

**TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING**

**(Constituted under Section 99 of**

**Tamil Nadu Goods and Services Tax Act 2017)**

A.R.Appeal No. 03/2022 AAAR

Date: .11.2022

**BEFORE THE BENCH OF**



1. **Thiru. MANDALIKA SRINIVAS, MEMBER(CENTRE)**

2. **Thiru. DHEERAJ KUMAR, MEMBER(STATE)**

**ORDER-in-Appeal No. AAAR/ 09/2022 (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	SOM VCL (JV) 11/F, SECOND FLOOR, MAIN ROAD, SRI RENGANARAYANAPURAM TIRUNELVELI-627120
GSTIN or User ID	33AB AIS3460L1Z8
Advance Ruling Order against which appeal is filed	Order No.10/AAR/2022 Dated: 22.03.2022
Date of filing appeal	20.04.2022
Represented by	Ms. Natasha Jhaver, CA
Jurisdictional Authority-Centre	Madurai Commissionerate
Jurisdictional Authority -State	State Tax officer, Tirunelveli 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 form GST DRC-03

**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 filed under Section 100(1) of the Tamil Nadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by SOM VCL (JV) (hereinafter referred to as 'Appellant') was registered under the GST Act vide GSTIN 33AB AIS3460L1Z8. The appeal was filed against the Order No.10/AAR/2022 dated 22.03.2022 passed by the Tamil Nadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The Appellant stated that they were engaged in execution of civil engineering and other general construction contracts for various Government departments and organizations. The parties SOM Projects private limited and M/s Varindera Constructions Limited had entered into joint venture under the name "SOM VCL(JV) " solely for carrying out the works contract service for Kudankulam Nuclear Power project, a unit of Nuclear Power Corporation of India Ltd (NPCIL) at their site "Anuvijay Township, Kudankulam, Radhapuram Taluk, Tirunelveli, Tamil Nadu. The appellant stated that they were awarded a project by NPCIL, a Government entity for carrying construction of 360nos (D-type 240Nos, D-special 80 Nos and E-type 40 Nos) residential quarters (9 blocks of G+10 floors) for residential usage of their employees at Anuvijay Township. The



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

1. Whether the execution of works contract service at Kudankulam Nuclear Power Project would be covered under S.No vi (or) vii of Notification No.24/2017 dated 21.09.2017 attracting GST@12% or 18%; and
  2. The assessee had already charged GST @12% on its invoices for the works contract service provided. In case the rate of GST is determined to be 18% instead of 12% should they pay the differential tax through debit note under GSTR 1?
3. The Original Authority had vide Order No:10/AAR/2022 dated 22.03.2022 ruled as follows:
1. The execution of works contract service for construction of residential quarters to the employees of Kudankulam Nuclear Power Project was not covered under Sl.No. 3(vi) of Notification 11/2017-CT-Rate dt. 28.06.2017 for the reasons stated in Para 7 above. The applicable rate was @18% GST as per Sl. No3(xii) of Notification 11/2017-CT-Rate dt. 28.06.2017(as amended) read with the corresponding TNGST Notification.; and
  2. The question on how the differential tax was to be paid was a procedural aspects of payment and was out of the purview of Section 97(2) and hence was not answered.
4. Aggrieved of the decision of AAR in the order no:10/AAR/2022 dt.22.03.2022, preferred the subject appeal. The grounds of appeal are as follows:
- (i) The AAR vide their letter 01.11.2021 addressed to the appellant asked for certain information, as recorded in para 3.3 of the impugned order, which was replied to by the appellant on 08.11.2021 as recorded in para 3.4 of the impugned order. It was further observed from para 4.2 of the impugned order that the AAR had requested the jurisdictional authorities to obtain certain information / documents from KKNPP / NPCIL and furnish the same. The documents sought for were,
    - (a) A letter / statement from KKNPP regarding financial approval for the planned township and details of such approval by the Central Government for establishing the township; and
    - (b) Copy of the plan of township.
  - (ii) The jurisdictional authorities had tried to obtain these documents from KKNPP/ NPCIL and except an Email dated 02.02.2022 from the Chief Engineer of NPCIL, no further documents could be obtained by them from KKNPP / NPCIL. The said Email had confirmed that Anuvijay Township was within the premises of M/s NPCIL, KKNPP and the said township was used exclusively for the purposes of M/s NPCIL. In para 6.2 of the impugned order, the AAR had held that the second question raised by the appellant as to whether they could pay the additional tax liability by raising Debit notes, in the event if the tax rate was held to be 18 %, could not be answered by them, as the said question was on procedural aspects and not within the ambit of AAR.
  - (iii) In para 7.2 to 7.4 of the impugned order, the AAR has framed three issues, which requires to be satisfied, to decide whether the GST rate under S.No. 3 (vi) of Notification 11/2017 C.T. (Rate) could be claimed or not and held that out of the said 3 conditions, first two conditions were satisfied in this case and proceeded to examine



the third condition, whether the subject work was in relation to any work entrusted to the government entity, by the Government.

- (iv) In para 7.5 of the impugned order, the AAR had observed that in the instant case, the work of construction of residential quarters was awarded to the appellant by NPCIL. It was further held that the entity procuring such work is KKNPP and the work of construction of the Residential quarters for the employees of KKNPP was not a work in relation to the work entrusted to KKNPP as envisaged in the proviso to entry 3(vi) of the Notification No. 11/2017 CT (Rate) dated 28.06.2017. The AAR had observed that as the work of the construction of residential quarters was a welfare measure done by KKNPP for their employees, this cannot be construed to be in relation with the work entrusted to NPCIL by the Central Government. The AAR further observed that in absence of any document evidencing the same, the subject work cannot be considered as being in relation to any activity entrusted to NPCIL by the Government. Accordingly, the AAR had come to the conclusion that the appellant was not entitled for availing the GST rate at 6% in as much as the condition prescribed in the notification was not satisfied.
- (v) In para 8 of the impugned order, the AAR had referred to the non-co-operation of KKNPP / NPCIL to provide the details and documents; and in the absence of such details / documents, proceeded to hold that the benefit of 12 % GST rate under S.No. 3 (vi) of Notification 11/2017 could not be claimed in this case.
- (vi) Non co-operation on the part of KKNPP / NPCIL can never be the reason to take any adverse view by the AAR and the ruling should be based on the materials available on record and available in public domain. Section 105 of the CGST Act, 2017 gave ample power to the AAR to obtain any documents and the AAR could have used such powers to obtain the information from NPCIL, if such information was felt to be crucial for deciding the issue. Hence, the decision of the AAR to hold that the appellant was liable to pay GST @ 18 %, in the absence of the required documents from NPCIL, was erroneous and not sustainable in law.
- (vii) KKNPP, a unit of NPCIL was the largest nuclear power station in India, situated in Kudankulam in the Tirunelveli district, Tamil Nadu. KKNPP had built a large township known as Anuvijay Township for its employees near the village Chettikulam in Tirunelveli district. Appellants were awarded the contract to construct of the residential quarters for the employees of the KKNPP, a unit of NPCIL. Construction of the residential quarters for NPCIL was only for the usage of the employees. The same was also certified by the Chief Engineer of NPCIL through Email dated 02.02.2022.
- (viii) Nuclear power plants were always constructed on the seashore areas to reduce the exposure to any risk of explosion for the general public in case of any accident. Further the plants would be functioning round the clock and presence of proper labourers and staff have to be ensured all the time. Hence, it becomes necessary for them to provide the residential quarters within a reasonable distance from the power plant, for smooth functioning of the nuclear power plant. Hence, it is clear that the construction of residential quarters by NPCIL is "in relation to" its main activity of construction of atomic power plants and generation of electricity, a function entrusted to NPCIL by the Government.



- (ix) The appellant had submitted a copy of the Memorandum of Association of NPCIL, from which the broad objectives of forming NPCIL could be observed. As per Section 3 of the Atomic Energy Act, 1962, the Central Government was having wide powers which could be exercised either by the Central Government directly or through a corporation, Government Company or authority established by it. It was in pursuance of such powers NPCIL was formed and the activity of construction of residential quarters was directly in relation to fulfilling the obligations entrusted to NPCIL, by the Central Government, under Section 3 of the above said Act. They had stated that the word “in relation to” had a very wide connotation and would include direct as well as indirect nexus with the subject matter. In the instant case the construction of the residential quarters for the exclusive use of the employees in the planned township of NPCIL were relatable to the objectives and functions entrusted to NPCIL by the Central Government. The appellant had relied on the ratio of the decision of the Hon’ble Supreme Court in the case of Doypack Systems Pvt. Ltd v/s UOI reported in 1988 (36) ELT 201 (SC) in support of their case.
- (x) For the above reasons the conclusion of the AAR to the effect that the concessional rate of GST rate @ 12%, under S.No. 3 (vi) of Notification 11/2017 was not admissible to the appellant in as much as the construction of the residential quarters undertaken by the appellant were in relation of the work entrusted to NPCIL by the Central Government; hence the decision of AAR was not at all sustainable and was liable to be set aside. Further, it was contended that the residential quarters exclusively used by the employees of the KKNPP, a unit of NPCIL was an integral part of the work entrusted to NPCIL of implementing nuclear power projects by the Central Government.

Personal Hearing:

5. The Authorised Representative (AR) appeared for the hearing conducted on virtual platform and reiterated the facts and grounds of appeal. The Members drew the attention of the AR to the letter dated 22.01.2021 of NPCIL furnished alongwith their application and stated that the said letter is very generic in nature and did not certify that the subject residential colony constructed by them specifically belongs to NPCIL and for use by their Employees: The members required the AR to furnish a letter/certificate from NPCIL to the effect that the work undertaken by them for which the concessional rate was claimed was for the use of staff/employees of KKNPP and to get clarified whether the said works are in relation to the work entrusted to NPCIL by the Central Government.

5.1 The AR sought seven working days to furnish the above mentioned confirmation.

5.2 The appellant vide their e-mail dated 22.07.2022 furnished a letter No. NPCIL/KKNPP/C&TS/D/2022 dated 21.07.2022 issued by Shri T.Suresh, Engineer-in-charge, SO/E(C&TS) addressed to the appellant certifying that the Anuvijay Township is an Integral part of the Nuclear Power Project Located at Kudankulam Tirunelveli District.

## Discussion and Findings:

6. We have carefully considered all the material on record and the relevant provisions of Law. The appellant is before this authority seeking to set aside/modify the ruling passed by the AAR and hold that they are entitled to avail the CGST rate of 6% as per Sl.No. 3(vi) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 and equivalent SGST rate. Thus, the appellant is before us seeking modification on the ruling pertaining to Q.No. 1 raised by them before the AAR and the same is taken up for consideration.

7. The appellant was awarded the project for construction of 360 nos of (D-type Nos., D-special-80 Nos and E-type-40 nos) residential quarters (9 blocks of G+10 floors) for residential usage at Anuvijay Township, Kudankulam. The appellant has sought clarification on the applicability of the concessional rate of Tax of 12% GST as per the entry sl. No. 3(vi) of Notification No. 11/2017-C.T.(Rate) as amended. The relevant entry for ease of reference is as under:

		[[vi] [Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, {other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above} <sup>25</sup>	6	{Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation
		provided] <sup>26</sup> to the Central Government, State Government, Union Territory, [a local authority, a Governmental Authority or a Government Entity] <sup>27</sup> by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.  [Explanation.- For the purposes of this item, the term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.] <sup>28</sup>		to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be; <sup>29</sup> <sup>30</sup> <sup>31</sup>

The AAR after examining the various limbs of the said entry had concluded that the contract is a works contract service as defined under Section 2(30) of the GST Act 2017; NPCIL being a PSE established under Department of Atomic Energy, (Central Government Department) with 100 percent equity held by the Central Government to implement atomic projects for the generation of electricity as entrusted by the Central Government was a ‘Government Entity’ as per the definition available under 2(zfa) of Notification No.12/2017-C.T.(Rate) effective from 13.10.2017; and concluded that the appellant had not substantiated their fulfilling of condition that works procured by the said Government entity in relation to a work entrusted to it by the Central Government. The efforts taken to verify the fact was spelt in the ruling of the AAR. The claim of the appellant before us is that the AAR with the powers vested with them under Section 105 of the GST Act 2017 ought to have obtained the required information for verification, which the authority felt necessary. The appellant had furnished the MOA of NPCIL along with the Appeal filed before us. The appellant,



further had furnished a letter from NPCIL in No. NPCIL/KKNPP/C&TS/D/2022 dated July 21, 2022, pursuant to the personal hearing before us.

8. On perusal of the MOA furnished along with the appeal application, it is seen that the Main Objects to be pursued by NPCIL is 'Development of Nuclear Power; Protection of the Environment; Manufacturing, trading and the Objects incidental or ancillary to attainment of the main objects are Coordination and control; As a helper and servicing agency for the subsidiaries; To obtain charters, concessions, etc, Borrowing Powers; To acquire and lease property, To provide for welfare of employees, etc... Under the clause 'To acquire and lease property', it was further mentioned that 'To acquire by purchase, lease, exchange, hire or .....apartments, plant, machinery and hereditaments of any nature or description situated in India or any other part ..... and turn the same to account in any manner as may seem expedient, necessary or convenient to the Company for the purposes of its business'. Further, from the letter furnished by the appellant subsequent to the Personal hearing before this authority, it is seen that the project of constructing residential quarters at Anuvijay Township, Kudankulam was meant exclusively for use of the employees. It was certified that the said township was in direct relation to the fulfilling obligations entrusted to NPCIL and as per the objects of NPCIL in its MOA. For ease of reference, the operative portion of the said letter addressed to the appellant is snipped and placed as under:

This is to certify that the Anuvijay Township is an Integral part of the Nuclear Power Project located at Kudankulam Tirunelveli District, Tamil Nadu. The said township comprises of residential accommodation and other infrastructure works which are exclusively for use of the employees which is in direct relation to the fulfilling obligations entrusted to Nuclear Power Corporation of India Limited (NPCIL) and as per the objects of NPCIL in its MOA and the said township is not for sale or resale.

8.1 From a joint reading of the MOA of NPCIL and the certificate dt.21.07.2022, it is evident that the works relating to construction of residential quarters are exclusively meant for use of the employees of NPCIL at Kundankulam Project and acquiring such buildings are objectives incidental or ancillary to attainment of the main object of NPCIL, a government entity.


9. In fact,, the AAR had held that in the absence of substantiation with regard to the fulfillment of the condition that the services were procured by NPCIL, a Government Entity, in relation to the work entrusted to them by the Central government, the concessional rate provided was not available to them. The appellant before us, through the MOA and the certification from NPCIL has established that the residential quarters constructed at Anuvijay township were meant exclusively for the employees and that as per the MOA, one of the Objects incidental to attainment of the main objects, provide NPCIL to acquire apartments as seen expedient, necessary or convenient to the Company for the purposes of its main object/business. Hence, we hold that the condition that the services so procured by the Government entity, in this case, NPCIL, is in relation to the work entrusted to it and therefore, the appellant are/were eligible for the concessional rate of tax @6% of CGST plus 6%of SGST as per entry 3(vi) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 (as amended) readwith the corresponding Notificaiton underTNGSTA for the period upto 31.12.2021.


9.1 However, in view of the amendment made to the above entry 3(vi) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 vide Notification No. 15/2021-C.T.(Rate) dated 18.11.2021 effective from 01.01.2022, 'Government entity' stands omitted in the class of recipients. Therefore, the applicable rate of tax for the above work is @ 9% of CGST plus 9% of SGST as per entry Sl.No. 3(xii) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 (as amended) read with the corresponding Notification under TNGSTA.

10. In view of the above, we modify the ruling extended by the AAR in order no: 10/AAR/2022 dt 22.03.2022 as follows:

### **RULING**

The execution of works contract service for construction of residential quarters exclusively meant for the employees of NPCIL at Anuvijay township by the appellant is covered under entry Sl.No.3(vi) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 and the corresponding SGST Notification for the period upto 31.12.2021.

  
(DHEERAJ KUMAR) 15/11/2022  
Principal Secretary/  
Commissioner of Commercial Tax  
Tamil Nadu /Member AAAR

  
(MANDALIKA SRINIVAS)  
Pr. Chief Commissioner of GST  
& Central Excise, Chennai Zone/  
Member AAAR

To  
SOM VCL (JV)  
11/F, SECOND FLOOR, MAIN ROAD,  
SRI RENGANARAYANAPURAM  
TIRUNELVELI-627120

**// By RPAD //**



Copy to:

1. The Principal Chief Commissioner of GST & Central Excise,  
No. 26/1, Mahatma Gandhi Road, Nungambakkam, Ch – 600 034.
2. Principal Secretary/ The Commissioner of Commercial  
Taxes/Member, II Floor, Ezhilagam, Chempauk, Chennai-600 005.
3. The Commissioner of GST & Central Excise, Madurai Commissionerate,  
Central Avenue Building, 4, Lal Bahadur Shastri, Bibikulam.
4. The State Tax Office, Tirunelveli(Town) Assessment Circle, Tirunelveli Commercial  
Taxes Building, Reserve Line Road, Palayamkottai, Tirunelveli – 627 002.
5. Joint Commissioner (ST)/Member,  
Authority for Advance Ruling, Tamil Nadu,  
Room No.503 B, 5<sup>th</sup> Floor, Integrated Commercial Taxes Office Complex,  
No.32, Elephant Gate Bridge Road, Chennai-600003
6. Master File / spare