

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

A.R.Appeal No.04/2023 AAAR

Dated :20-12-2023

BEFORE THE BENCH OF

Dr. Ram Niwas, I.R.S., Chief Commissioner of GST & Central Excise, Member, Appellate Authority for Advance Ruling, Tamil Nadu	Dr. D.Jagannathan, I.A.S., Commissioner of Commercial Taxes, Member, Appellate Authority for Advance Ruling, Tamil Nadu
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Order-in-Appeal No. AAAR/7 /2023 (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. Mannarai Common Effluent Treatment Plant (P) Limited, No. 209/2A, S. Periyapalayam Post, Uthukuli Road, Trippur – 641 605.
GSTIN or User ID	33AACCM4445J1ZJ

Advance Ruling Order against which appeal is filed	20/AAR/2023 dated 19.06.2023
Date of filing appeal	26.09.2023
Represented by	Mr. S. Harishankar, Chartered Accountant. S Chandrakumar, Director.
Jurisdictional Authority-Centre	Coimbatore Commissionerate.
Jurisdictional Authority -State	Tiruppur (Rural) -1, Assessment circle.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	ARN : AD330923062685T Date: 23.09.2023.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. The subject appeal was 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 M/s Mannarai Common Effluent Treatment Plant (P) Limited, (hereinafter referred to as 'Appellant'). The Appellant was registered under the GST Act vide GSTIN 33AACCM4445J1ZJ. The appeal was filed against the Order No. 20/AAR/2023 dated 19.06.2023 passed by the Tamil Nadu State Authority for Advance Ruling (hereinafter referred to AAR) on the Application for Advance Ruling filed by the Appellant.

2.1 The Appellant has stated that they are an effluent treatment plant, promoted by the dyeing units. The appellant plans to engage themselves in the purchase of effluent from dyeing units, treat the effluent at its plant, and sell the water, salts, and output. The appellant by application number GST-ARA-01 dated 12th August 2022 sought an advanced ruling, as to whether

- The classification of output, as supply of goods, is correct?
- The classification "Water including natural or artificial mineral waters and aerated waters, not containing added sugar or sweetening matter, not flavored (other than drinking water packed in 20 litre bottles) under heading 2201, is correct?

2.2 After detailed submissions, and after hearing the appellant, the Advance Ruling Authority, passed a ruling vide its order 20/ARA/2023 dated 19.06.2023, holding that,

- Classification of outputs, as sale of goods is correct, subject to the conditions that applicant follows the guidelines mentioned in para 4.9 of the order.
- The classification of water sold by the applicant is correctly classifiable as per notification No. 2/2017 – Central tax rate, as under:

Sl No	Heading	Description	Rate
99	2201	Water (other than aerated, mineral, distilled, medicinal, ionic, battery, demineralized and water sold in sealed container)	NIL

3. Aggrieved, M/s Mannarai Common Effluent Treatment Plant (P) Limited preferred the subject appeal. In the grounds of appeal, they stated, *inter alia*, that

- The order of the learned AAR is against the facts of the case and against the principles of natural justice and interpretation of the law.
- The learned AAR failed to appreciate the nature of processing carried out by the applicant and failed to consider that the minerals and hardness are removed in the processing to make the output fit for reuse.
- The learned AAR erred in equating the plant run by the applicant to process effluents with sewage water treatment plants and relying on the circular issued for the purpose of sewage plants when there are inherent differences in the processing as well as output which is characterized as Trade permeate, MEE condensate in TN pollution control board consent order.
- The learned AAR erred in holding that the output is classifiable as Water under heading 2201 after observing Effluent water does not fit under Chapter 22 as it is not fit for human consumption under the heading “Beverages, Spirits and Vinegar”
- The learned AAR failed to provide an opportunity to the applicant to make submissions to the materials relied on by the AAR in arriving at the decision and erred in not considering the materials submitted by the applicant.
- The learned AAR erred in not considering the decisions of M/s Hojwala infrastructure Limited (AAR Gujarat GUJ/GAAR/R/2002/48), and M/s Kasipalayam Common Effluent Treatment Plant Private Limited (AAR Tamil Nadu 23/AAR/2021) where it has been held demineralized water for industrial use is classifiable as water taxed at 18%.
- And additional grounds which may be added at the time of hearing with the permission of authority.

Hence, the Appellant prayed that the Appellate Authority may pass orders to set aside/modify the impugned order under Appeal, grant a personal hearing, and pass such other orders, as deemed fit.

PERSONAL HEARING:

4.1. The appellant, after consent, was given an opportunity to be heard in person on 07.12.2023. Mr.S.Harishankar, Chartered Accountant and Mr. S Chandrakumar, Director, who are the Authorised Representatives (ARs) of the Appellant, appeared for the personal hearing on 07.12.2023.

4.2. The AR reiterated the grounds of appeal and made additional submissions dated 07.12.2023. They furnished test report dated 12.10.2023 in their own case given by South India Textile Research Association, Consent Order dated 24.03.2023 of Tamilnadu Pollution Control Board and copies of 2 Advance Rulings in the case of M/s Palsana Enviro Protection Ltd (Gujarat AAR) and M/s Kasipalayam CETP (TN AAR). They submitted that according to them the subject goods would fall under CTH 2853 – Other inorganic compounds and not under CTH 2201. They submitted that according to them even if considered as water (CTH 2201), it should be treated as demineralized water.

5. Under the additional submissions made by the AR on behalf of the appellant, documents like test report No.V2300446A dated 12.10.2023 of M/s.South India Textile Research Association (SITRA), Process Explanation, Additional Written submissions, Consent Order dated 24.03.2023 of Tamilnadu Pollution Control Board, relevant case laws, CBIC Circular No.179/11/2022-GST dated 03.08.2022, etc., have been furnished by the appellant. Further, under the additional written submissions, the following points were highlighted, viz.,

- The input in the treatment processing done by their plant is the effluent discharged from the textile dyeing industries. The effluent contains dyes, chemicals, salts etc. and the total dissolved solids is 7932 mg/l.
- The effluent is subject to extensive processing at the treatment plant which includes equalization, biological aeration, nitrification, denitrification, biological degradation, secondary clarifier, oxidation reduction, filtration, evaporation.
- The intention of the processing is to achieve zero liquid discharge as mandated by the Madras High Court and to make the resulting products fully reusable in the dyeing industries. The outputs of the processing are the following and the mode of disposal / usage as per the consent order of Tamil Nadu Pollution Control Board are as follows:-

Description of outlet	Point of disposal
Sewage	Industry's own land
Trade effluent I (RO Permeate, MEE Condensate)	Distributed to member units for reuse
Trade effluent II (Brine solution, Recovered Salt)	Distributed to member units for reuse
Trade effluent III (Sale Residue)	ATFD

- That they had applied for advanced ruling including the query regarding the correct classification of RO Permeate, MEE condensate (Trade effluent II); that at the time of filing the application, they had applied under the name "Water" falling under heading 2201 and the advanced ruling authority

passed the order grouping the product as Water [other than aerated, mineral, distilled, medicinal, ionic, battery, demineralized and water sold in sealed container] under heading 2201 with 'NIL' rate of tax.

- Now they state that the classification of RO Permeate as per the Advanced Ruling order is incorrect for the following reasons:-

a) Characteristics of the RO Permeate and test report from SITRA

That in respect of RO Permeate, Phenolphthalein alkalinity, turbidity, phosphate, Fluoride, Nitrate, Iron, Silica is reduced to non-deductible or very negligible levels. Only minor number of chlorides, sulphates and bicarbonate which aid in the processing are retained. The intention of the processing is to make the Permeate fit for usage in the dyeing industry, whereby the dissolved solids are reduced from 7932 mg/l to 148 mg/l, and for achieving this result the company has made huge investment with the aid of Central and State Governments. In this regard, they have submitted the test report from "The South Indian Textile Research Association", an organization supported by Ministry of Textiles, which classifies the product as **RO Permeate Industrial Use and not for human consumption.**

b) Consent order of the "Tamil Nadu Pollution Control Board"

The 'Consent Order' from the Tamil Nadu Pollution Control Board which is the nodal organization, specifies the name of the product as RO Permeate (Trade Effluent II) and the only specified use permitted is reuse by the dyeing units. Hence the RO permeate is prohibited from being used for any other purpose such as drinking, irrigation, river discharge, and therefore cannot be termed as water falling under heading 2201.

c) Applicant's RO Permeate cannot be equated with Sewage treatment

The advanced ruling authority has equated sewage treatment plant with the effluent treatment plant run by the applicant. The authority has failed to appreciate the fact that the characteristics of the dyeing effluent and sewage are entirely different. Further the norms for sewage plants are different, as the treated sewage water is allowed to be permitted to be used for irrigation, discharged into water bodies. But the RO Permeate can only be discharged for reuse in dyeing units and cannot be used for irrigation or discharged into water bodies. Hence the exemption given to treated sewage water under the heading 2201 is not applicable to the RO permeate. This has been upheld by Gujarat AAR in case of Palsano Enviro while holding, "This clearly shows the intention of the legislature that any type of water which are being sold in terms of commercial purpose have been kept out of the purview of exemption as provided under entry No. 99 of the Notification."

- d)** Therefore the RO permeate, do not get covered under the Chapter 22, "**Beverages, Spirits, Vinegars**", and that the same is classifiable under either of the following headings, viz.,

2853 00 99 – Other Inorganic Compounds

Since the RO permeate which is not fit for human consumption does not have the characteristic of water covered under 2201, it is classifiable under this residuary head. Comparable products like distilled water, conductivity water are grouped here.

2201 - Demineralised water

Without prejudice the above, if in the opinion of authority, it is classifiable as water under 2201, the RO permeate is to be treated as 'Demineralised water' since most of the minerals and chemical elements including Phosphate, Fluoride, Nitrate, Iron, Silica are reduced to non-deductible or very negligible levels. This view has been followed in Hojwala Infrastructure Limited (AAR Gujarat), Palsano Enviro Protection Limited (AAR Gujarat) and Kasipalayam Common Effluent Treatment Private Limited (AAR TamilNadu). In case of Palsano Enviro it was held that "It can be concluded that after undergoing out all the process, treated water obtained from CETP have micro amount of dissolved minerals and chemical and virtually free from all types of toxic materials. Looking to the presence of small amount of metal and water obtained after treatment from CETP is covered under 'de-mineralize water'. Hence, we are of the view that the treated water obtained from CETP is not eligible for exemption under Sr. No. 99 of Notification No. 12/2017-CT (Rate) dated 28-6-2017".

DISCUSSION AND FINDINGS:

6.1 We have carefully considered the submissions made by the appellant including the additional submissions made during the personal hearing, and the applicable statutory provisions. On perusal and analysis of the documents involved and the facts relating to the case, we observe that the instant case basically revolves around the classification of treated water from the effluents gathered from the dyeing units. We also notice from the Advance Ruling No.20/AAR/2023 dated 19.06.2023, passed by the Original Advance Ruling Authority that the water sold by the appellant was held as classifiable under the Heading 2201, and held as exempted from payment of GST as laid down in Sl.No.99 of the Notification No.2/2017-Central Tax (Rate) dated 28.06.2017.

6.2 We observe that in order to arrive at the said decision, the Advance Ruling Authority has considered the Test report No. V2000610 dated 30.03.2021 furnished by M/s.South India Textile Research Association (SITRA) Textile Testing and Service Centre, in respect of a sample relating to M/s.Kasipalayam Common Effluent Treatment Plant (P) Ltd. Further, it has been stated in the said order that treated sewage water attracts 'Nil' rate of GST, as clarified in CBIC Circular No.179/11/2022 dated 03.08.2022, and that the same analogy would apply to the case in hand.

6.3 Apart from the Appeal filed in Form GST ARA-02 dated 23.09.2023, before the Appellate Authority for Advance Ruling (received on 26.09.2023), it is seen that

the appellant has also filed additional submissions during the personal hearing on 07.12.2023, wherein the applicant had furnished additional grounds/documents in respect of their appeal, which has been reproduced in detail in para 5 above.

6.4 Under the additional submissions made, the appellant brings to our attention that

- they have submitted the test report No.V2300446A dated 12.10.2023 in their own case issued by "The South Indian Textile Research Association", an organization supported by Ministry of Textiles, which classifies the product as **RO Permeate Industrial Use and not for human consumption**.
- Further, as per the 'Consent Order' issued by the Tamil Nadu Pollution Control Board, the name of the product has been specified as **RO Permeate**, and the only specified use permitted, is reuse by the member units, i.e., the dyeing units.
- The advanced ruling authority has erred in equating sewage treatment plant with the effluent treatment plant run by the appellant whereby they have failed to appreciate the fact that the characteristics of the dyeing effluent and sewage are entirely different. Further the norms for sewage plants are different, as the treated sewage water is allowed to be permitted to be used for irrigation, discharged into water bodies, whereas the RO Permeate can only be discharged for reuse in dyeing units and so, the exemption given to treated sewage water under the heading 2201 is not applicable to the RO permeate. They stated that the Gujarat AAR in case of Palsano Enviro has upheld the same by holding as follows :- *"This clearly shows the intention of the legislature that any type of water which are being sold in terms of commercial purpose have been kept out of the purview of exemption as provided under entry No. 99 of the Notification."*

6.5 We also notice that the test report No.V2300446A dated 12.10.2023 issued by "The South Indian Textile Research Association" (SITRA), has now been put forth, which relates to the appellant themselves, i.e., M/s.Mannarai CETP (P) Limited. We find that the Authority for Advance Ruling (AAR) while passing Ruling No.20/AAR/2023 dated 19.06.2023, had discussed the test report No. V2000610 dated 30.03.2021 furnished by SITRA, in respect of a sample relating to another unit, viz., M/s.Kasipalayam Common Effluent Treatment Plant (P) Ltd.

6.6 The appellant has furnished the following documents now, which were not available before the AAR while deciding the matter, viz.,

- (i) Test report No.V2300446A dated 12.10.2023 of SITRA
- (ii) Consent Order No.2308150947958 dated 24.03.2023 of Tamilnadu Pollution Control Board
- (iii) Process explanation furnished by the appellant, etc.,

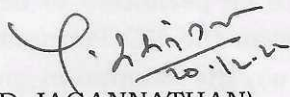
Therefore, we are of the view that the issue in the instant case requires a re-examination by the AAR, especially in view of the fact that a test report is now available in respect of a sample of the appellant themselves, and in view of the fact that such other documents like consent letter, process explanation, etc., have also been adduced by the appellant.

6.7 Accordingly, we hold that interest of justice will be met by remanding the case to the lower authority, with a direction to re-visit the issue, take into cognizance the documents now available such as the test report, consent order, etc., and to pass necessary orders as per the provisions of law, after offering an opportunity of personal hearing to the appellant. All aspects of the matter are kept open for decision by the AAR. We further find that this authority is empowered vide Section 101(1) of the CGST/TNGST Acts, 2017 to pass such orders as deemed fit.


7. In view of the above, we order as under

ORDER

The Advance Ruling No.20/AAR/2023 dated 19.06.2023 passed by the Lower Authority in the case of the appellant is set aside. The matter is remanded to the Lower Authority for re-examination and passing of appropriate fresh orders into the matter, after following the principles of natural justice.


(D.JAGANNATHAN)

Commissioner of Commercial Taxes
Tamil Nadu /Member AAAR


(RAM NIWAS)

Chief Commissioner of GST
& Central Excise, Chennai Zone/
Member AAAR

To

M/s. Mannarai Common Effluent Treatment Plant (P) Limited,
No. 209/2A, S. Periyapalayam Post,
Uthukuli Road, Trippur – 641 605

Copy Submitted to:

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2. Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Coimbatore Commissionerate.
4. The Assistant Commissioner (ST),
Tiruppur (Rural)-1. Assessment circle,
5. Master File/ Spare-2