

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

A.R.Appeal No.07/2024/AAAR

Date: 10.01.2025

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	Dr. D. Jagannathan, I.A.S., Commissioner of Commercial Taxes, Member, Appellate Authority for Advance Ruling, Tamil Nadu
---	---

Order-in-Appeal No. AAAR/12/2025 (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 MEDICAL COUNCIL, No.959 & 960, Poonamalle High Road, Purasaiwakkam, Chennai - 600084
GSTIN or User ID	33AACAT1667P1Z2
Advance Ruling Order against which appeal is filed	Order No.20/ARA/2024 Dated : 27.09.2024
Date of filing appeal	15.10.2024
Represented by	Shri. CA. S. Seetharaman, Partner, M/s. S Seetharaman & Associates, Chartered Accountants
Jurisdictional Authority-Centre	Chennai North Commissionerate
Jurisdictional Authority -State	Chennai Central, Arumbakkam Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs.10,000/- (CGST) and Rs.10,000/- (SGST) made vide Challan CIN IDIB24103300046407 dated 09.10.2024

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.

2.1. 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 MEDICAL COUNCIL (hereinafter referred to as 'Appellant'). The Appellant is registered under the GST Act vide GSTIN 33AACAT1667P1Z2. The appeal was filed against the Advance Ruling No.20/ARA/2024 dated 27.09.2024 passed by the Authority for Advance ruling, Tamilnadu.

2.2. The Appellant has stated that the Tamil Nadu Medical Council was constituted under the Madras Medical Registration Act IV of 1914 by the Local Legislature and it caters to the registration of Registered Medical Practitioners practicing or completing their study in the state of Tamil Nadu, Pondicherry and Andaman & Nicobar Islands.

Further they stated that they collect various fees such as fees for issuing Provisional, under-graduate, post graduate registration certificates, No Objection Certificate, certificate of Good standing, CME certificates etc.

2.3. The Appellant had approached Authority for Advance Ruling, Tamil Nadu (AAR), vide GST-ARA-01 dated 29/12/2022 for clarification of GST applicability on various fees collected by it and raised the following question :-

“Whether GST is applicable on various fees collected by Tamil Nadu Medical Council, a Government Authority?”

While the application for advance ruling was reported to be filed online on 30.12.2022, the application was physically received on 05.01.2023 as mandated under Rule 107A. At the time of filing the application, an investigation by the Senior Intelligence Officer, DGGI, Chennai Zonal Unit was in progress. Summons dated 30.11.2022 and 20.12.2022 were issued under section 70(1) of CGST Act, 2017 and a statement was recorded from Shri R Shanmugam, Registrar of M/s TNMC on 09.01.2023. Moreover, in clause 17 of the application filed by them, they had declared that no proceedings are pending or decided in any proceedings in the applicant's case under any of the provisions of the Act. The AAR, originally vide its order 18/ARA/2023 dated 19.06.2023 rejected the application filed by the appellant under first proviso to Section 98(2) of the CGST Act, 2017, on the ground that summons issued u/s 70 is initiation of a proceeding under the CGST Act.

2.4. Aggrieved, the appellant preferred an appeal on 13.09.2023 vide Appeal No.01/2023 before the Appellate Authority for Advance Ruling, Tamilnadu (AAAR), against the decision of the Order referred above. Apart from presenting the legalities involved in the grounds of appeal, the appellant *inter alia* highlighted the fact that the additional material submitted to AAR by DGGI, which was discussed in the impugned ruling was not brought to the notice of the Appellant. Thereby, the principles of natural justice was not followed in as much as they have not been extended an opportunity to comment on the submissions of DGGI with respect to Hon'ble Andhra Pradesh High Court order dated 23.11.2022, which states that issuance of summons under Section 70 of CGST Act, 2017, is the commencement of investigation/proceedings as per CGST Act, 2017.

2.5 Accordingly, the Appellate Authority for Advance Ruling, Tamilnadu, vide their Order-in Appeal No.AAAR/04/2023 (AR) dated 09.12.2023 remanded the matter back to AAR with a direction to forward the letter dated 03.04.2023 of DGGI alongwith its enclosures, if any, 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.

2.6 On communicating the relevant documents to the appellant, the AAR accorded an opportunity of personal hearing to the appellant and passed an order vide Advance

Ruling No.20/ARA/2024 dated 27.09.2024, wherein the advance ruling application filed was rejected under the first proviso to Section 98(2) of the CGST / TNGST Acts, 2017, in view of the fact that 'proceedings' on the same issue was already initiated and pending against the applicant.

3. Aggrieved against the Advance Ruling No.20/ARA/2024 dated 27.09.2024, passed by the AAR, the appellant has come up with this appeal. Under the 'Grounds of Appeal' enclosed to the Appeal Application filed by the appellant, they have put forth the following contentions :-

- AAR Tamil Nadu erred in concluding that summon u/s 70 is a proceeding.
- The investigation by DGGI-South, Sub-National unit, Chennai, as stated in AAR order, 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 them.
- AAR has erred in citing a ruling passed by AAAR, Andhra Pradesh 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".
- The Appellate Authority vide Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2022/22, in the case of M/s. Shalby Limited, had 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 Hon'ble 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 Hon'ble 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 Hon'ble 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 Hon'ble 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 Hon'ble Allahabad High Court held that the term "proceeding" and "inquiry" are two different terms and they cannot be intermixed. 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 IPC.
- In Para 12 of its order dated 17/08/2022 in Writ Petition No.26145 of 2022, Hon'ble Telengana High Court in the case of M/s. Srico Projects Pvt. Ltd., has ruled as follows :- "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 decision. 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.

PERSONAL HEARING:

4.1 The first personal hearing had been scheduled on 27.12.2024. But the applicant in their letter dated 26.12.2024 has requested 15 days time to appear for personal hearing. Hence the next personal hearing had been scheduled on 09.01.2025. Shri. CA. S. Seetharaman, Partner, M/s. S Seetharaman & Associates, Chartered Accountants,

appeared on 09.01.2025 for the personal hearing as an Authorised Representative (AR) of the Appellant. He reiterated the submissions made in their 'grounds of Appeal' enclosed along with the appeal application. He stated that the term 'proceedings' has not been defined in the GST Act, and that the same has been used in general with a prefix like adjudication proceedings, recovery proceedings, etc. He further argued that the issuance of summons shall not be treated as 'proceedings' as it is in the nature of an enquiry and he contended that 'proceeding' takes effect only after the issuance of Show Cause Notice as discussed in their grounds of appeal.

4.2 The AR then submitted additional written submissions dated 09.01.2025 during the hearing, wherein it was stated that on 20.12.2024, they have made a submission before the Principal Chief Commissioner of GST & Central Excise, Chennai requesting to take up the issue GST taxability on the same matter with the GST Council. Accordingly, they requested to stay the proceedings till the decision on the reference is made. The members explained that the advance ruling proceedings cannot be stayed, in view of the fact such references for clarification and the advance ruling proceedings operate independently of each other, and that the Authority for Advance Ruling / Appellate Authority for Advance Ruling are mandated to pass rulings/orders in a time bound manner, as per the provisions of GST Acts.

DISCUSSION AND FINDINGS

5.1 We have carefully considered the submissions made by the appellant in the advance ruling application, the submissions made during the personal hearing, and the 'grounds of appeal' furnished alongwith the application for appeal by the appellant. The appellant filed advance ruling application for determination of the liability to pay tax on service involving collection of various fees by them, which is covered under Section 97(2)(e) of GST Act, 2017, i.e., determination of the liability to pay tax on any goods or services or both. However, while examining the application of the appellant in terms of Section 98(2), it was noticed that an investigation has already been initiated by DGGI-South, Sub-National unit, Chennai, in respect of the questions raised in the application in the instant case. The relevant provisions of Section 98(2) of the CGST Act, 2017, is reproduced below :-

"(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

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:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order."

5.2 Since the first proviso to Section 98(2) restricts admitting application seeking advance ruling on questions which are already pending in any proceedings in the case of an appellant under any of the provisions of the Act, the term 'proceedings' assumes immense significance in the context of the instant case. It is quite clear that the term 'proceedings' has not been defined under the CGST Act, 2017. However, the word 'proceedings' is seen to have been widely used in the Act, *ibid*, either as it is, in the context of the situation, or with a prefix bringing out the meaning and purpose in an unambiguous manner like 'Recovery proceedings', 'Assessment proceedings', etc. To highlight a few, the table affixed below, brings out the picture as to when and where the term 'proceedings' has been referred to in the CGST Act, 2017, and in what context the same has been used, i.e.,

Section	Referred as	Context/Phrase
6(2)(b)	Any proceedings	Cross jurisdiction – “has initiated any proceedings on a subject matter”
Proviso to 29(1) and 29(2)	The proceedings	Cancellation or Suspension – “during pendency of the proceedings relating to cancellation of registration”
66(1)	Any other proceedings	Special Audit – “If at any stage of <u>scrutiny</u> , <u>inquiry</u> , <u>investigation</u> or any other proceedings before him”
70(2)	Judicial proceedings	Power to summon – “deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code”
78	Recovery proceedings	Initiation of Recovery proceedings
122(1)(xvi i)	Any proceedings	Penalty for certain offences – “furnishes false information or documents during any proceedings under this Act”
160(1)	Other proceedings	Assessment proceedings not to be invalid on certain grounds – “No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, <u>summons</u> or other proceedings”

5.3 From the above, it could be seen that Section 66 of the CGST Act, 2017, that talks about 'Special Audit', specifies in sub-section 1 of Section 66 as follows :- *“If at any stage of scrutiny, inquiry, investigation or **any other** proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the*

Commissioner.” The juxtaposition of the words ‘any other proceedings’ with the words scrutiny, inquiry, investigation conveys that inquiry or investigation are also proceedings. It is clear from the above that ‘any other proceedings’ refer to proceedings in the nature of scrutiny, inquiry, investigation, etc., also that precede the issue of show cause notice. This is so because, the said provision enables the proper officer to refer the case for special audit, if in his opinion the case is of complex nature. The fact that these proceedings precede issue of show cause notice, is confirmed by the manner in which the provisions of sub-section 6 of the same section 66 has been worded, i.e., (6) *Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer **may initiate action under section 73 or section 74.***”.

5.4 Apart from the above, it may be seen that while the term ‘any proceedings’ contained in the phrase in proviso to Section 98(2) of the CGST Act, 2017, viz., “*in **any proceedings** in the case of the applicant **under any of the provisions of this Act**”*”, by itself conveys an exhaustive picture, the additional usage of the words ‘under any of the provisions of the Act’, makes it all the more broader and all encompassing. We are therefore of the opinion that the usage of the words ‘any proceeding’ in the proviso to Section 98(2) of the CGST Act, 2017, will encompass within its fold all the proceedings involving scrutiny, inquiry, investigation, cancellation or suspension of registration, audit, inspection, search and seizure, assessment, adjudication, recovery, etc., as well.

5.5.1 The introduction of GST is considered a paradigm shift in the history of tax reform and the statute relating to it has been framed afresh keeping in mind the new concept of taxation embarked upon. Accordingly, the context in which the terms like proceedings, inquiry, assessment, etc., have been used in the GST enactments differ from the other enactments like the Central Excise Act, 1944, the Finance Act, 1994, etc., the Customs Act, the Income Tax Act, etc. Under these circumstances, we are of the opinion that any reference or reliance on any case law made by the appellant involving the enactments referred above are not applicable to the instant case involving GST. Accordingly, we feel that the reliance on the Hon’ble Supreme Court case involving ***Liberty Union Mills v. Union of India***, by the appellant do not come to their aid.

5.5.2 The appellant has relied upon the Hon’ble Supreme Court case involving ***Radha Krishan Industries v. State of Himachal Pradesh and Ors.*** However, on perusal of the judgment, it is seen that the said case revolves around provisional attachment and specifically as to whether the same was in consonance with the conditions stipulated in Section 83 of the CGST/HPGST Act, 2017. We also come to understand that this case focusses mainly on rendering the provisional attachment under Section 83 in that case as ‘ultra-vires’ or illegal, and about the taxpayer’s entitlement to submit objections and to have an opportunity of being heard before the provisional attachment. It becomes imperative to note here that the first proviso to

Section 98(2) of the CGST Act, 2017, discusses about *“any proceedings in the case of the applicant **under any of the provisions of this Act**”*. On the other hand, Section 83(1) of the Act, *ibid*, talks about a situation, viz., *“Where during the pendency of any proceedings **under Section 62 or Section 63 or Section 64 or Section 67 or Section 73 or Section 74**, the Commissioner is of the opinion ----.”* It is quite clear from the above that the term ‘proceeding’ referred to in Section 83 is restrictive in nature, in as much as it gets related to Sections 62 / 63 / 64 / 67 / 73 / 74 only, whereas the said term referred to in the first proviso to Section 98(2) applies to any of the provision of this Act. We further notice that even in the case of Section 83, the proceedings under Section 62, 63 and 64 all relate to assessment proceedings that precede the issue of any show cause notice. Accordingly, we are of the opinion that the dynamics of the instant case of the appellant is different and distinguishable from the case involving Radha Krishan Industries, and thereby it does not come to their aid.

5.5.3 The appellant has relied on the Judgement dated 02.12.2020 of the Hon’ble High Court of Allahabad in the case of M/s.G.K.Trading Company in Writ Tax No.666 of 2020, wherein it was held that the word “inquiry” in Section 70 is not synonymous with the word “proceedings” in Section 6(2)(b) of the U.P.G.S.T. Act / C.G.S.T. Act. It was further held therein as follows :- *“The words “any proceeding” on the same “subject-matter” **used in Section 6(2)(b) of the Act**, which is subject to conditions specified in the notification issued under sub-Section (1); **means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties etc., proceedings for demands and recovery under Section 73 and 74 etc**”*. Here again, it may be noted that the Hon’ble High Court has attempted to provide clarity to the term ‘proceedings’ **as used in Section 6(2)(b) of the CGST Act, 2017, only** and not in relation to any other provisions of the Act.

5.6.1 Now we observe that there are two judgments of the Hon’ble High Court directly on the issue before us, viz.,

- (i) Judgment dated 17.08.2022 of the Hon’ble High Court of Telangana in W.P.No.26145 of 2022, in the case of M/s.Srico Projects (P) Ltd., Vs Telangana State Authority for Advance Ruling, and
- (ii) Judgment dated 23.11.2022 of the Hon’ble High Court of Andhra Pradesh in W.P. No.5571/2021 in the case of Master Minds Vs Appellate Authority for Advance Ruling and Others.

Whereas the decision of the Hon’ble High Court of Telangana in the case of M/s.Srico Projects seems to favour the case of the appellant, the decision of the Hon’ble High Court of Andhra Pradesh in the case of M/s.Master Minds favours the decision of the AAR. It is a well settled principle of interpretation that when there are two different decisions in the orders of two Hon’ble High Courts, the binding force or precedence is diminished and the judicial / quasi-judicial authorities can take their view based on the most logical of the two different decisions of the Hon’ble High Courts.

5.6.2 We observe that the Hon'ble High Court of Telangana in para 12 of the judgment dated 17.08.2022 only mentions that in the context of the matter, inquiry or investigation would not come within the ambit of the word "proceedings". This is clear from the said para 12 of the judgment which is reproduced below :-

"12. 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 decision. Therefore, inquiry or investigation would not come within the ambit of the word "proceedings"."

5.6.3 On the other hand, in the case of M/s.Master Minds, the Hon'ble High Court of Andhra Pradesh has elaborately considered the provisions of Section 70 of the CGST Act, Section 98(2) of the CGST Act, the decisions of certain Appellate Authorities for Advance Ruling on the subject, and by a reasoned and detailed order, has come to the conclusion that when investigation has already commenced, prior to the filing of application, the ARA shall not admit the application as per the first proviso to Section 98(2) of the CGST Act, 2017. In this regard, paras 7, 11, 12 and 13 of the said judgment involving M/s.Master Minds are reproduced below, for facilitation.

"7. As can be seen, the main thrust of argument of learned counsel for petitioner is that in view of the commencement of the investigation by the DGGSTI even before the submission of application by the petitioner, the ARA ought not to have admitted his application. In this regard, it is apposite to refer to section 98 of the CGST/AP GST Act, which reads thus:

"98. Procedure on receipt of application:-

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

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:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or

obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.”

As can be seen, Section 98(2) of the CGST/APGST says that authority may after examining the application and records called for and after hearing the applicant or his authorized representative, by order, either admit or reject the application. Thus, the sub-section (2) says that after hearing the petitioner or his authorized representative, the authority may either admit or reject the application. However, for admitting the application of the applicant, a qualification is provided in the form of proviso to the said section. The proviso says 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 in the said Act. Thus, it is needless to emphasize that the first proviso puts an embargo on the authority of the ARA to admit an application. The said embargo says that where the questions raised in the application are already pending or decided by any proceedings in the case of an applicant under any of the provisions of the CGST/APGST Act, the authority shall not admit the application. The submission of the petitioner herein is that the phrase ‘any proceedings’ encompasses the investigation of an application under the provisions of the Act. To buttress his argument, the petitioner referred to Section 70 of the APGST Act, which reads thus:

“ 70. Power to summon persons to give evidence and produce documents.—

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (Act No. 5 of 1908).

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860. (Act No. 45 of 1860)”

As per the said section, the proper officer under this Act shall have the power to summon any person either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure. Such enquiry referred to in sub-section (1) shall be deemed to be judicial proceedings within the meaning of section 193 and 228 of the Indian Penal Code. Thus, the proceedings conducted by the investigating authority under the provisions of this Act shall be construed as judicial proceedings as per the CGST/APGST Act.”

"11. Thus, the above jurisprudence tells us that any proceedings referred to in 98(2) proviso encompasses within it the investigation against the applicant as per the provisions of CGST/APGST Act and if by the date of filing of the application before the ARA, already such proceedings were commenced, the ARA shall not admit the application inviting advance ruling. Learned Senior counsel for respondent has not placed any contra citations before us to hold any other view.

12. Coming to the instant case, summons were issued to the petitioner on 01.07.2019 by Senior Intelligence Officer, DGGSTI and the panchanama was recorded on 01.07.2019. Copy of panchnama proceedings filed along with the writ petition contains a detailed examination of the petitioner by the Senior Intelligence Officer. The question numbers 9 to 16 relate to the courses conducted by the petitioner, the registration of the petitioner institution under GST Act and its payment of tax etc. particulars, which can be said to be concerning to the provisions of the CGST/APGST Act. Therefore, it can be said that the investigation was commenced even prior to the filing of the application by the petitioner before ARA.

13. Having regard to the legal position that when investigation has already commenced prior to the filing of application, the ARA shall not admit the application as per proviso to sub-section (2) of Section 98, we are of the view that the ARA should not have admitted the application in the instant case and issued its ruling. —."

Under these circumstances, considering the provisions of the statute discussed earlier in this order, we are inclined to go with the judgement of the Hon'ble High Court of Andhra Pradesh in the case of M/s.Master Minds.

5.7 At this juncture, it becomes imperative to analyse as to whether the query raised in the application for advance ruling is the same on which the investigation was initiated, and whether the investigation proceedings precedes the application for advance ruling. Accordingly, it is seen that the first summon issued by the Senior Intelligence Officer, DGGI, Chennai Zonal Unit, is dated 30.11.2022 to the Registrar, M/s.Tamil Nadu Medical Council, Chennai-106, requesting the Registrar to appear in person on 07.12.2022 to give evidence and to produce the following details/documents, viz.,

1. Month-wise details of amounts collected towards the services provided by TNMC to its members and others, for the period from 01.07.2017 to 30.11.2022;

2. Ledger copies for the period from 01.07.2017 to 30.11.2022;

3. Sample invoices/receipts/copy of certificates (year wise).

Subsequently, another summon dated 20.12.2022 was also seen to have been issued to the applicant for appearance on 09.01.2023. Further, the Show Cause Notice No.72/2023 dated 09.09.2023 is seen to have been issued to the applicant requiring them to show cause as to why taxes under GST should not be demanded on the consideration received towards registration fees, fees collected for continuing medical education (CME), etc., Perusal of the show cause notice also reveals that

(i) a letter dated 19.12.2022 has been submitted by the applicant to the Senior Intelligence Officer, DGGI, Chennai furnishing the details of 'Registration fees of Doctors' and 'Continuing Medical Education Certificate Import fees' for

the period from 01.07.2017 to 30.11.2022, in response to the summons dated 30.11.2022, and

(ii) a statement dated 09.01.2023 has been recorded from Shri Dr. R. Shanmugam, Registrar of TNMC, wherein he has explained about the various fees collected by TNMC, and the reason as to why GST was not paid on the fees collected.

Accordingly, it is clear that the issue involved in the investigation carried out by DGGI, Chennai Zonal Unit, and the one covered under the query for advance ruling raised by the applicant, viz., ***“Whether GST is applicable on various Fees collected by Tamil Nadu Medical Council (TNMC) a Government Authority.”***, is one and the same.

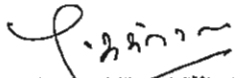
5.8 Further, it is seen that while the application for advance ruling in the instant case was filed by the applicant online on 30.12.2022, the first summon issued by the Senior Intelligence Officer, DGGI, Chennai Zonal Unit is dated 30.11.2022 for appearance on 07.12.2022. It is seen that the date of issue of the second summon is 20.12.2022 for appearance on 09.01.2023. It is quite clear from the above, that the initiation of proceedings by way of issue of both the summons that seeks the details/documents in relation to the issue involved in the instant case, precedes the date of filing of advance ruling application by the applicant. Further, the letter dated 19.12.2022 which also precedes the application, of the appellant furnishing the details of fees collected, unambiguously proves the case in point.

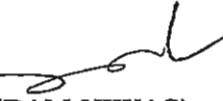
5.9 We are therefore of the opinion that an advance ruling is not required to be pronounced once an investigation is initiated against the appellant under the provisions of the CGST Act, or the GST Act of the respective State or Union Territory, involving the same issue on which the query for advance ruling has been raised, and accordingly, the application for advance ruling filed online on 30.12.2022 by the appellant is liable for rejection under the first proviso to Section 98(2) of the CGST / TNGST Acts, 2017.

6. In view of the above, we order as under :-

ORDER

The ruling pronounced by the AAR in Advance Ruling No.20/ARA/2024 dated 27.09.2024 is upheld and accordingly, the appeal filed by the appellant is dismissed.


(D. JAGANNATHAN)
Commissioner of Commercial Tax
Tamil Nadu/Member AAAR


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



To
TAMILNADU MEDICAL COUNCIL,
No.959 & 960, Poonamalle High Road,
Purasaiwakkam, Chennai – 600084

//BY RPAD//

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

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

Copy to:

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

4. The Joint Commissioner(ST),
Chennai (Central) Division,
No.1, Greams Road,
Chennai. 600006.

5. The Assistant Commissioner (ST),
Arumbakkam Assessment circle,
No.1, Greams Road,
Chennai. 600006.

6. Master File/ Spare-2