

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

A.R.Appeal No. 17/2021 AAAR

Date: 09.03.2022

BEFORE THE BENCH OF

1. **Thiru M.V.S.CHOUDARY, MEMBER (CENTRE)**
2. **Thiru K.PHANINDRA REDDY, MEMBER (STATE)**

ORDER-in-Appeal No. AAAR/07/2022(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 appellant 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 appellant 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 appellant.
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. Rasi Nutri Foods 1/67A,1/67B, Salem Trichy Main Road, Ayeepalayam, Athanur, Rasipuram, Namakkal-636301.
GSTIN or User ID	33AAGFR9140J1Z2
Advance Ruling Order against which appeal is filed	Order No. 39 /ARA/2021 dated: 21.10.2021
Date of filing appeal	8.12.2021
Represented by	Ms.S.Vishnupriya, Advocate
Jurisdictional Authority-Centre	Salem Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Rasipuram Assessment Circle
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. UTIB 21123300045016 dated 08.12.2021

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act,2017 and the Tamil Nadu Goods and Service Tax Act,2017 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 appeal is filed under Section 100 (1) of the Central Goods & Services Tax Act 2017 by Tvl. Rasi Nutri Foods, (herein after referred to as the Appellant), having their registered office at 1/67A,1/67B, Salem Trichy Main Road, Ayeepalayam, Athanur, Rasipuram, Namakkal-63630. They are registered under the GST Act, 2017 vide GSTIN 33AAGFR9140J1Z2. They have stated that they participated in the tender opened by Government of Tamilnadu for supply of fortified rice kernel(FRK) and was awarded the contract.

2. They had sought Advance Ruling to clarify

whether Notification No. 39/2017-Central Tax (Rate) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, would be applicable to the Appellant's activity of

manufacture and supply of Fortified Rice Kernels to the Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government.

3. The AAR pronounced the following rulings:

(i) Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, is not applicable to manufacture and supply of Fortified Rice Kernels to rice mills designated by Tamil Nadu Civil Supplies Corporation pursuant to the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government for the period upto 30.09.2021.

(ii) Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 issued by the Commercial Taxes and Registration Department, as amended by Notification No. 11/2021-C.T.(Rate) dated 30.09.2021 is applicable to the supply of Fortified Rice Kernels (Pre-mix), by the appellant, for the Pilot Scheme on "Fortification of Rice & its Distribution under the Public Distribution System" project launched by the Central Government, from 01.10.2021 onwards, under Sl.No. (b) of Column (3) of the said Notification subject to fulfillment of the conditions stipulated under Column (4) of the said Notification.

4. Aggrieved with the above said ruling, that for the period prior to 01.10.2021, they were not entitled for the benefit of Notification No. 39/2017-CT® dated 18.10.2017, they have filed this appeal and submitted the copy of application in Form GST ARA - 02 and also submitted a copy of Challan evidencing payment of application fees of Rs.10,000/- each under sub-rule (1) of Rule 104 of CGST Rules, 2017 and TNGST Rules, 2017. In the grounds of Appeal, they inter-alia, stated that:

- fortified rice kernel, fall under Chapter XIX of the Tariff and the relevant lab report established the same. FRK fall within the ambit of Chapter XIX as "preparation of serial, flour, starch or milk". Therefore, the rate applicable for clearance for FRK for the period prior to 01.10.2021 was only 5% (2.5% CGST

+ 2.5% SGST) on account of Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017.

- Clause 19 of the tender document which dealt with packing stated that the Tenderer shall pack the fortified rice kernels in 25/50KG size oval HDPE bag with LDPE inner poly liner of suitable thickness marked with proper labelling that is Batch No./Lot No., name of the manufacturer has specified in FSSAI Regulations. Therefore, it has satisfied required of being unit container.
- there was a clear intention to supply by way of free distribution to economically weaker sections of the society. This is, borne by the fact that the supply itself takes place under the contract through a tender meant for free distribution. The rice mills are the part of the distribution system which ensures that the FRK mixed with regular rice and ultimately distributed to the identified section of the society on free of cost basis by ensuring that there is no diversion of fortified rice from the rice mills from the any other destination.
- The programme in question had been duly approved by the Central Government. It was a Pilot Scheme funded by the Government of India in the Ratio of 90:10 in respect of North-Eastern States, Hilly and Island States and 75:25 in respect of rest of the states. The program was jointly funded by the Central and State Governments. The Appellant has produced a relevant certificate as per notification.
- The LA erred in denying the benefit of Notification 39/2017-CT(R) dated 18.10.2017 read with G.O.Ms.No.140 dated 17.10.2017 that FRK is not a food preparation. The LA erroneously upheld the test that because cooking was necessary the article could not be food preparation. In fact, the FRK is edible as such.
- The blending of the FRK with the rice was, did not in any fashion destroy the essential nature of FRK. The essential nature test has been emphasised by the Hon'ble Supreme Court of India in its decisions in –
 - (i) 2006 (202) ELT 278 – Bharat Textiles & Proofing Inds. Vs. Commissioner of Central Excise at para 14.
 - (ii) (2016) 15 SCC 491 – Commissioner of Central Excise vs. Fitrite Packers
 - (iii) (2015) 14 SCC 47 – Servo-Med Industries Pvt. Ltd., vs. Commissioner of Central Excise

5. The appellant was granted an opportunity to be personally heard on virtual mode on 28.01.2022. The appellant requested a short adjournment and requested the case to be posted on 09.02.2022. Accepting the request, the case was posted for hearing on 09.02.2022. Ms. S. Vishnupriya, Advocate appeared for the hearing virtually and sought withdrawal of the appeal application by filing a Memo. When asked about the specific provision under GST under which the withdrawal is sought, she stated that the appellate forum has an inherent power to allow withdrawal of the application. She was allowed to file a written submission with legal provisions/precedence on their request for withdrawal. In the Memo filed, they stated that while arguing the issue before the lower Authority, they had placed reliance on certain judgements of the Hon'ble Supreme Court of India, on the scope of specific expressions contained in Notification dated 18.10.2017, which has not been referred by the Lower Authority in the Order dated 21.10.2021.; that they intend moving an application under Section 102 of the Act before the Hon'ble Authority for Advance Ruling to reiterate their submissions on the issue and place the decisions of the Court before the Authority and therefore prayed to permit them to withdraw the present appeal with leave to place the decisions before the Lower Authority by way of separate application for rectification and that the withdrawal of the appeal may not be treated as a relinquishment of their case as to applicability of Notification dated 18.10.2017.

6. The appellant submitted the following written submissions on 18.02.2022.

- Concept of "Advance Ruling" is basically a facility provided to the assesseees in order to ascertain their tax liability, to plan their affairs well in advance and to avoid a long drawn and expensive litigation. It is a statement from the Revenue Authorities issued on the voluntary request of the private parties, concerning the treatment and consequence of one or more series of contemplated future actions or transactions. Therefore, in view of the above, it can be construed that "Advance Ruling" (hereinafter referred to as "AR") is basically a voluntary scheme. Further, the Hon'ble Madras High Court in its decision rendered in the case of Pizzeria Fast Foods Restaurant (Madras) Pvt Ltd Vs CCT, Chennai and others reported in 2005 (140) STC 97 at para 26 had held that Section 28-A of the TNGST Act, 1959 (provision relating to "Advance Ruling") was a provision beneficial to the assessee.
- Section 97 of the CGST Act, 2017 (hereinafter referred to as the "Act") uses the word "desirous", i.e any person who wishes to opt for the AR scheme

may opt for the same. Section 100 of the Act (appeal provision for AR) also uses the word “may” appeal to the Appellate Authorities. Therefore, it can be inferred that AR is a beneficial provision for the assessee. Consequently, the appeal provisions of AR are also to be interpreted in a liberal manner and the Assessee, in the present case, at the relevant point in time can also withdraw the appeal in order to seek a remedy under any other provisions of the Act (in the present case it is as per Section 102 of the Act which deals with “rectification petition”)

- There is no express provision under the Act to prevent the withdrawal of appeal. Therefore, the appeal may be permitted to be withdrawn. In this regard , kindly see the decisions in:

- i) Bijay nanda patnaik Vs Satrughna Sahu and others-AIR 1963 SC 1566 at para 7

- ii) Biman C Karmakar and others Vs State of West Bengal and others-(2001) 10 SCC 635 at para 3

- It is a settled legal principle that “Every procedure is to be understood as permissible in law till it is shown to be prohibited in law and as a matter of general principle, prohibition cannot be presumed”. In this regard, kindly see the decision in :

Rajendra Prasad Gupta Vs Prakash Chandra Mishra and others-2011(1) TMI 175-SC.

- Therefore, a withdrawal of appeal not having been prohibited under section 100 of the Act, the same can be permitted. In view of the above, the appellant may be permitted to withdraw the present appeal unconditionally with no relief sought for against the respondent in the present appeal”.

7. The appellant has sought withdrawal of the appeal filed by them. Chapter XVII of GST Act provides the statutory provisions in respect of Advance Ruling and Section 100(1) states as follows:

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

In the case at hand, when an opportunity of being heard was extended to the appellant, they sought withdrawal of appeal. The appellant, in this regard, has relied on the decisions of the Hon’ble Supreme Court in the case of Rajendra Prasad Gupta Vs Prakash Chandra Mishra and others-2011(1) TMI 175-SC, wherein the

Hon'ble Supreme Court held that "Every procedure is to be understood as permissible in law till it is shown to be prohibited in law and as a matter of general principle, prohibition cannot be presumed". Abiding the law set by the Apex court, considering that there is no explicit prohibition for withdrawal in the current legal provisions, the appeal is permitted to be withdrawn and no ruling is extended.



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

**APPELLATE
AUTHORITY FOR
ADVANCE RULING**

09 MAR 2022

**GOODS AND SERVICE TAX
Chennai-5, Tamilnadu.**

To
Tvl. Rasi Nutri Foods,
1/67A, 1/67B, Salem Trichy Main Road, Ayeepalayam,
Atharur, Rasipuram, Namakkal-636301. // By RPAD //

E.Mail.Id: nprasad@nprasadassociates.com

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,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. The Commissioner of GST & Central Excise, Salem Commissionerate,
No.1, Foulkes Compound, Anaimedu, Salem-636 001.
4. The Assistant Commissioner (ST), Rasipuram Assessment circle,
Commercial Taxes Building,
Taluk Office Compound,
Athur Main Road,
Rasipuram. 637 408.

5. 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

