TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING

(Constituted under Section 99 of

Tamil Nadu Goods and Services Tax Act 2017)

A.R.Appeal No. 15/2021 AAAR Date: 13.01.2022

BEFORE THE BENCH OF

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

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

ORDER-in-Appeal No. AAAR/ 01/2022 (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. Navbharat Imports, B-3,32/34,Golden primrose Apartments, Saravana Street, T. Nagar, Chennai-600017.
GSTIN or User ID	33AAKPS4623H1ZN
Advance Ruling Order against which appeal is filed	Order No.35/AAR/2021 Dated: 30.09.2021
Date of filing appeal	16.11.2021
Represented by	S.Murugappan, Counsel for M/s.Navabharat Imports
Jurisdictional Authority-Centre	North Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST) T.Nagar Assessment circle, Chennai-600028
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.UBIN 21113300021936 dated 05.11.2021,

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,2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act,2017.

The subject appeal has been filed under Section 100 (1) of the Tamilnadu Goods & Services Tax Act, 2017/Central Goods & Services Tax Act 2017 by M/s. Navbharat Imports (herein after referred as the Appellant), having their registered office at No. B-3,32/34,Golden primrose Apartments, Saravana Street, T. Nagar, Chennai-600017, are retailers dealing with various types of toys like baby tricycle, kids scooter, etc and registered under GST Act vide Registration No. 33AAKPS4623H1ZN.The appeal is filed against the Order No. 35/AAR/2021 Dated: 30.09.2021 passed by the Tamil Nadu Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The appellants stated that they are regular importers and traders of toys from various countries, that they sell these goods in India, in retail as well as through E-Commerce platforms. They added that they also intend to manufacture these toys in India in future, that the toys proposed to be imported include both electronically operated toys as well as manually operated toys in which electronic parts were fitted for providing light, music and horn etc. They furnished the functionalities of some of the toys as listed below:

Children's Scooter SC-007

It is a scooter toy applicable for the age range between 3-5 years old in which the toddler will be placed in the seat provided and has to move with the wheels provided only by applying pressure with the legs and handle bar shall be used to change the direction. This toy is provided with light in the handle bar and the music.

Activity Ride-on

It is a car toy applicable for the age ranging from 12 Months – 36 Months old. The toddler will be placed in the seat provided and has to be pushed by the other person for the movement and the steering provided shall be used for changing the direction. This toy is provided with electronic lights and music in the form of buttons present in the steering.

Smart Tri-Cycle

It is a tri-cycle toy which is applicable for the age range upto 18 months. The toddler has to be placed in the seat provided and has to pedal for the movement of the tri-cycle. The handle bar provided shall be used for direction also in the handle bar there are buttons present for light, horn and music.

Kick Scooter

It is a tri-cycle applicable for the age ranging from 3-14 years. This tri-cycle has to be driven upon standing on one leg in the tri-cycle and pushing with the other leg. The direction of the tri-cycle shall be changed by turning the handle bar. The bottom of this tri-cycle is provided with battery provision for light and music.

2.1 They averred that in so far as the toys are concerned, they are classified under chapter heading 95.03 of the Harmonized commodity description and coding system. The chapter and heading are reproduced hereunder:

95.03 Tricycles, Scooters, Pedal Cars and similar wheeled toys; dolls' catridges; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.

2.2. They stated further that under the GST, the above toys are further classified under the following tariff Schedules:

Rates for Goods – Schedule II – (CGST 6%, SGST 6% Total 12%)		
(1)	(2)	(3)
228.	9503	Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof) [other than electronic toys]

and

GST Rates for Goods – Schedule III – (CGST 9%, SGST 9% Total 18%)		
(1)	(2)	(3)
440.	9503	Electronic toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof)

2.3. Further, they stated that the toys imported and sold by them are meant for engaging the kids in the activity of enjoyment and recreation rather than serious or practical purpose. It is a toy used by the child to play with, that these toys are equipped with music and light facility powered by a small pencil cell, that the music and light that are provided are for attracting children however the operations are no way related to the pencil cell but for the music or light instrument fitted on it, that it is solely provided for attracting the children towards the toys, that these toys are manually operated and remain fully operational and functional even without light, music or horn. They added that electronic circuits are dedicated only for the purpose of enhancing quality of entertainment through light, music, horn etc. and it is in no way interferes with operational features of the toy.

3. The Appellant had sought Advance Ruling on the following questions:

When physical force is the primary action of a Toy and if the light and the music are ancillary to it then whether it is to be classified under "Electronic Toys" or "other than Electronic Toys"?

4. The AAR pronounced the following rulings:

The products Children Scooter ,Activity Ride-on , Smart Tricycle and Kick Scooter, in which physical force is the primary action and contains an in built

electronic circuit, are "Electronic Toys" and the applicable GST Rate is CGST @9% as per serial number 440 of Schedule-III of Notification No. 01/2017-CT (Rate) dated 28.06.2017 and SGST @9% as per Sl.no.440 of Schedule-III to Notification No. II(2)/CTR/532 (d-4)/2017 Vide G.O.Ms No.62 dated 29.06.2017.

5. Based on the above ruling, the Appellant has filed the present appeal. The grounds of appeal are paraphrased as follows:

The appellant submitted that the above ruling issued by the Tamil Nadu Authority for Advance Ruling (AAR) is not sustainable in law and liable to be set aside for the following grounds:

1. It is an admitted position that the goods under reference move only based on the physical force exerted by the child. Or in other words, mobility to the kick scooter pedal car etc. are given only by manual operation by the child. It is also an admitted position, as confirmed by the jurisdictional officer, that the batteries are provided for lights and sounds and not for mobility.

2. It is also an admitted fact that the entries in the notification with regard to the expression "Electronic Toys" are not defined. There is no definition of "Electronic Toys" in the notification or in the schedule to the Customs Tariff Act to which one has to take recourse for interpretation of the entries appearing in the notification. Again, this is clearly admitted in para.7.3 by the Authority for Advance Ruling.

3. When such is the case, the Authority for Advance Ruling committed a serious error by looking for a definition of 'toy' and the reliance placed by it in the Law Lexicon of Dr.Ramanatha Iyer is thus, misplaced. The issue under consideration is not relating to what is a 'toy'.

4. The Authority for Advance Ruling again committed an error in referring to the various standards applicable for these toys and in para.7.6 of the ruling a reference has been made to GB standard 19865—2005 which provides as mentioned below:

   "This Standard deals with the safety of toys that have at least one function dependent on electricity..... Toys using electricity for secondary functions are within the scope of this standard."

5. The Authority goes on to observe that the safety standards prescribed for toys requires that safety standards prescribed for electronic toys also to be complied with even if electricity is used for the secondary function of the toy. It also concludes that from this it is evident that a toy which is designed for the amusement of children may incorporate more than one functionality.

6. At the same time, even after referring to the GB standards, the Authority misdirected itself to conclude that the mobility and use of physical force for obtaining mobility for these toys alone cannot be treated as 'principal activity' and the light / music / sound as 'secondary activity'. The standard itself refers to use of electricity for 'secondary functions'. When the toy makers and the authorities who prescribe standards for such toys refer to such secondary functions using electricity, it will be illogical for the Authority to conclude that in their opinion both mobility as well as flashing of light / music, all will be principal activities.

7. In para 7.7 the Authority has gone to the extent of stating that the function of flash light / music / sound are not dependant on the physical / manual force and the toy can be used for developing fine motor skills such as blinking, switching on/off of the music even without applying physical force of pedalling or pushing the toy.

8. It appears that the Authority has completely lost sight of the purpose of purchasing such toys. No sensible person will buy a toy scooter or car toy only for the purpose of switching on/off of music or making horn or for blinking lights. There are hundreds of other toys which can product music or generate visual effects. No one will buy these tri-cycles or scooters for using them only for playing with light and music. Such a conclusion defies logic. When a toy has more than one function, it is essential to see whether there is a principal function. A common man buys a tri-cycle or kick scooter for the primary purpose of making the child use this for physical activity by pushing, pedalling etc. Such toys are not purchased only for playing with music or switching on/off lights. Therefore in this context, as the standards themselves indicate, such functions becomes ancillary functions. While they enhance the attraction and use of the toys, such music or light are not the primary purposes of these toys.

9. For these reasons, the Authority for Advance Ruling has erred in concluding that all the functions are to be seen and since there is an electronic circuit

available in these toys for creating sound / flashing light, they are to be treated as "Electronic Toys".

10. In para.7.8 of the ruling the Authority has referred to the expression "Electronic Toys like tricycle, scooter, pedal cars" and has posed a question to itself as to when a pedal car will become an electronic toy. There are certain brands of cars which are electronically operated and also contain optional pedalling. A toy car will be an electronic toy when it is operated by battery for its mobility. There are numerous remotely controlled cycles, pedal cars etc. which are operated by electricity. The expression "Electronic Toys" should refer to such toys as they are understood in common parlance.

11. The Authority appears to have been misdirected itself into seeking legal definition of toys and the scientific meanings attributed to such toys by completely ignoring how these terms are understood in common parlance by the consumers and by the dealers who deal with such products. While the Authority has admitted that there is no legal definition for electronic toys in the notification then, it becomes important to examine the scope of the above expression by applying "common parlance" test. The appellants referred to various judgments of the Apex Court in this regard which were not at all referred to in the ruling given by the Authority and there is total non-consideration of these relevant points in the ruling rendered.

12. In the case of **Commissioner of Central Excise, New Delhi Vs. M/s.Connaught Plaza Restaurant (P) Ltd. reported in 2012 (286) E.L.T. 321 (S.C.) the Apex Court has made the following observations in paragraphs 18 and 31 and these will be directly relevant to the present case.**

"18. Time and again, the principle of common parlance as the standard for interpreting terms in the taxing statutes, albeit subject to certain exceptions, where the statutory context runs to the contrary, has been reiterated. The application of the common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law maker; "it is an attempt to discover the intention of the Legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts."

... ...

"31. Therefore, what flows from a reading of the aforementioned decisions is that in the absence of a statutory definition in precise terms; words, entries

and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances. This, however, is by no means an absolute rule. When the Legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding."

13. In the case of ***Commissioner of Central Excise, Nagpur*** *Vs.* ***Shree Baidyanath Ayurved Bhawan Ltd.*** **reported in *2009 (237) E.L.T. 225 (S.C.)* the following observations have been made by the Apex Court in para.38 of the judgment.**

"38. ... ... Resort should, in the circumstances, be had to popular meaning and understanding attached to such products by those using the product and not to be had to the scientific and technical meaning of the terms and expressions used. The approach of the consumer or user towards the product, thus, assumes significance. What is important to be seen is how the consumer looks at a product and what is his perception in respect of such product. The user's understanding is a strong factor in determination of classification of the products. ... ..."

14. In the case of *Collector of Central Excise, Kanpur Vs. Krishna Carbon Paper Co.* reported in *1988 (37) E.L.T. 480 (S.C.)* the Apex Court has made the following pertinent observations in paragraphs 8, 9 and 11.

*"**8.** It is well-settled, as mentioned before, that where no definition is provided in the statute itself, as in this case, for ascertaining the correct meaning of a fiscal entry reference to a dictionary is not always safe. The correct guide, it appears in such a case, is the context and the trade meaning. In this connection reference may be made to the observations of this Court in Commissioner of Sales Tax, U.P. v. M/s. S.N. Brothers, Kanpur (AIR 1973 S.C. 78) at page 80 para 5.*

***9.** The trade meaning is one which is prevalent in that particular trade where that good is known or traded. If special type of goods is subject matter of a fiscal entry then that entry must be understood in the context of*

that particular trade, bearing in mind that particular word. Where, however, there is no evidence either way then the definition given and the meaning following from particular statute at particular time would be the decisive test. ... ...

***11.** It is a well-settled principle of construction, as mentioned before, that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. This principle is well-settled by a long line of decisions of Canadian, American, Australian and Indian cases. Pollock J. pointed out in* Grenfell v. I.R.C. (1876 1 Ex. D 242 at 248) *that if a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words "popular sense" that which people conversant with the subject-matter with which the statute is dealing would attribute to it. The ordinary words in every day use are, therefore, to be construed according to their popular sense. ... ..."*

15. Apart from the above, there are numerous judgments rendered by the Apex Court as mentioned below where the importance and relevance of common parlance test has been upheld.

   i. *Ramavatar Bhudaiprasad Etc. vs. Assistant Sales Tax Officer,Akola (1961) 12 ST 286 (SC).*

   ii. *Commissioner of Sales Tax,Madhya Pradesh vs. Jaswant Singh Charan Singh (1967) 19 STC469 (SC).*

   iii. *Ponds India Ltd. Vs Commissioner of Trade Tax, Lucknow 2008 (5) TMI 46 - SUPREME COURT.*

16. In para.7.9 the Authority for Advance Ruling has observed that the toys under reference are designed to use physical force for pedalling, pushing and also to develop fine motor skills like blinking, discrete tasks of switching on/off the music etc. and that these functions are targeted to develop a certain skill while amusing the child playing with it. This observation and conclusion are highly subjective. A common man does not buy a tri-cycle for a child for developing discrete tasks of switching on/off a music in the tri-cycle. Similarly, a person does not buy a toy car to develop the skill of blinking. The primary purpose of buying a tri-cycle or toy car is for the

physical activity to be undertaken by the child. The additional features do not change the character of a tri-cycle or a toy car. Two prominent examples can be cited in this connection. One relates to a walking stick equipped with a small torch. In this example, the torch fixed in the walking stick is an additional feature and if one wants to use only a torch, he will not buy a walking stick for using the torch. The second example is a smart phone which has features, including torch light, calculator and a camera. People intending to buy cameras or calculators or torch lights will not buy the mobile phone for those purposes because it has these features. Mobile phone is basically for the purpose of facilitating communication over cellular network and all other features are additional features incorporated in the device.

17. Thus, the conclusions drawn by the Authority are completely erroneous and not in accordance with the trade and common man's understanding of these terms as clearly expounded by the Apex Court in the extracts referred to above. As a result, the impugned ruling deserves to be set aside.

6. **PERSONAL HEARING:** The Appellant was granted personal hearing through Digital mode (Virtually) on the consent of the appellant, as required under law before this Appellate Authority on 22.12.2021. The Authorized representatives of the Appellant Tvl. S. Murugappan, learned Counsel of the appellant appeared for hearing. The learned Counsel reiterated the written submissions and emphasized that the whole issue is whether the presence of 'Electronic Circuit' will make the toys under consideration as 'Electronic Toys'. He contended that when there is no statutory definition of 'Electronic Toys', the popular meaning/common parlance understanding is to be adopted, that when there are two functions in a toy and the 'Primary function' is made through electronics, then such toys are 'Electronic toys'. In this case, the toys are bought only for enriching the main 'Motor activity' of cycling, pedaling, etc & the presence of visual/sound effect are add-on features which do not make them 'electronic toys'. The learned Counsel referred to the explanatory notes to HSN and stated that the wheeled toys and the Mechanical toys are considered separately, that in common parlance, these toys are not mentioned under 'Electronic Toys'.

7. Discussion: We have gone through the submissions of the Appellant and the ruling of the Original Authority. In general understanding, a toy which is primarily operated by use of manual force or are required to be manually pushed is

considered as a 'non-electronic toy', and the toys operated by use of electricity or power generated from the batteries, whether chargeable or replaceable are considered as an 'electronic toy'. As the **Children's Scooter SC-007**is a scooter toy applicable for the age range between 3-5 years old in which the toddler will be placed in the seat provided and has to moved with the wheels provided only by applying pressure with the legs and handle bar to change the direction this may not be considered as an electronic toy. This toy is provided with light in the handle bar and the music which is only a secondary provision. Though they contended that the toys are functioning independent of the electronic circuit provided therein, but the fact remains that the toys are equipped with such electronic circuit irrespective of the fact that they are for other functions.

Activity Ride-on is a car toy applicable for the age ranging from 12 Months – 36 Months old. The toddler will be placed in the seat provided and has to be pushed by the other person for the movement and the steering provided shall be used for changing the direction. This toy is provided with electronic lights and music in the form of buttons present in the steering which is only a secondary provision. Though they contended that the toys are functioning independent of the electronic circuit provided therein, but the fact remains that the toys are equipped with such electronic circuit irrespective of the fact that they are for other functions.

Smart Tri-Cycle is a tri-cycle toy which is applicable for the age range upto 18 months. The toddler has to be placed in the seat provided and has to pedal for the movement of the tri-cycle. The handle bar provided shall be used for direction also.In the handle bar there are buttons present for light, horn and music which is only a secondary provision. Though they contended that the toys are functioning independent of the electronic circuit provided therein, but the fact remains that the toys are equipped with such electronic circuit irrespective of the fact that they are for other functions.

Kick Scooter is a tri-cycle applicable for the age ranging from 3-14 years. This tri-cycle has to be driven upon standing on one leg in the tri-cycle and pushing with the other leg. Though they contended that the toys are functioning independent of the electronic circuit provided therein, but the fact remains that the toys are equipped with such electronic circuit irrespective of the fact that they are for other functions.

8. With regard to the submission of the learned counsel that the common parlance alone has to be applied in the absence of definition of " Electronic toy" in the said notification or in the Act. In this regard, it is pertinent to note that the Tamil Nadu Advance Ruling Authority has relied on the various standards applicable for these toys and in para.7.6 of the ruling a reference has been made to GB standard 19865—2005 which provides as mentioned below:

> *"This Standard deals with the safety of toys that have at least one function dependent on electricity..... Toys using electricity for secondary functions are within the scope of this standard".*

The Hon'ble High Court of Madras in the case of Southern Refractories & Minerals Vs. State of Tamil Nadu reported in 81 STC 387 (1991) held that in interpreting entries in taxing schedules, the popular meaning should be given to such terms and the classifications made by the Indian Standard Institution regarding the goods in question could be made use of in determining the said popular or commercial meaning. Hence the reference of standard applicable to the toys relied on by the Tamil Nadu Advance Ruling Authority is a part of common parlance to ascertain the term of " Electronic Toys".

9. Let us examine the entries relating to electronic toys and toys other than electronic under the GST Act are as follows:

Sl.No./ Sch.	HSN	DESCRIPTION	RATE
228. /II	9503	Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof) [other than electronic toys]	6% + 6%
440. /III	9503	Electronic Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof)	9% + 9%

As seen from the above entries, both entries are same except for the term 'electronic'. Had the Parliament thought that the electronic toys are altogether different from that of toys, it would not add the same list of tricycles, scooters, pedal cars etc. (including parts and accessories thereof) and the difference between them is that any component of electronic added to the toys like tricycles, scooters, pedal cars etc. would disentitle them to fall under serial number 228 of schedule II to the Notification No.1/2017 Central Tax Rate dated 28-6-2017. In the case of appellants, it is apparently clear that all the four products contain electronic components irrespective of its usage, the said goods would fail to fall under serial number 228 of schedule II to the Notification No.1/2017 Central Tax Rate dated 28-6-2017 and

therefore they have to be classified under serial number 440 of schedule III to the Notification No.1/2017 Central Tax Rate dated 28-6-2017. The Advance Ruling Authority has with the aid of standard applicable for tools have also came to the conclusion that the goods of the appellate are classifiable under serial number 440 of schedule III to the Notification No.1/2017 Central Tax Rate dated 28-6-2017, which we hold that no interference is warranted and accordingly the appeal fails.

10. In light of the above, we rule as under:

RULING

As far as these toys consists of electronic components irrespective of the usage, they would attract 18% GST as per Sl.No. 440 of Schedule-III of the Rate Notification. The subject appeal is dismissed accordingly.

9/10

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

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

APPELLATE AUTHORITY FOR ADVANCE RULING
13 JAN 2022
GOODS AND SERVICE TAX
Chennai-5, Tamilnadu.

To

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Copy to:

1. The Principal Chief Commissioner of GST & Central Excise, No. 26/1, Mahatma Gandhi Road, Nungambakkam, Ch – 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(North) No. 26/1, Mahatma Gandhi Road, Nungambakkam, Ch – 600 034
4. Assistant commissioner,(ST) T,Nagar, Assessment circle, Chennai-600017

5. Joint Commissioner (ST)/Member,
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6. Master File / spare