

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamil Nadu Goods and Services Tax Act
2017)

A.R.Appeal No. 14/2021 AAAR

Date: 11.02.2022

BEFORE THE BENCH OF

1. Thiru M.V.S.CHOUDARY, MEMBER (CENTRE)

2. Thiru K.PHANINDRA REDDY, MEMBER (STATE)

ORDER-in-Appeal No. AAAR/ 03/2022 (AR)

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamil Nadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a). On the applicant who had sought it in respect of any matter referred to in sub-section (2), of Section 97 for advance ruling;
 - (b). On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s. HEALERSARK RESOURCES PVT LTD No: 168/85, Vanagram Ambattur Road C/o Apollo Institute of Hospital Management and Allied Sciences, Adjacent to Apollo Nursing College inside Apollo Hospital Campus, Ayanambakkam CHENNAI-600095
GSTIN or User ID	332100000255ARB
Advance Ruling Order against which appeal is filed/ reference made	Order No.37/ARA/2021 Dated: 21.10.2021
Date of filing appeal/reference made	23.11.2021
Represented by	CA. VIRAL KHANDHAR
Jurisdictional Authority-Centre	Chennai South Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Vanagaram Assessment circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	No, Reference made by AAR

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

The subject reference is made under Section 98(5) of the Tamilnadu Goods & Services Tax Act, 2017 /Central Goods & Services Tax Act 2017 by the Members of Advance Ruling Authority in respect of M/s Healersark Resources Private Limited (hereinafter referred to as Appellant'). The Reference is made vide the Order No. 37 /ARA /2021 dated 21.10.2021 of the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The applicant has stated that they are into the business of hospitality providing boarding, lodging facilities and such other services to M/s. Apollo Med Skills Limited (AMSL). AMSL is into training youth in various Healthcare related vocational programs by providing up-skilling courses for Doctors, Nursing Professionals and skilling courses for Paramedical and Hospital Support Staff.

AMSL has established training centers across the country for Training and Skilling of health care professionals as part of implementation of its Projects under Deen Dayal Upadhyay Grameen Kaushalya Yojana (DDU-GKY) and other similar programs under various schemes. As part of the project, AMSL is required to provide Boarding and Lodging facilities to the candidates enrolling for the courses under the Projects. After successful completion of the course, AMSL provides certificate to the candidates in collaboration with Healthcare Skills Sector Council (HSSC). In this regard, AMSL has engaged the applicant to provide the boarding, lodging facilities and such other agreed services, to AMSL in line with the SOP given by the Government of India for the implementation and furtherance of its projects under DDU-GKY. In order to render the above services, it was agreed that the applicant would tie up with various other third-party service providers to ensure that such agreed services are rendered to AMSL. The applicant has entered into an agreement with AMSL for providing boarding, lodging and other services to the trainees at all places in Tamil Nadu.

2.1 The Appellant had filed an application before Hon'ble Authority for Advance Ruling, seeking clarification on the following questions:

1. What is the applicable GST SAC code and the GST rate for the supplies made by them to M/s. Apollo Med Skills Limited (AMSL).
2. Is it a composite supply or a mixed supply?
3. Whether the service is exempted vide Notification No. 12/2017- CT (Rate) dated 28.06.2017.

3.1 The ruling of the original authority is as follows:

Ruling per: Smt. K. Latha Member SGST:

Examination of the details, agreement and other documents reveals that the applicant Tvl. Healersark Resources Private Limited is not providing accommodation and other services to Tvl Apollo Med skills Limited (AMSL) but only supporting Tvl. Apollo Med Skills in implementation of project under Deen Dayal Upadhyay Grameen Kaushalya Yojana (DDU-GKY). The Hostel, Boarding and other facilities are given to the candidates as enrolled under the scheme by AMSL. Hence, the service rendered by Healers Ark Resources Private Limited to Tvl. Apollo Med Skills Limited is only a business support services classifiable under SAC Code 998599 other support services which is taxable @ 9% CGST and 9% SGST. Hence in my opinion the question raised by the applicant stating that he is providing

accommodation and boarding and other services to Apollo Med Skills Limited is wrong and hence advance ruling cannot be issued on the questions raised.

Ruling per: Shri T.G. Venkatesh, I.R.S.

I respectfully differ from the views of SGST Member in Para above. I find that in the case at hand, the applicant has entered into an agreement with Apollo Med Skills Limited (AMSL) dated 23.09.2017 to supply the 'Hospitality' services of providing the Boarding, Lodging and other services as required under the scope of the said agreement. Under GST, each supply is unique and the taxability is determined based on the facts of the supply made. In the case at hand, the agreement is entered into with AMSL and the recipient of the supply made by the applicant is AMSL. The fact that the supply is being procured by AMSL for implementing the Vocational Scheme under DDU-GKY is not relevant to decide on the classification of the supply being made by the applicant. The supply extended by the applicant is providing accommodation, food and such other agreed services to AMSL, i.e., the candidates undertaking the vocational courses, chosen by AMSL for which the applicant raise the invoice on AMSL as per the agreed prices. The question raised before this authority and to be decided in this case is whether the activities undertaken by the applicant as per the scope of the agreement entered into with AMSL is a composite supply with provision of accommodation to the candidates/students enrolled for the vocational courses in health care under the DDU-GKY scheme as the principal supply and if so, whether the entire activity is exempted under Sl.No.14 of Notification no.12/2017 -CT(Rate) dt. 28.06.2017. I find that the question raised is relevant to the facts of supply being made by the applicant and also find that the classification opined by the learned SGST Member under 'SAC 998599-Other Support Services n.e.c.' is a residual entry to be adopted in cases where the supply cannot be suitably classified under the relevant category, which is not the case in hand, hence I take up the questions raised by the applicant and extend my findings as under.

"The supply envisaged in the agreement entered with AMSL is a composite supply of hospitality services in which provision of accommodation, food and other amenities are naturally bundled in the course of business and supplied in conjunction. The provision of accommodation is the principal

supply, being provided to all the candidates (headcount wise) and the applicable SAC is 9963 and per day equivalent tariff being less than Rs.1000, the exemption provided under Sl.No.14 of Notification no.12/2017 -CT(Rate) dt.28.06.2017 is applicable to the case in hand”

3.2 In view of the above different views, the issue

Whether Advance Ruling cannot be issued on the questions raised as per the SGST Member

or

the questions being admissible, can be admitted and since the supply is a composite supply with provision of accommodation is the principal supply thereby the exemption provided under Sl.No.14 of Notification No.12/2017-CT (Rate) dated 28.06.2017 is applicable to the case in hand as per day equivalent tariff is less than Rs.1000/-

was placed for decision before the Appellate Authority as per the provisions under Section 98(5) of the Act.

4. **Personal Hearing:**

The applicant was granted virtual personal hearing through digital mode as required under law before this Appellate Authority on 28.01.2022. The Authorised representative of the appellant CA Viral Khandhar appeared for the hearing virtually. The AR reiterated their submissions and stated that because of the difference in opinion between the CGST and SGST Members of the Original Authority the case is placed before the Appellate forum. They stated that they are in agreement with the opinion of the CGST member. They were asked whether they are providing these hospitality services only to M/s Apollo Med Skills Ltd (AMSL) for which the AR replied that as of now they are providing only to AMSL on a Principal to Principal basis either through their own locations or by renting locations.

5. **Discussion and Findings :**

We have gone through the entire case records encompassing the facts of the case, documents placed on record & submissions made by the applicant before the Lower Authority and the reference made by the Lower Authority. We find that the applicant has entered into an agreement with AMSL based on which the applicant

undertakes supply of hospitality services to the students of the up-skilling programs conducted by AMSL. The issue before us to be decided is whether the 'services supplied by the applicant is a "Business Support Service-Other' classifiable under SAC 998599 & therefore the questions raised cannot be ruled" as opined by the SGST Member or "the supply of the applicant is a 'composite supply' with the principal supply being 'provision of accommodation' " as held by the CGST Member.

6.1 From the submissions, it is seen that the applicant has entered into a 'Service Provider Agreement' with AMSL, wherein they have agreed to provide the boarding, lodging facilities and such other services as per Annexure -1 to the agreement. They have represented themselves as 'into Hospitality Industry and is engaged in providing services to various institutions, entities and Organizations, in the ordinary course of its business.' It is acknowledged by AMSL under Para 1 of the agreement that the applicant may also enter into contracts/Agreements with other parties during the term of this Agreement providing that those arrangements do not affect any provision of the agreement entered into with them. Further, clause 11 of the agreement which speaks on 'Relationship of the Parties' states that 'nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency relationship or otherwise between the parties'. The Authorised representative, during the hearing stated that as of now, they are providing such hospitality services only to AMSL on a Principal to Principal basis. Thus, it is evident AMSL extends training for up-skilling rural youth under the DDU-GKY project, wherein the programs are residential. In order to provide the 'Hospitality services' required to be provided to the students enrolled, AMSL has entered into agreement with the applicant for supply of 'Hospitality services', which includes provision of Lodging separately for boys & girls and boarding facilities.

7.1 The State Member has not brought out as to how the supply is classifiable under SAC 998599 but has merely stated that "The Hostel, Boarding and other facilities are given to the candidates as enrolled under the scheme by AMSL. Hence, the service rendered by Healers Ark Resources Private Limited to Tvl. Apollo Med Skills Limited is only a business support services classifiable under SAC Code 998599 other support services". Before proceeding further, the service

Explanation of SAC 998599, under which the State Member has opined classification of the service is examined:

998599 Other support services n.e.c.

This service code includes

- *business brokerage and appraisal services other than for real estate;*
- *business services of intermediaries and brokers;*
- *specialist advice other than for real estate, insurance and engineering (specialist services in art, specialist services for courts of law, etc.);*
- *services by agencies and agents on behalf of individuals seeking engagements in motion pictures, theatrical productions, modelling or other entertainment or sports attractions;*
- *placement of books, plays, artwork, photographs, etc., with publishers, producers, etc.;*
- *issue of reduced-price coupons and gift stamps;*
- *management services for copyrights and their revenues (except from films);*
- *management services for rights to industrial property (patents, licences, trademarks, franchises, etc.);*
- *auctioning services other than in connection with legal procedures;*
- *reading of electric, gas and water meters;*
- *data preparation services;*
- *specialized stenotype services such as court reporting;*
- *public stenography services;*
- *other business support services not elsewhere classified*

From the above, it is seen that the 'business services of intermediaries' and that of 'other business support services not elsewhere specified' are the two categories of the above, which may encompass the subject supply of the applicant. The applicability of these categories are analysed.

7.2 It is not in dispute that AMSL run the program under the DDU-GKY project, wherein the Boarding and Lodging facilities are to be extended by them to the students enrolled in the program. AMSL has engaged the applicant to provide the 'Hospitality services' and entered into an agreement with the applicant. It is evident from the said agreement between the applicant and AMSL that the supply is made by them in the capacity of an 'independent contractor' and therefore the supply is not a 'business service of intermediaries'.

7.3 Further, various activities may be required for effective supply by a person and he may engage different independent persons to supply the individual activities required by him in the course of provision of the said supply. If we are to agree with the opinion of the State Member, then all such independent activities /every such individual activity of a supply may take the shade of extending support service to the main business and the individual nature of supply by such independent persons would be lost. In the case at hand, the applicant undertakes the activities of providing 'Hospitality Services' specifically classifiable under SAC 99632, in his individual capacity and therefore, the activity cannot be categorized as 'Other business support services not elsewhere classified.'

7.4 In the case at hand, the applicant has entered into lease agreements with third party service providers and in one such agreement entered into with AMET University(Academy of Maritime Education and Training) available on record, it is seen that the applicant has entered into the contract for lease of the property owned by AMET for the purpose of 'running Hostels and providing accommodation for the students/Candidates, and/or general office purposes and lawful uses ancillary to any of the foregoing principle uses'. Thus, it is clear that the applicant, enters into agreement with third parties, in their own capacity, to enable themselves to provide the 'Hospitality service', which establishes that the activities of the applicant are independent in nature. Also, from the scope, language and the terms and conditions of the agreement of the applicant with AMSL, it is evident that the applicant is entrusted to provide the 'Hospitality Services' in the capacity of an Independent contractor only and not as an agent of AMSL.

7.5 For the above mentioned reasons, we do not find merit in the opinion of the State Member and reject the same.

8.1 From the facts of the case it is seen that the applicant is to extend the services as per the 'Statement of Work' (SOW) which includes provision of separate accommodation for girls and boys along with provision of food and other services for a fixed consideration towards accommodation (fixed rent per candidate) and variable consideration towards food and other facilities (based on the headcount/actuals). As stated in para supra, the scope, language and

the terms of the agreement establishes that the applicant is to extend the bouquet of services required from them as 'Hospitality Services' together and in conjunction with each other and therefore is a naturally bundled 'composite supply' of service, with 'Provision of accommodation' as the principal service and we agree with the findings of the Central Member in this regard.

8.2 The final issue to be decided is whether the service is exempted under S.No. 14 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017. The relevant entry is as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
14	Heading 9963	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent.	Nil	Nil

From the scrutiny of above exemption entry we find that the description of service is use based and is available when the declared tariff of a unit of accommodation is below one thousand rupees per day or equivalent i.e., the entry applies when

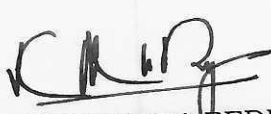
- the accommodation is used for residential or lodging purpose and
- the tariff when arrived at for per day equivalent is below one thousand rupees i.e., even if the declared tariff is a monthly tariff if the per day equivalent is below one thousand rupees, then it is immaterial.


In the case at hand as has been observed in Para 9.5 of the reference Order, the per day equivalent consideration for the composite supply of Hospitality services when extended in Chennai Region is Rs. 300/- and for regions out of Chennai the per day equivalent consideration is Rs. 250/- which are below one thousand rupees stipulated for per day. Therefore, the applicant is eligible for the said exemption entry.

9. In view of the foregoing, we rule as under:

RULING

- a. The supply envisaged in the agreement entered with AMSL is a composite supply with 'Provision of Accommodation-SAC 9963' as Principal Supply.
- b. The exemption at Sl.No. 14 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 is applicable to the case in hand.


(K.PHANINDRA REDDY)
Additional Chief Secretary/
Commissioner of Commercial Tax
Tamil Nadu /Member AAAR


(M.V.S.CHOUDARY)
Chief Commissioner of GST
& Central Excise
Chennai Zone/Member AAAR



To

M/s. HEALERSARK RESOURCES PVT LTD // By RPAD //
No: 168/85, Vanagram Ambattur Road
C/o Apollo Institute of Hospital Management and Allied Sciences,
Adjacent to Apollo Nurshing College inside Apollo Hospital Campus,
Ayanambakkam, CHENNAI-600095

Copy to:

1. The Principal Chief Commissioner of GST & Central Excise,
No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034.
2. The Additional Chief Secretary/ The Commissioner of Commercial
Taxes/Member, II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. The Commissioner of GST & Central Excise, Chennai South
Commissionerate, MHU Complex, No. 692, Anna Salai, Nandanam,
Chennai. 600 035.

4. Assistant commissioner,(ST) Vanagaram Assessment circle,
Integrated Commercial Taxes Buildings,
1/109, Chennai Bangalore Highway,
Varadharajapuram, Chennai. 600 123.
5. Joint Commissioner (ST)/Member,
Authority for Advance Ruling, Tamil Nadu,
Room No.503 B, 5th Floor, Integrated Commercial Taxes Office Complex,
No.32, Elephant Gate Bridge Road, Chennai-600003
6. Master File / spare

