

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

A.R.Appeal No.02/2023 AAAR

Date : 09.12.2023

BEFORE THE BENCH OF

Dr. Ram Niwas, I.R.S., Principal Chief Commissioner of GST & Central Excise, Member, Appellate Authority for Advance Ruling, Tamil Nadu	Sh. 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/05/2023 (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	TAMILNADU NURSES AND MIDWIVES COUNCIL, No.140, Jayaprakash Narayanan Maligai, Santhome High Road, Chennai-600004.
GSTIN or User ID	UNREGISTERED
Advance Ruling Order against which appeal is filed	Order No.17/ARA/2023 Dated: 19.06.2023 received on 24.08.2023 by the Appellant

Date of filing appeal	13.09.2023
Represented by	Shri. V S Swaminathan, CA
Jurisdictional Authority-Centre	Chennai North Commissionerate
Jurisdictional Authority -State	Mandaveli Assessment Circle, Chennai
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide Challan CIN IDIB23093300064629 dated 12.09.2023

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

2. The subject appeal was filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s TAMIL NADU NURSES AND MIDWIVES COUNCIL (hereinafter referred to as 'Appellant'). The Appellant is unregistered under the GST Act. The appeal was filed against the Order No.17/ARA/2023 dated 19.06.2023 passed by the Tamilnadu State Authority for Advance ruling on the Application for Advance ruling filed by the Appellant.

2.1 The Appellant has stated that the Tamil Nadu Nurses and Midwives Council (TNNMC) was formed as per provisions of the Tamil Nadu Nurses and Midwives Act, 1926. The purpose for which the Tamil Nadu Nurses and Midwives Act 1926 was enacted was to provide for the Registration of Nurses, Midwives, Health Visitors, Auxiliary Nurse-Midwives and Dhais in the State of Madras. The Act was enacted with the aim of advancement of Nursing Education and champion the cause of the nursing profession.

2.2. The Appellant had approached Authority for Advance Ruling(AAR), Tamil Nadu, vide GST-ARA-01 dated 28.06.2022 for clarification of GST applicability on various fees collected by it and to provide ruling for their taxability under GST act, SAC Code and Prevailing GST rates, with the following question:

"Whether GST is applicable on various fees collected by Tamil Nadu Nurses and Midwives Council, a Government Authority?"

2.3. At the time of filing the application, an investigation by the Senior Intelligence Officer, DGGI, Chennai Zonal unit, Chennai was in progress. A statement dated 18.04.2022, another statement dated 14.06.2022 had already been recorded from Dr.S. Ani Grace Kalaimathi, Registrar of M/s TAMIL NADU NURSES AND MIDWIVES COUNCIL, and an Incident Report dated 24.06.2022 has already been issued in this case. In the application for advance ruling filed in their GST ARA-01 in clause 17, they had stated as follows:

"17. I hereby declare that the question raised in the application is not (tick) –

<input checked="" type="checkbox"/>	Already pending in any proceedings in the applicant's case under any of the provisions of the Act
<input checked="" type="checkbox"/>	Already decided in any proceedings in the applicant's case under any of the provisions of the Act

The applicant contested that non-disclosure of enquiry/summons u/s 70 of CGST Act, as 'proceedings' in the advance ruling application does not amount to suppression and that they are eligible for a ruling in this case.

2.4. The AAR, Tamil Nadu, vide its order 17/ARA/2023 dated 19/06/2023 rejected their application under first proviso to Section 98(2) of the CGST Act, 2017, on the ground that a proceeding is pending under the CGST Act, 2017.

2.5. The Original Authority had vide Order No: 17/AAR/2023 dated: 19-06-2023 discussed as follows:

"8.8 The applicant contests that non-disclosure of enquiry / summons under Section 70 of CGST Act as 'proceedings' in the advance ruling application of the applicant does not amount to suppression and they are eligible for a ruling by AAR. The applicant is interpreting the term 'proceedings' in isolation with reference to Section 73 and 74 of the Act without considering the first proviso to section 98(2) of the Act comprehensively. The said first proviso is reproduced below;

*"Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under **any of the provisions of this Act**".*

It is apparent that the first proviso covers any 'proceedings' in the case of an applicant under any of the provisions of the Act including Section 70 of the Act, under which investigation is being conducted by DGGI, Chennai Zonal Unit and not restricted to Section 73 or 74 alone as contested by the applicant.

8.9 We find from the letters received from DGGI, Chennai Zonal Unit about the investigation being conducted against the applicant, an Incident Report No.89/2022 dated 24.06.2022 having OR No. 89/2022 dated 16.06.2022 determining tax amount of Rs.474 lakhs. Further, the said incident report was issued after the statement deposed by Registrar of the applicant on 18.04.2022 and 14.06.2022. Therefore, it is apparent that proceedings are pending against the applicant on the date of filing of advance ruling online application on 27.06.2022 and liable to be rejected under first proviso to Section 98(2) of the Act."

3. Aggrieved over the decision of AAR in the Order No. 17/ARA/2023 dated 19.06.2023, M/s TAMIL NADU NURSES AND MIDWIVES COUNCIL preferred the subject appeal. In the grounds of appeal, they stated, inter alia, as follows:

- AAR Tamil Nadu erred in concluding that summon u/s 70 is a proceeding.
- Incident report issued by DGGI-South, Sub-National unit, Chennai, as stated in AAR order (para 5), unless it is converted into Show Cause Notice shall not be construed as proceedings.
- AAR has erred in NOT considering the distinction between proceeding and investigation pronounced by various courts and AAR cited by us.
- AAR has erred in citing a ruling (Para 8.7) passed by AAAR AP in the case of Masterminds wherein AAAR/AP high court have only made a passing remark without going into question of the definition of "Proceeding" under GST Act whereas they had made submissions citing ruling distinguishing "Proceeding" and "Investigations", which were as per the Advance Ruling(Appeal) No. GUJ/GAAAR/APPEAL/2022/22 in the M/s. Shalby Limited, wherein the Appellate Authority ruled that:
 - a. Section 98(2) will be attracted only when a show cause notice has been issued or order is passed which is not there in the present case and the investigation initiated by state tax is not within the ambit of the term proceedings. To this extent, appellant relied upon judgement of Delhi High Court in case of CIT-I Vs Authority of Advance Ruling 120201 I 19 Taxmann. Com 80 (Delhi HC) and the case of Sage Publication Ltd Vs Deputy Commissioner of Income Tax (International Taxation) reported at 120161 387 ITR 437 (Delhi), which was later affirmed by the Supreme Court in (2017)1246 Taxman 57 (SC).
 - b. The term 'Proceedings' only includes any proceedings that may result in a decision i.e. show cause notice or order and cannot include mere inquiry or investigation initiated by investigation agencies as Show Cause Notice is the point of commencement of any proceeding as per Master Circular No. 1053/0212017-CX dated 10.03.2017 issued by CBIC.
- They rely on the following judgments of the Honourable Supreme Court which clearly defines the Term "Proceedings" and distinguishes it from enquiry/summons:
 - The Supreme Court in Liberty Union Mills v. Union of India held that the term "investigation" means the process of collection of evidence or the gathering of material. It can be said that the term "Proceeding" has a larger scope than the term "investigation". It is not merely a process of collection of evidence, it includes only those actions that may result in a decision i.e., in nature of show cause notice or order. All other interim steps leading to such

event are merely inquiries, investigations, etc., and are therefore not covered under the ambit of the term 'proceeding';

- The Supreme Court in *Radha Krishna Industries v. State of Himachal Pradesh and Ors* clarified that the proceeding commences from the issuance of a Show Cause Notice (SCN) and concludes upon the passing of an adjudication order; Without issuing a show cause notice proceeding cannot be deemed to be started and once an adjudication order is passed, the proceeding is deemed to be concluded;
- In *G.K. Trading Company v. Union of India*, the Allahabad High Court held that the term "proceeding" and "inquiry" are two different terms and they cannot be intermixed and thus, the "inquiry" launched under section 70 of the CGST Act against the petitioner simultaneously with the "proceedings" launched under UP GST law is not barred by the limitations of section 6(2)(b); The section 70 also spells out only powers vested with the investigating officer as prescribed by Sec 193 and 228 of IPC in relation to summons/statement on oath and the term "Judicial Proceedings" used in this section pertains only to powers vested by IP;
- In Para 12 of its order dated 17/08/2022 in Writ Petition No.26145 of 2022, Telengana High Court in the case of *M/s. Srico Projects Pvt.Ltd.*, has ruled that though the word "proceedings" has neither been defined in Chapter XVII nor in the definition clause i.e., in Section 2 of the CGST Act, if the said word is understood in the context in which it is being applied, namely, any proceedings pending or decided in the case of an applicant under the provisions of the CGST Act, it would mean proceedings where the question raised in the application for advance ruling has already been decided or is pending decisions and therefore, inquiry or investigation would not come within the ambit of the word "proceedings".

- Crave leave for submission of additional grounds at the time of personal hearing.

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

4. Further to this, the Appellant vide their letter dated 27.09.2023, filed additional grounds of Appeal, wherein they stated that:

- AAR in their ruling vide para 6 stated as follows:

"DGGI Office has also quoted High Court of Andhra Pradesh order dated 23.11.2022 in WP No.5571 of 2021, which states that issuance of summons under Section 70 of CGST Act, 2017, is the commencement of investigation/proceedings as per CGST Act, 2017."

- The said additional material submitted to AAR by DGGI was not brought to the notice of the Appellant and thereby principal of natural justice was not followed in as much as they have not been extended an opportunity to

comment on the submissions of DGGI w.r.t Andhra Pradesh High Court order dated 23.11.2022.

- Tamil Nadu State Appellate Authority for Advance Ruling vide Order No.AAAR/07/2019(AR) dated 21.10.2019 in the case of A M Abdul Rahman Rowther & Co., on the same facts had opined that justice will be met by recommending the case to the lower authority to extend an opportunity to the Appellant and then decide the case as per the provision of law.

They requested to consider the above ruling of TNAAAR, also as their grounds of appeal.

PERSONAL HEARING:

5. The Authorized Representative (AR), Shri V Swaminathan, Chartered Accountant, appeared for the personal hearing and reiterated grounds of appeal. The AR also reiterated their additional grounds made vide letter dated 27.09.2023.

DISCUSSION AND FINDINGS:

6.1 We have carefully considered the various submissions made by the appellant 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 revolves exclusively around the admissibility of the application for advance ruling filed by the appellant. It is seen that the Ruling as pronounced by the Original Advance Ruling Authority vide Advance Ruling No.17/ARA/2023 dated 19.06.2023 reads as *"The advance ruling application is rejected for the reasons discussed in para 8 supra"*.

6.2 We also notice from the said ruling that the proceedings initiated by the DGGI, Chennai Zonal Unit prior to the filing of application by the appellant, and its impact on the admissibility or otherwise of the application had formed the crux of the discussion. This discussion has led to the decision arrived at by the Advance Ruling Authority to reject the application, *per se*. Further, we notice from the grounds of appeal filed before us by the appellant, that the same revolves exclusively around the term 'proceedings' and whether the inquiry or investigation initiated by DGGI, would fall within the ambit of the word 'proceedings' impacting the admissibility of the original application for advance ruling filed by the appellant.

6.3 Apart from the Appeal filed in Form GST ARA-02 dated 12.09.2023, before the Appellate Authority for Advance Ruling (received on 13.09.2023), it is seen that the appellant had also filed another letter dated 27.09.2023, wherein the applicant

had furnished additional grounds in respect of their appeal, which has been reproduced in para 4 above.

6.4 The appellant brings to our attention that the additional material furnished by the DGGI Office to the Advance Ruling Authority was not brought to their notice. Accordingly, the appellant states that the principles of natural justice have not been followed in as much as they have not been extended an opportunity to comment on the submissions of DGGI with regard to the Hon'ble Andhra Pradesh High Court Order dated 23.11.2022. Further, we find that the appellant had enclosed a copy of the Order in Appeal No.AAAR/07/2019(AR) dated 21.10.2019 passed by the Tamil Nadu State Appellate Authority for Advance Ruling in the case of A.M. Abdul Rahman Rowther & Co., on the same facts, and opined that justice will be met by recommending the case to the lower authority to extend an opportunity to the appellant and then decide the case as per the provisions of law. Accordingly, the issue before us for determination is whether the rejection of application filed by the appellant for advance ruling, by the Lower Authority is as per the provisions of law and Principles of Natural Justice.

6.5 On perusal of the original order passed by the Advance Ruling Authority vide Advance Ruling No.17/ARA/2023 dated 19.06.2023, we find that in para 5 of the said Order, the contents of the letter dated 28.07.2022 of DGGI have been discussed. Further, we observe that in para 8.9 of the said order, the Advance Ruling Authority draws the conclusion that the advance ruling application is liable to be rejected based on the fact that statements has been recorded and an Incident Report determining the tax amount has been issued by the DGGI, Chennai Zonal Unit. We find that the appellant is aggrieved over the fact that the principles of natural justice have not been followed in as much as they have not been provided with the materials and facts furnished by DGGI, and that they have not been extended an opportunity to comment on the same.

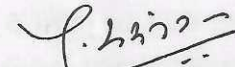
6.6 We observe that the rejection of application for advance ruling in the instant case stems from the fact that an investigation initiated by DGGI against the appellant is pending on the same issue. This being the case, the advance ruling authority ought to have shared the new findings of DGGI that was lying before them, and discussed the same in detail, either during the personal hearing, or thereafter, before proceeding to finalise the case.

6.7 Therefore, we are of the considered opinion that the principles of natural justice have not been followed in the instant case, since the advance ruling authority had erred in not sharing the documents and comments forwarded by DGGI, with the appellants. Accordingly, we are of the view that justice will be met by restoring the application for advance ruling to its original position, by way of remanding the case to the lower authority, with a direction to forward the letter dated 28.07.2022 of DGGI alongwith its enclosures to the appellant enabling them to comment on the same, and to offer them another opportunity of personal hearing before deciding the case as per the provisions of law. 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.

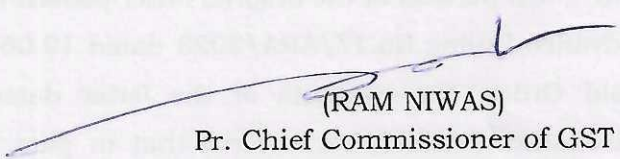
7. In view of the above, we order as under

ORDER

The Advance Ruling No.17/ARA/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 consideration and passing of appropriate orders, after following the principles of natural justice.


(D. JAGANNATHAN)

Commissioner of Commercial Taxes
Tamil Nadu/Member AAAR


(RAM NIWAS)

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

To

TAMILNADU NURSES AND MIDWIVES COUNCIL,
No.140, Jayaprakash Narayanan Maligai,
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//By RPAD//

Copy Submitted to:

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

Copy to:

3. The Commissioner of GST & Central Excise,
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Nungambakkam, Chennai-600034.

4. The Assistant Commissioner (ST),
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5. Master File/ Spare-2