

**AUTHORITY FOR ADVANCE RULING, TAMILNADU  
ROOM NO.206, 2<sup>ND</sup> FLOOR, PAPJM BUILDING,  
NO.1. GREAMS ROAD, CHENNAI -600 006.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING UNDER  
SECTION 98 OF THE GOODS AND SERVICES TAX ACT, 2017**

**Members present:**

Shri R.Gopalsamy, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
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**Advance Ruling No.17/ARA/2023 Dated: 19.06.2023**

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the 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. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
- 5. 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 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.*

GSTIN Number, if any / User id		Unregistered
Legal Name of Applicant		Tamil Nadu Nurses and Midwives Council
Registered Address / Address provided while obtaining user id		Jayaprakash Narayanan Maligai, No.140, Santhome High Road, Mylapore, Chennai – 600 102.
Details of Application		GST ARA – 01 Application Sl.No.38/2022 dated 30.06.2022
Jurisdictional Officer		Centre : Chennai North Commissionerate ; Division: Mylapore
Concerned Officer		State: Mandaveli Assessment Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provider
B	Description (in brief)	Applicant was constituted as per provisions of the Tamil Nadu Nurses and Midwives Act, 1926, Gazetted on 29.06.1926. It 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 nursing profession against collection of fees.
Issue/s on which advance ruling required		1. Determination of the liability to pay tax on any goods or services.
Question(s) on which advance ruling is required		1. Whether GST is applicable on various fees collected by TN Nurses and Midwives Council a Government Authority?

1. The applicant submitted a copy of challan dated 24.06.2022 evidencing payment of application fees of Rs. 5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The online application form for advance ruling dated 27.06.2022 was physically received on 28.06.2022 as mandated under Rule 107A.

2.1 The Tamil Nadu Nurses and Midwives Council (hereinafter referred to as “Applicant”) was formed under The Tamil Nadu Nurses and Midwives Act, 1926. It

is an act to provide for registration of Nurses, Midwives, Health Visitors, auxiliary Nurse-Midwives and dhais in the State of Tamil Nadu.

2.2 The said Act vide Section 11, inter alia, provides for regulating the conduct of any examination which may be prescribed as a condition of admission to the register, and any matters ancillary to or connected with such examinations; determining the manner in which all fees levied under this Act and all moneys received by the Council shall be applied for the purposes of this Act.

2.3 Section 12 of the said Act, inter alia, provides for regulating the compilation, maintenance and publication of the register; for regulating and supervising the practice of their profession by registered nurses, midwives, health visitors, auxiliary nurse-midwives and dhais; for regulating the publication of the names of registered nurses, mid-wives, health visitors, auxiliary nurse-midwives and dhais and their residences; for prescribing the rates of fees to be charged for examinations prescribed for admission to the register and for registration.

2.4 On interpretation of law, the applicant, inter alia, states that 'Fees' is not defined in GST Acts; according to Black's Dictionary, Fees is a charge fixed by law for services of public officers or for use of a privilege under control of Government; applicant is a statutory body set up by an Act of State Government and the fees collected is for a privilege under control of Government and takes a position equivalent to taxes and duties which is not covered by GST Act; applicant is a Government entity under GST law; fees collected by the applicant are for discharging the applicant's statutory functions as stipulated in the Act and no service is rendered to the parties from whom the fees are collected. The above facts conclusively prove that the applicant is discharging its sovereign function and no service is rendered by the applicant.

2.5 The applicant vide letter dated 05.01.2023 relied on the ruling of Maharashtra Authority for Advance Ruling given to M/s Children of the World India Trust, as a second alternate ground for interpretation of law, while Doctrine of mutuality is the first alternate ground for interpretation of law.

2.6 The applicant submitted three different letters dated 13.01.2023 to substantiate their ground that no proceedings were initiated by GST officials that would invalidate the present application for advance ruling. According to the applicant, initiation of proceedings under GST Act are covered by section 73 and 74 of the Act;

department can initiate proceedings under section 73 and 74 of the Act under various situation; one among the situation is inspection /survey by the department U/s 67; GST officials inspected their council office and called for certain details; personal hearing was made and details were collected including summon issued for which Registrar attended and gave her statement. Only inspection was done by the department under section 67 which is only a process to initiate the proceedings and a proceeding under GST Act. Further no SCN or order was issued before the application filed for AAR on 28/06/2022 and no notice was served on the applicant for initiation of proceedings under section 73 and 74 of the GST Act. Therefore, the applicant is eligible for a ruling from Authority for Advance Ruling.

2.7 The applicant also made a claim that the functions entrusted to the applicant by the Government of Tamil Nadu come under public health as stated in Sl. No.6 of Article 243W of the Constitution of India. The said service to the government qualifies for exemption as pure service to government vide Sl. No. 3 of Notification No.12/2017 CT (Rate), dated 28.06.2017.

2.8 The applicant vide letter dated 16.03.2023, as additional grounds, stated that Section 70 of CGST Act spells out only powers vested with the investigating officer as prescribed by Section 193 and 228 of Indian Penal Code in relation to Summons / Statement on oath and the same do not amount to "proceedings" under CGST Act. 'Proceedings' is not defined in CGST Act and in the absence of statutory definition, it shall be accorded literal interpretation. The fact that the term 'proceeding' 'adjudication proceedings' and 'investigation' has been used separately and not interchangeably in the CGST Act suggests that the term 'proceeding' does not include 'investigation' and 'inquiry' within its ambit.

2.9 The applicant further relied on the judgements of Hon'ble Supreme Court in the case of *Liberty Union Mills Vs Union of India* and *Radha Krishna Industries vs State of Himachal Pradesh and Ors* to distinguish 'proceedings' from enquiry / summons. They also relied on the judgement of Hon'ble Allahabad High Court in the case of *G.K. Trading Company vs Union of India*. 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 and requested for ruling.

3. The applicant, after consent, was given an opportunity to be virtually heard on 12.01.2023. Sri V.Swaminathan, Chartered Accountant, the Authorized

Representative (AR) of the applicant appeared for the personal hearing and reiterated the submissions. However, members asked about the investigation being conducted by DGGI. The AR stated that DGGI had collected information from the applicant and they are not aware of any case booked by DGGI. The personal hearing was continued on 16.03.2023, in physical mode, wherein the AR appeared and stated that DGGI had issued summons under Section 70 and collected information / documents. He further requested to take on record their submissions on 13.01.2023 and sought further time to submit additional grounds as to why they are eligible for advance ruling and submitted the same vide letter dated 16.03.2023 supra.

4.1 The applicant has registered as an unregistered applicant in GST portal on 24.06.2022 for filing advance ruling application under the category of statutory body. The concerned authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

4.2 The concerned State said authority vide letter RC No.524/2022/A4 dated 03.08.2022, inter alia, stated that Tamil Nadu Nurses and Midwives Council is an autonomous body. As per GST Act, a statutory body, corporation or an authority created by the parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. They are separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purpose of GST Acts. Therefore, the Council which is a regulatory body is liable to be registered under GST Act, 2017.

4.3 The said State authority relied on Student's Registration fee structure and various fee prescribed for processing, recognition, inspection, enhancement of seats and re-inspection fee for various courses displayed in the website of the Council to state that the Council charges fees not only from colleges affiliated, but also from the students on various aspects. Further relied on the definition of 'supply' as per Section 7 and definition of 'Outward Supply' as per section 2(83) of GST Act, 2017.

4.4.1 The concerned State authority, with regard to the question of the applicant that fees collected by the Council is not for supply of goods, service or both, stated that it is clearly mentioned in their website that the Council charges various fees for the services rendered. Therefore, the services rendered should be treated as taxable services.

4.4.2 With regard to the applicant's question that fees collected does not have the character of sale, transfer, barter, exchange, license, rental lease or disposal made or agreed to be made, the concerned State authority states that as per Notification No.11/2017 dated 28.06.2017 vide Sl. No.608 of Annexure has specific entry 99314 Nursing and physiotherapeutic services and Sl. No. 600 with entry 999294 - 'Other Education and training services nowhere else classified' attracts 9% CSGST and 9% SGST.

4.4.3 With regard to the applicant's question that fees are not a consideration since there is no supply involved, the State authority states that the services offered by the Council are against Primary Processing fees, Annual Recognition fee, Inspection fee, and Enhancement of seats / Re-inspection fee. These services are rendered only when fees mentioned are paid, which clearly establishes that the service is for a consideration and therefore, there is supply of services involved.

4.5 Intelligence-II of the State vide letter RC. No.4272/2022/A9 dated 20.07.2022 informed that no proceeding is pending with them in respect of the applicant.

5. DGGI, Chennai Zonal Unit vide email dated 28.06.2022 sent 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 payable on various fees collected which is a consideration for the supply under section 7 of the Act that is not exempted by any notification. The said incident report was issued after the statement deposed by Registrar of the applicant on 18.04.2022 and 14.06.2022. The DGGI vide letter dated 28.07.2022 sent copy of the said statements along with the details of various fees collected by the applicant from 01.07.2017 to 2021-22.

6.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearings and the comments furnished by the Centre and State Tax Authorities. The applicant filed advance ruling application for determination of the liability to pay tax on service, within the meaning of that term as per Section 97(2)(e) of GST Act, 2017.

We also take cognizance of the fact that subject matter of the application viz collecting various fees by the applicant fulfills the requirement of Section 95(a) of the Act. However, while we examine the application of the applicant in terms of Section 98(2), we find that the questions raised in the application are being investigated by DGGI, which states 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 provision of the Act.

6.2 The questions raised in advance ruling application which are already pending investigation by DGGI against the applicant was brought to the attention of the AR in the personal hearings for which the applicant provided various submissions listed in para 2.6 to 2.9 supra.

7.1 It is seen from the submissions and documents discussed in para 2 and 4 supra that the applicant is a regulatory body receiving various fees from institutions and students regulated by the applicant under an Act administered by the State.

7.2 However, before venturing to decide the questions on merits, the question of admissibility of the application needs to be decided in view of the intimation received from DGGI, Chennai Zonal Unit about the investigation against the applicant being conducted on the questions raised in the advance ruling application.

8.1 As narrated in para 2.6 to 2.9 supra, the applicant has submitted various arguments and relied on judicial pronouncements to assert that the present application for advance ruling is not barred by first proviso to section 98(2) of the Act. For ease of reference, the relevant statutory provisions of the Act are reproduced below;

8.2 Section 98(2) of the Act reads as follows;

*(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.*

8.3 Chapter XVII – Advance Ruling is a benevolent piece of legislation in the Act with an objective to obviate litigation at initial stage of the issues arising in tax matters to taxpayers including any unregistered persons intending to commence any business activity. It provides an opportunity to all entities both commercial and non-commercial, Government and quasi-Government, statutory bodies, etc, hitherto not registered under any of the indirect tax laws to seek clarification on the taxability or otherwise of their activities after introduction of the GST Act, 2017, where the applicant is also not an exception.

8.4 However, 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 applicant under any of the provisions of the Act.

8.5 We find the term ‘proceedings’ is used in many Sections of the Act and some of the Sections are Section 6 - Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances, Section 29 – Cancellation or Suspension of registration, Section 36 – Period of retention of accounts, Section 50 – Interest on delayed payment of tax, Section 52 – Collection of tax at source, Section 54 –Refund of tax, Section 66 Special audit, Section 67 – Power of inspection, search and seizure, Section 73 - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed, Section 78 – Initiation of recovery proceedings, Section 84 - Continuation and validation of certain recovery proceedings, Section 160 – Assessment proceedings.

8.6 The applicant states that ‘proceedings’ is not defined under CGST Act. In the absence of statutory definition, the term ‘proceedings shall be accorded a literal interpretation. The applicant relied on the judgements without citations of Hon’ble Supreme Court in the case of *Liberty Union Mills Vs Union of India* and *Radha Krishan Industries vs State of Himachal Pradesh and Ors*, the judgement of Hon’ble Allahabad High Court in the case of *G.K. Trading Company vs Union of India* to distinguish ‘proceedings’ from enquiry / summons. The cited rulings, rendered in issues other than advance ruling, pertains to attachment of properties in the case of

Radha Krishan Industries and simultaneous proceedings on same matter by two authorities covered under Section 6(2)(b) in the case of G.K. Trading Company. The term 'proceedings' has been used in various sections of the Act under different context and therefore the said ruling relied by the applicant do not apply to the issue on hand.

8.7 However, Hon'ble High Court of Andhra Pradesh in the case of *Master Mind Vs Appellate Authority for Advance Ruling (2022) 1 Centax 288 (A.P.)/2023 (70) G.S.T.L. 45 (A.P.) [23-11-2022]* held that Application for advance ruling is not admissible when proceedings in relation to same issue had commenced prior to filing of such application and rulings of both AAR and AAAR were to be set aside.

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 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.

9. In view of the above, we rule as under;

**RULING**

The advance ruling application is rejected for the reasons discussed in para 8 supra.

(N.USHA) 19.6.2023  
Member (SGST)



(R.GOPALSAMY) 19/06/23  
Member (CGST)

To

M/s. Tamil Nadu Nurses and Midwives Council,  
Jayaprakash Narayanan Maligai,  
No.140, Santhome High Road, Mylapore, Chennai – 600 102.

//By RPAD//

Copy submitted to:

1. The Principal Chief Commissioner of CGST & Central Excise,  
No. 26/1, Mahatma Gandhi Road, Nungambakkam,  
Chennai – 600 034.
2. The Principal Secretary / Commissioner of Commercial Taxes,  
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & Central Excise,  
Chennai North Commissionerate.
2. The State Tax Officer,  
Mandaveli Assessment Circle,  
Integrated Building for Commercial Taxes and Regn. Department,  
Room No. 419, 4<sup>th</sup> Floor, Nandanam,  
Chennai – 600 035.
3. Master File / spare – 1.