

AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND 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.
---	---

Advance Ruling No. 18 /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		33AACAT1667P1Z2
Legal Name of Applicant		Tamil Nadu Medical Council
Registered Address / Address provided while obtaining user id		New No.914 Old No. 569, Poonamalle High Road, Arumbakkam, Chennai 600106
Details of Application		GST ARA – 01 Application Sl.No.01/2023 dated 05.01.2023
Jurisdictional Officer		Centre: Chennai North Commissionerate Division: Anna nagar
Concerned Officer		State: Arumbakkam 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 previously known as Madras Medical Council was constituted under Madras Medical Registration Act IV of 1914 by the Local Legislature. The Applicant caters to the registration of Registered Medical Practitioners practicing or completing their study in the state of Tamil Nadu, Pondicherry and Andaman & Nicobar Islands. The Council imparts medical ethics to the RMP's and ensure scientific practice by them and issues Provisional, Under Graduate, Post Graduate Registration Certificate, No Objection Certificate and Certificate of Good standing and CME certificates.
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		Whether GST is applicable on various fees collected by Tamil Nadu Medical Council a Government Authority?

1. The applicant submitted a copy of challan dated 30.12.2022 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 30.12.2022 was physically received on 05.01.2023 as mandated under Rule 107A.

2.1 Tamil Nadu Medical Council (in short 'Applicant') previously known as Madras Medical Council was constituted under the Madras Medical Registration Act IV of 1914 by the Local Legislature. 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. The Council imparts medical ethics to the RMP's and ensure scientific practice by them and issues Provisional, Under Graduate, Post Graduate Registration Certificate, No Objection Certificate and Certificate of Good standing and CME certificates.

2.2 The Applicant is preparing State Medical Registers and List of Registered Medical Practitioners are Gazetted in the Tamil Nadu Govt. Gazette every year. Registration particulars of doctors including Photographs are stored safely and securely in their database. The Council has implemented online registration to facilitate Doctors Applicant

2.3 The Applicant is functioning as per guidelines of Tamil Nadu Medical Registration Act, 1914. The fees collected by the Council from the Medical Practitioners for registration and allied activities are the mandate of the State Legislature and TNMC is carrying out the Statutory obligations and responsibility set out in the above Act.

2.4 On interpretation of law, the applicant, 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 05.01.2013 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.

3.1 The applicant vide letter dated 16.03.2023, as additional grounds, has stated that GST officials inspected their council office and collected information / documents and called for certain details u/s Section 67 of CGST Act and that the Applicant also received Summons u/s 70 of CGST Act. Further, it is stated that

during PH, Members raised question of suppression of the said information in AAR application, with regard to this it is 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.

3.2 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.

4. The applicant is under the administrative control of State Tax. 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.

4.1 The concerned State authority vide letter RC No.16/2022/A4 dated 13.02.2023, stated that Tamil Nadu Medical Council previously known as Madras Medical Council was constituted under Madras Medical Council under the Madras Medical Registration Act IV of 1914 by the Local Legislature came into force from 1st June 1916 vide G.O.Ms.No.698 (Public), dt.10.04.1916.

4.2 The concerned State authority has stated that Tamil Nadu Medical Council was established for the State of Tamil Nadu consisting of fifteen members and controlled over by State of Tamil Nadu and that no certificate required by law to be given by a Medical Practitioner or Officer shall be valid unless signed by a Registered Practitioner; without registered as a member in Tamil Nadu Medical Council, the Medical students who completed their M.B.BS/MD/M.S/DNB completed in Foreign Countries etc. cannot practice/appoint as Physician, Surgeon or other Medical

Officer in any Hospital, Asylum, Infirmary, Dispensary as Medical Officer or Health in the State of Tamil Nadu; that Tamil Nadu Medical Council Collects Registration Fees for Membership from the medical students and inform the same to the State Government, who after verifying the proof of Medical degree and consulting the Council, permit the Registration as Member to the Medical Practitioners; no person shall be eligible to be a member of the Council unless he is a registered practitioner. The person who falsely pretends to be a registered practitioner shall be liable to be punished on conviction by a Magistrate.

4.3 The concerned State authority has further stated that the Registration particulars of Doctors are stored safely and securely in their Database; the fees collected by the Medical Council for Registration from Medical Practitioners are mandate of the State Legislature and carrying out the statutory obligations and responsibility; the list of registered Medical Practitioners are published in Tamil Nadu Government Gazette every year.

4.4 The concerned State authority has also stated that The Council is functioning with the source of Registration Fees received from Medical Practitioners for incurring expenses such as salary to employees, building maintenance, payment of Electricity and water charges etc as not receiving any Govt. grant either from State or Central.

4.5 The concerned State authority, with regard to the question of the applicant that Whether GST is applicable on various fees collected by Tamil Nadu Medical Council a Government Authority has stated that Tamil Nadu Medical Council is not a Service provider or doing any business activities. This has been confirmed by the Additional Commissioner, Chennai North, Office of the Principal Commissioner of CGST & Central Excise, Chennai - 34 in his order issued from C.No.V/15/110/2019-Ch-Adj./DIN-20220159TK000000DC8E DT.31.01.2022. Hence GST is not applicable for various fees collected by Tamil Nadu Medical Council, a State Government Authority.

4.6 The said authority has neither furnished their comments on the question raised by the applicant nor informed about any pending proceeding against the applicant on the question raised.

5. The applicant, after consent, was given an opportunity to be virtually heard on 16.03.2023. Sri V.Swaminathan, Chartered Accountant, the Authorized

Representative (AR) of the applicant appeared for the virtual hearing and reiterated the submissions. However, members asked about the investigation being conducted by DGGI vide Summons dt.30.11.2022 and 20.12.2022 and suppression of the said information in the Advance Ruling Application. The AR admitted receipt of Summons before filing Advance Ruling Application on 05.01.2023 and requested time till 20.03.2023 to file reply with regard to the said Summons issued by DGGI, before passing any order with regard to admission of advance ruling application.

6. Additional Director, DGGI, Chennai Zonal Unit vide letter in F.No.DGGI/INV/GST/3924/2022-Gr.Z dated 03.04.2023 addressed to Authority of Advance Ruling (TAMILNADU) has informed that their office has initiated an investigation against M/s Tamil Nadu Medical Council (in short TNMC) on account of non-payment of GST on Registration fees etc collected and that in this regard two Summons have been issued to TNMC and a statement of Shri R Shanmugam, Registrar of TNMC has been recorded on 09.01.2023. It is further stated that it has come to the knowledge of their office that M/s Tamil Nadu Medical Council has filed application before Authority of Advance Ruling (TAMILNADU) and that as per proviso to Section 98(2) of CGST Act, the Advance Ruling 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 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 the Act. It is further stated that it appears that TNMC have suppressed the fact about the ongoing investigation by DGGI, CZU, Chennai, and sought for Advance Ruling on the very same issue. DGGI office has also quoted High Court of Andhra Pradesh order dt.23.11.2022 in W.P 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.

7.1 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 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 examining 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. As per Section 98(2) of the Act, the Advance 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.

7.2 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.

7.3 However, before venturing to decide the questions on merits, the question of admissibility of the application needs to be decided in view of the letter received from DGGI, Chennai Zonal Unit dt.03.04.2023, about the investigation against the applicant being conducted on the questions raised in the advance ruling application.

7.4 As narrated 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;

7.5 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.

7.6 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.

7.7 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.

7.8 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, pertain 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 not apply to the issue on hand.

7.9 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.

7.10 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' 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**"*

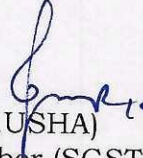
It is apparent that the first proviso covers any 'proceedings' in the case of an applicant under any of the provisions of the Act including Section 70 of the Act, under which investigation is being conducted by DGGI, Chennai Zonal Unit.

7.11 We take into cognizance of letter received from DGGI, Chennai Zonal Unit letter dt.03.04.2023, about the investigation being conducted against the applicant from which, it is apparent that proceedings are pending against the applicant on the date of filing of advance ruling online application on 30.12.2022 and liable to be rejected under first proviso to Section 98(2) of the Act.

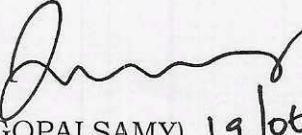
8. In view of the above, we rule as under;

RULING

The advance ruling application is rejected for the reasons discussed in para 7 supra.


(N. USHA) 19.6.23
Member (SGST)




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

To

M/s. Tamil Nadu Medical Council,
New No.914 Old No. 569, Poonamalle High Road,
Arumbakkam, Chennai 600 106.

//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 Principal Commissioner of GST & Central Excise,
Chennai North Commissionerate.
2. The Assistant Commissioner,
Arumbakkam Assessment Circle,
F-50, 1st Avenue, 2nd Floor,
Anna Nagar East, Chennai-600 102.
3. Master File / spare – 1.