrial uses. Such sewage water is purified by applying different processes in the STP plant.

(c) As per the parameters tested by the Appellant, the properties of processed water generated from the sewage is different than the properties of the original sewage water received in the STP plant. Therefore, it was held that 'Treated Water' is

purified sewage water and since it is purified water, the same will not fall under Sr. No. 99 of Notification 02/2017-Central Tax (Rate) dated 28 June 2017.

5. Being aggrieved by the said impugned order, the Appellant has filed the present appeal before the Maharashtra Appellate Authority for Advance Ruling (**hereinafter referred to as "the MAAAR"**) on the following grounds:

Grounds of Appeal

5.1. That the water obtained from STP is not 'purified water', and is thus, eligible for exemption from GST under Sl. no. 99 of Notification 02/2017 – Integrated Tax (Rate) dated 28.06.2017.

5.2. That to understand the scope of the exemption notification, it would be relevant to understand the meaning of the term 'Water' and what it covers. Since, the term 'Water' has not been defined in the GST Law, reference has been made to the dictionary meaning of the word 'Water' from the law lexicon, which has been reproduced herein below:

"Water" covers more than seventy percent of the earth's surface. It fills the oceans, rivers and lakes and is in the ground and in the air we breathe. Without water there can be no life. Today more than ever, water is both slave and master to the people. We use water in our homes for cleaning, cooking, bathing and carrying away wastes. We use water to irrigate dry farmlands so that we can grow more food. Our factories use more water than any other mineral. We use water in rushing rivers and thundering water falls to produce electricity.

The word 'water' has been used in the Act in both the senses namely (i) it is a mineral and (ii) the most common, readily and freely available substance on earth [Ichchapur Industrial Coop. Society Ltd. vs. Competent Authority ONGC (1997) 2 SCC 42, 52, para 28] [Petroleum and Minerals Pipelines (Acquisition of Rights of User in Land) Act (50 of 1962) S. 2 (ba)]"

5.3 From the above, it can be seen that water used in factories as an industrial input is also covered under the term 'Water'.

5.4. Further, in the case of ***Commissioner of C.Ex. Jamshedpur vs. Kamani Foods [1999 (114) ELT 644 (Tribunal)]***, the Hon'ble Calcutta Tribunal in respect of matter related to classification of the product 'Treated Pure Water' held that the treated pure water is not excisable as no mineral salts are added in the treated water.

5.5. In this respect, it has been submitted that the process carried out by the Appellant involves converting the sewage water into treated water of an agreed quality to make it

suitable for industrial use but does not involve addition of any minerals to the water to make it fit for drinking purposes. The comparative statement presented by the Appellant between the water generated from sewage and between normal drinking water (not mineral water) has been submitted in Para 6 of Annexure I (Statement of Facts). From the difference, it is clearly visible that the processes adopted by the Appellant does not remove all the impurities and bacteria, however, due to removal of solid waste and sewage, water can be used for industrial purpose.

5.6. Thus, such treated water generated from the STP, and used in the factory by either the Appellant, or by BPCL is squarely covered under the term 'Water' as used in Sl. No. 99 of the Exemption Notification.

5.7. It has been submitted that all the other categories of water as mentioned in the exclusion clause have some special characteristics and specialized uses such as they are used in aerated drinks, medicinal/ health uses, automotive cooling system, sterilization, laboratory application, car battery, etc. However, as the term 'purified' has not been defined, it is not clear whether the process carried out by the Appellant to convert sewage water into water fit for industrial consumption can be said to be covered under 'purified water'.

5.8. In the case of the Appellant, the process essentially involved is removing bio-waste, grit and removing undesirable chemicals, biological contaminants, suspended solids, and gases from sewage water. The goal is to obtain water for use in the factory of the Appellant as well as, if available in surplus, then the same shall also be sold for usage as an Industrial Input.

5.9. That as the words 'purified water' have not been defined under the GST Law, then applying the legal principle of **'noscitur a sociis'**, the meaning of the accompanying words of the term **'purified'** should be looked into to derive the intent of the usage of the words after the phrase **"other than"** in **Sl. No. 99 of the Notification No. 02/2017-I.T. (Rate) dated 28.06.2017**. The words, **'aerated', 'mineral', 'purified', 'distilled', 'medicinal', etc.**, excluded from the exemption notification, seem to indicate the intent to exclude water which has been processed from naturally available water and also used for specialized purposes. Thus, the source of initial process is water, whereas, in case of the Appellant, the source is sewage.

5.10. As submitted above, the intention of the usage of the word **'purified'** seems to indicate purification for some specialized purpose. The Appellant is using sewage water and is carrying out certain processes such that the water can be used for Industrial purposes.

There are no processes carried out on naturally available water by the Appellant and such water is also not used specifically for certain specialized purposes. The water can be used by the Appellant or it can also be sold to any other industry which uses water as an Industrial input. Thus, ideally such water should not be covered under the exclusion clause of Sr. No. 99, and may be said to be exempt.

5.11 Further, reference has been made to the ruling of the ***Tamil Nadu Appellate Authority for Advance Ruling ('AAAR'), in the case of M/s. New Tirupur Area Development Corporation Limited (ORDER-in-Appeal No. AAAR/17&18/2021 (AR))***, which deals with the question whether raw water when treated to various processes to make it potable, would become 'purified water' or it would remain to be 'treated water'. The authority stated that the meaning of 'purified water' depends on what use it is to people, i.e., whether it is for washing, pharma use, industrial use or even to swim. In chemical terms, purified water is pure H_2O and only contains Hydrogen and Oxygen and no minerals. Distilled water is the most common form of pure water. In this context, the authority held that potable water is never to be equated to purified water. Therefore, supply of raw water, treated to become 'potable water' is water only, and not purified water. Accordingly, such potable water would fall under the Sr. No. 99 of the Notification No.02/2017-Central Tax (Rate) for exemption.

5.12. With reference to the above definition of purified water, it is worthwhile to note that the water obtained from STP and sent to BPCL contains bacteria, virus and E-coli, and hence can, by no stretch of imagination, qualify to be purified water. The Appellant would have to undertake ultraviolet treatment on such treated water to make it free from all impurities. Therefore, it can be safely concluded from the above ruling that supply of treated water to BPCL would construe to be supply of raw water, and nothing more, and hence falling under Sl. No. 99 of the Notification No. 02/2017-Integrated Tax (Rate), and thereby, qualify for exemption from the levy of GST.

5.13. It is submitted that raw water obtained from ground (well/pond/bore well) and rain cannot be used in its natural form for any purpose without any minimal treatment to it. It is a general practice across the globe that water would need to be processed to the extent required for the specific end use. Basis the generic meaning of purified water, any water on which any treatment is done would amount to purified water. If that be the case, no supply of water would be eligible for such exemption as every water would be subject to minimal treatment and would fall under the meaning of purified water and

be excluded from the exemption entry. In such cases, the intention of the Government to grant exemption for supply of water would be defeated wholly.

5.14. Treated water supplied by the Appellant is not sold in sealed containers, and is, thus, eligible for exemption under GST.

5.15. It has been submitted that the Authority has failed in correctly applying the clarification of the Circular No.52/26/2018 dated 09 August 2018 which clarified that supply of drinking water, for public purposes, if not supplied in sealed containers, is exempted from GST, and held that treated water is neither supplied to be used as drinking water for public purposes, nor supplied in sealed containers as drinking water to M/s. BPCL.

5.16. It has been submitted that the treated water is supplied by the Appellant to BPCL through a pipeline and not in a sealed container. On perusal of the position in the erstwhile VAT and Excise regime, it is evident that the intention of the law is to tax only those waters which are normally sold in sealed containers. In other words, the intention of the law is never to levy any tax on "water which is not cleared in sealed containers." Hence, even under the GST regime, the intention of the law seems to provide the exemption from levy of GST for any kind of water which is not cleared in sealed container as the rates for various goods prescribed in the GST Tariff have been almost aligned with the earlier rates of Excise/ VAT.

5.17. It is pertinent to note that "waters" excluded from the exemption notifications as per Sl. No. 99 of Notification No. 2/2017 – Integrated Tax (Rate) (supra) are specific in nature, which, if not sold in sealed containers, shall be susceptible to lose their distinguishing characteristic. For example, aerated water is necessarily required to be sold in sealed containers as it will lose the "aerated" nature of the same if sold otherwise. Similarly, distilled, medicinal, ionic, battery, de-mineralized and waters of like nature, are necessarily required to be sold in sealed containers as the quality/ nature of such water may get compromised due to any kind of contamination in an open container or any other manner of sale of the same.

5.18. It has been submitted that the Authority has failed to consider their grounds submitted in relation to GST rate on goods which had been determined by the GST council considering the rates under the erstwhile Central Excise and VAT regime.

5.19. Reference has been made to the Hon'ble Finance Minister Late Shri Arun Jaitley's announcement that the tax rates under GST would be more or less in the similar band as the rates under the erstwhile indirect taxes (i.e., Central excise, VAT, etc.). In this connection, the Appellant have cited the exemption provided to the manufacture of

"Waters not cleared in sealed containers" under the erstwhile Central Excise Tariff Act, 1985. They have also referred to the Maharashtra VAT Act, 2002, wherein 'Water' was covered under Schedule A which is for NIL rated goods. It is further submitted that even in MVAT regime, there was no VAT on sale of 'treated water' in the State of Maharashtra. the relevant entry is reproduced below:

Schedule A- Maharashtra VAT Act, 2002:

Sr. No	Name of the commodity	Conditions and exceptions	Rate of Tax
49	Water other than,-		Nil
	(a) aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized water, and		
	(b) water sold in sealed container.		
	(c) water for injection.	-	

5.20. Thus, in view of the exemption for water under Central Excise and the MVAT law and the decision taken by the GST Council, it is evidently clear that the intention of the Government was not to levy any tax on sale of 'Water'. Accordingly, supply of water (not sold in sealed container) should be exempted from payment of GST.

5.21. It has been submitted that the Authority have failed to consider our grounds submitted on the test of purposive interpretation; that it is amply clear that the objective of the law was not to levy tax on supply of water (other than aerated, mineral, distilled, medicinal, purified, ionic, battery, de-mineralized and water sold in sealed container). It is well settled principle that the law would have to be interpreted having regard to the objective it seeks to achieve. Hence, it is important to look at the substance of the transaction and determine the levy of GST accordingly. It has been further submitted that when supply of water from well or bore well is not subject to GST, how can water obtained from STP be treated as purified water and levy tax thereon. In this regard, reference has been made to the decision in the case of ***State of West Bengal vs. Union of India [AIR 1963 SC 1241 at p. 1265***], wherein the learned Chief Justice stated that the Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause, to be interpreted, occurs.

5.22. With reference to the above judicial precedents, it has been submitted by the Appellant that the exemption entry must be read with the intention of the Government on exempting supply of water (other than in sealed containers) from tax in erstwhile as

well as GST regime. The entry should be interpreted having regard to the objective of the Government.

Submissions by the Jurisdictional Officer

6.1 The Department has contended that the water supplied by the Appellant to BPCL will fall under the category of "Purified Water" as provided under the exclusion clause of Sl. No. 99 of the Exemption Notification No. 02/2017-C.T.(Rate) dated 28.06.2017, and hence, the supply of the said water will not be exempted from the levy of GST.

6.2 To justify the aforesaid stand, the Department has placed reliance upon Wikipedia which provides that "Water treatment is any process that improves the quality of water to make it appropriate for a specific end-use. ... Water treatment removes contaminants and undesirable components, or reduces their concentration so that the water becomes fit for its desired end-use." Thus, the Department, relying upon the meaning of the "Water Treatment" provided in the Wikipedia, contended that the water obtained from Sewage Treatment Plant can be considered as "purified water".

6.3. The Department has further stated that Sewage Treatment Plant operated by the Appellant undertakes processes of screening, grit removing, nutrient removing, aeration, Reverse Osmosis on the sewage water. This amounts to treating water and purifying it. Basis this, the Department has contended that the 'Treated Water' obtained from STP (Classifiable under Chapter 2201) will not be eligible for exemption from GST in terms of entry at Sl. No. 99 of the Notification No. 02/2017-C.T. (Rate) dated 28.06.2017, and the same will attract GST at the rate of 18% in terms of the entry at Sl. No. 24 of Schedule III to the Notification No. 01/2017-C.T. (Rate) dated 28.06.2017 having the description "Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matters nor flavoured [other than Drinking Water packed in 20 litres bottles].

6.4. As regards the Appellant's reliance on the well settled legal construction of 'noscitur a sociis' to interpret the term 'purified' inserted in the impugned entry at Sl. No. 99 of the Notification No. 02/2017-C.T., the Department has contended that the legal principle of **'noscitur a sociis'** is applied to interpret the meaning and scope of such terms of the statute, which are ambiguous and obscure, so as to comprehend the said term in the right context. The Department further contends that since the meaning of the term 'purified' used in the impugned entry of the exemption notification is quite clear and lucid, and hence does not warrant the application of the legal principle of **'noscitur a sociis'** to interpret the term **'purified'**.

6.5. As regards the Appellant's contention that all the terms used in the exclusions clause, such as aerated, mineral, purified, distilled, medical, ionic, battery, de-mineralized, appear to give the special characteristics and uses of the water, and as such, such water have not been exempted whereas the water supplied by them after the treatment done through STP, have no special characteristics and uses as such, and therefore, the same would not fall under the exclusion clause, and hence, is eligible for exemption, it is contended by the Department that assuming arguendo the contention put forth by the Appellant, it is clear that the impugned water supplied by the Appellant to M/s. BPCL is being used for specific purposes, i.e., for the industrial use, in the plant of M/s. BPCL, and thereby, the said water can rightly be equated with the 'purified water', mentioned in the exclusion clause of the entry of the exemption notification, and therefore, the same will not be eligible for the exemption from the levy of GST.

6.6. As regards the Appellant's reliance on the Hon'ble Finance Minister's speech and Minutes of the 14th GST Council wherein it was stated that the rate of the tax on the goods under GST would be kept at par with the rate prescribed under erstwhile tax regime (i.e., Central Excise and VAT), and hence the Appellant has contended that since the impugned product attracted nil rate of duty in the erstwhile tax regime, and therefore, the said product, i.e., the STP treated water will not attract any GST under the GST regime too. In this regard, the Department has contended that the said speech of the Hon'ble Finance Minister as well as the Minutes of the GST Council will not hold precedence over the legislation formulated and passed by the Parliament, and hence, the Appellant's contention does not hold any water.

PERSONAL HEARING

7.1 Personal hearing in the matter was held on 25.02.2022 in the virtual mode, which was attended by Shri Santosh Sonar, on behalf of the Appellant as well as by the jurisdictional officer. Shri Sonar reiterated the earlier submissions made while filing the Appeal under consideration.

7.2 Shri Sonar, in the aforesaid hearing, contended that the impugned product, i.e., the STP Treated Water, is exempt under the GST law in terms of the provisions of entry at Sl. No. 99 of the Exemption Notification No. 02/2017-C.T. (Rate) dated 28.06.2017, having description ***as "Water [other than aerated, mineral, purified, distilled, medical, ionic, battery, de-mineralized and water sold in sealed container]"***. Shri Sonar further submitted that since the water supplied by the Appellant to M/s. BPCL is suitable for industrial use only, and not for drinking purposes, the same cannot be considered as

"purified water" as mentioned under the aforesaid entry at Sl. No. 99 of the Exemption Notification No. 02/2017-C.T. (Rate) dated 28.06.2017. The Appellant's Representative also referred to the Tamil Nadu AAAR Order in the case of M/s. New Tirupur Area Development Corporation Limited to contend the Purified water is pure H_2O, and have no minerals in it. Applying the ratio of this Advance Ruling Order, he contended that since the subject water has many biological and chemical impurities and contaminants, therefore, same will not be construed as "purified water", and will be eligible for exemption from levy of GST in terms of the entry at Sl. No. 99 of the Exemption Notification No. 02/2017-C.T. (Rate) dated 28.06.2017.

8. Consequent to the aforesaid Personal Hearing, the Appellant have filed additional submissions vide e-mail dated 03.03.2022, the extracts of which are as under:

8.1 Drawing reference to the Order issued by the Tamil Nadu Appellate Authority for Advance Ruling in the case of ***M/s. New Tirupur Area Development Corporation Limited (ORDER-in-Appeal No. AAAR/17&18/2021 (AR))***, it has been contended by the Appellant that STP treated water supplied by them does not contain the essential characteristics of "purified water" as prescribed under the aforesaid Advance Ruling Order pronounced by the Tamil Nadu AAAR.

8.2 It has been further contended that exemption is not dependent on the end use of water as the plain reading of the entry 99 of the exemption notification 02/2017-C.T. (Rate) dated 28.06.2017 clearly reveals that purpose for which water is being used or the end usage of the water is not specified therein, therefore, the interpretation of the subject water vis-à-vis its industrial use in not warranted. In this regard, the Appellant have placed reliance upon the Hon'ble Supreme Court judgment in the case of Government of Kerala & Anr. Vs, Mother Superior Adoration Convent (Civil Appeal No. 202 of 2012 and others, decided on 01.03.2021), wherein the Apex Court had held that literal formalistic interpretation of the statute was to be avoided in interpreting the beneficial exemption.

8.3 It has been further submitted by the Appellant that both the Appellant and M/s. BPCL, to whom the Appellant are supplying the STP treated water, can use normal drinking water in place of the impugned treated water, however, due to the scarcity of the normal drinking water supplied by MCGM, they are bound to use the impugned STP treated water for their industrial purposes. Therefore, they are not using the STP treated water for any special purposes as the normal drinking water would have used for the same purposes.

8.4 It has been further submitted that normal drinking water supplied by MCGM is purer than the impugned treated water as the impugned water contains various impurities and contaminants, such as virus, bacteria, E-coli, etc. They further contend that, if such water supplied by MCGM is not liable to GST, being water fit for human consumption, the STP water, which is not purified, cannot be construed as "purified water", and made liable to GST.

DISCUSSIONS AND FINDINGS

9. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with all the additional submissions made by the Appellant during the course of the personal hearing proceedings. We have also examined the impugned Advance Ruling passed by the MAAR, wherein it has been held that "Treated Water" obtained from STP [classifiable under Chapter 2201] will not be eligible for exemption from GST in terms of the provisions of the entry at Sl. No. 99 of the Exemption Notification No. 02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended); and that the same will be taxable at the rate of 18% in terms of the entry at the Sl. No. 24 of the Schedule III to the Notification No. 1/2017- I.T. (Rate) dated 28.06.2017.

10. On perusal of the entire case records and the submissions made by the Appellant as well as the Jurisdictional Officer, the moot issue before us is whether the impugned product, i.e., STP treated water supplied by the Appellant to M/s. BPCL, can be construed as 'purified water', or not.

11. Since, the term "purified" is not defined under the CGST Act, 2017, we will resort to the dictionary meaning of the same.

As per the website **Dictionary.com**, the term **"purify"** means:

1. to make pure; free from anything that debases, pollutes, adulterates, or contaminates;
2. to free from foreign, extraneous, or objectionable elements;

As per the **Cambridge Dictionary**, the term **"purify"** means:

1. to remove bad substances from something to make it pure;

12. Thus, as per the dictionary meaning, the term 'purify' means "to make pure", or "to free from foreign, extraneous, or objectionable elements". Accordingly, the "purified water" means such water which is free from foreign, extraneous, or objectionable elements.

13. Now, on perusal of the facts of the case, it is seen that the impugned product, i.e., STP treated water, is obtained after carrying out various physical and biological processes on the sewage water. By carrying out the said physical and biological processes on the sewage water inside the Sewage Treatment Plant, the sewage water is made free from various organic and inorganic substances, such as suspended particles, grit, clays, pollutants like nitrogen, phosphorus, etc. However, even after carrying out the said physical and biological processes, water coming out from the Sewage Treatment Plant still contains various biological contaminants such as bacteria, virus, E. coli, along with other impurities. Thus, it can be safely concluded that the resultant water is not pure due to presence of the said impurities and foreign elements.

14. The aforesaid notion is also supported by the Tamil Nadu AAAR order in the case of ***M/s. New Tirupur Area Development Corporation Limited (ORDER-in-Appeal No. AAAR/17&18/2021 (AR),*** wherein the Appellate Authority inter alia held as under:

"In chemical terms, purified water is pure H2O and only contains Hydrogen and Oxygen and no minerals; Distilled water is the most common form of pure water."

15. Thus, it is adequately clear that water containing anything apart from the Hydrogen and Oxygen will not be construed as pure water. It is further observed that even potable water, which is fit for human consumption, will not be treated as pure water due to the presence of various minerals and other elements like chlorine, which are added to it to kill the harmful micro-organisms that causes diseases.

16. Further, on application of the legal construction of **"noscitur a sociis"** to derive the meaning of the expression **"purified"**, which has not been defined under the GST law, it is seen that all the expressions of the exclusion clause of the relevant entry surrounding the word **"purified"** have got certain specific characteristics and usage. That is, these water at their respective places of their usage cannot be replaced or substituted by any other water. In the instant case, the STP treated water, which is supplied by the Appellant to M/s BPCL for their industrial use, does not have any specific characteristics and usages as those of the other specific water, such as "***aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container***" mentioned in the exclusion clause of the entry under consideration as the said STP treated water can be readily replaced by municipal water. This fact is comprehensibly substantiated by the Appellant's submissions wherein it has been submitted that prior to the installation of the Sewage Treatment Plant by the Appellant, their industrial needs were being fulfilled by the municipal water supplied by MCGM.

Further, it is also noteworthy that all these groups of specific water mentioned under the exclusion clause of the relevant entry are supplied in the packaged form, i.e., in the sealed container, in order to preserve their characteristics and specificity, while the same is not the case with the impugned product, i.e., STP treated water, which are supplied through pipelines without any such concerns. Thus, from the foregoing, it is amply clear that the term **"purified"**, mentioned under the exemption clause of the relevant entry, will definitely not include the STP treated water. Hence, the impugned product, i.e., STP treated water, is rightfully eligible for exemption under entry at Sl. No. 99 of the exemption notification no. 02/2017-C.T. (Rate) dated 28.06.2017.

17. The Appellant has also contended that it has never been the intention of the Government, i.e., either Central Government or State Government, to levy any indirect tax on water of general purposes. In this regard, they have stated that even under the erstwhile indirect tax regime, no tax, whether in the nature of Central Excise or in the nature of VAT, was leviable on the water of general purposes, hence the supply of STP treated water was not subject to any indirect tax under the erstwhile tax regimes. Basis this contention, they have argued that the said impugned product, i.e., STP treated water, will also not be liable to tax even under the GST regime. They have further contended that since the impugned product was not subject to any indirect tax under the erstwhile tax regime, the same should also not be liable to tax under GST regime.

18. In this regard, we intend to agree with the Appellant's contention in as much as that the Government, whether the Central Government or State Government, has never intended to tax water of general purposes. Even under the GST regime, Government has clarified its intention of not levying GST on the supply of general-purpose water by way of issuance of the CBIC Circular No. 52/26/2018 dated 09 August 2018, wherein it has been clarified that supply of drinking water, for public purposes, if not supplied in sealed containers, is exempted from GST. Thus, by applying the canon of "**purposive construction**", which gives effect to the legislative purpose/intendment, we are inclined to hold that the impugned product, which can aptly be construed as water of general purpose as discussed earlier, is eligible for exemption under the relevant entry at Sl. No. 99 of the exemption notification no. 02/2017-C.T. (Rate) dated 28.06.2017.

19. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

20. We, hereby, set aside the Advance Ruling Order No. **GST-ARA-67/2019-20/B-57 dated 08.09.2021** passed by the Maharashtra Advance Ruling Authority, and hold that STP treated water will be eligible for exemption in terms of entry at Sl. No. 99 of the Exemption Notification No. 02/2017-C.T. (Rate) dated 28.06.2017. Thus, the Appeal filed by the Appellant is, hereby, allowed.

(RAJEEV KUMAR MITAL)
MEMBER

(ASHOK KUMAR MEHTA)
MEMBER

Copy to the:

1. **Appellant;**
2. **AAR, Maharashtra**
3. **Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.**
4. **Commissioner of State Tax, Maharashtra.**
5. **Deputy/Assistant Commissioner CGST & Central Excise, Division -IV, Mumbai East Commissionerate.**
6. **Pr. Commissioner, Mumbai East Commissionerate.**
7. **Web Manager, WWW.GSTCOUNCIL.GOV.IN**
8. **Office copy.**