

**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 are:

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. 20 /AAR/2023 Dated: 19.06.2023

1. Any appeal against this Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, under Sub-section (1) of Section 100 of Central Goods and Service Tax Act / Tamil Nadu Goods and Service Tax Act, 2017('the Act' in short) within 30 days from the date on which the ruling sought to be appealed against is communicated.

2. In terms of Section 103(1) of the Act, this 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. 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 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, 2017.

GSTIN Number, if any / User id		33AACCM4445J1ZJ
Legal Name of Applicant		M/s. Mannarai Common Effluent Treatment Plant Private Limited
Registered Address / Address provided while obtaining user id		No. 209/2A, S. Periyapalayam Post, Uthukuli Road, Tiruppur - 641 605.
Details of Application		Form GST ARA – 01 Application Sl.No.45/2022/ARA dated 12.08.2022.
Concerned Officer		Centre: Coimbatore Commissionerate State: Thiruppur (Rural)-1 Assessment Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provider
B	Description (in brief)	Common Effluent Treatment Plant
Issue/s on which advance ruling required		Classification of outputs as supply of goods or Services
Question(s) on which advance ruling is Required		1.Whether the classification of supply of outputs as sale of goods is correct. 2.Whether the classification of water sold as ‘water including natural or artificial mineral waters and aerated waters, not containing added sugar or sweetening matter, not flavoured (other than drinking water packed in 20 litre bottles) under heading 2201 is correct.

M/s Mannarai Common Effluent Treatment Plant Private Limited, No. 209/2A, S. Periyapalayam Post, Uthukuli Road, Tiruppur - 641 605 (hereinafter called as the ‘Applicant’) is registered under the GST Acts with GSTIN: 33AACCM4445J1ZJ.

2.0 In their application for Advance Ruling, the Applicant has stated, *inter-alia*, the following as their nature of activity proposed:

- (i) the Applicant is an effluent treatment plant promoted by dyeing units;
- (ii) the Applicant is planning to buy the effluents from dyeing units and that the effluents will be delivered from the dyeing units to the Applicant through pipelines;

- (iii) the effluent will be processed at the plant and the resultant products, water, Sulphate solution and brine solution will be sold at market rates;
- (iv) the delivery will be made either through pipelines/Lorry. As per the norms of pollution control board, the resulting product can be sold to any member unit.

2.1 The Applicant has sought for advance ruling on the following questions;

1. Whether the classification of supply of outputs as sale of goods is correct.
2. Whether the classification of water sold as 'water including natural or artificial mineral waters and aerated waters, not containing added sugar or sweetening matter, not flavoured (other than drinking water packed in 20 litre bottles) under heading 2201 is correct.

2.2. The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of challan 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.

2.3 The Applicant has been established as a Zero Liquid Discharge (ZLD) plant, undertaking treatment of dyeing and bleaching effluents discharged / received from their member dyeing units, so as to completely prevent discharge of any effluent into the nearby water bodies.

2.4. As per the written submissions made, their main objective is to treat the effluents generated from all its member units. The effluents generated by the members are collected in a collection well through pipeline and from there it is sent to the Common Effluent Treatment Plant.

2.5. The effluent treatment, as explained by the Applicant, comprises of the following phases;

- Phase I - Pre- treatment: The raw effluent collected is subjected to activated sludge process to reduce organic load, TSS, colour and turbidity. Then suspended solids will be removed in filtration section and waste sludge from secondary clarifier is led to thickener followed by filter press for extracting sludge which is dried in sludge storage cum drying beds for further disposal.
- Phase II – Reverse Osmosis: The treated effluent from phase I is fed into three stage RO system for removal of dissolved inorganic salts and 80 to 85% of water will be recovered as reusable water. Additional fourth phase and fifth phase RO treatment recovers brine solution for reuse of member units.

○ Phase – III- Thermal Evaporation: The reject from sixth RO is further subjected to thermal evaporation through Multiple effect evaporator to separate mixed salt and mother liquor.

○ Phase IV – Brine treatment: To overcome the difficulties in concentrating and crystallizing Sodium Sulphate and Sodium Chloride in the Evaporator system and to reduce fresh salt purchase by member units, the brine reuse technology has been implemented.

3.0 The Applicants were offered personal hearing and it was held in digital platform on 18.11.2022, wherein Shri.S.Harishankar, Auditor (Authorised Representative –AR) appeared for the Applicant and reiterated the submissions made in the application. The Applicant has also submitted the details of effluent treatment process carried out by them which were received on 24.11.2022.

3.1 Another Personal Hearing was held on 18.11.2022, as there was a change in constitution of Members. In this Personal Hearing which was conducted virtually, the AR reiterated the submissions already made and explained the process briefly.

3.2. Subsequently, the Applicant has requested another personal hearing to make additional submissions and they were provided with an opportunity of being heard in person on 16.03.2023 and their Authorised Representative Thiru. N. Sivachalam, Chartered Accountant attended hearing in person and, *inter-alia*, made the following submissions:

The applicant is engaged in the process of effluent treatment for their member dyeing units under Zero Liquid Discharge Mechanism and have obtained the necessary consent from Pollution control board. So far, they have been doing as a service provider, receive effluent from dyeing units through pipelines with automated monitoring and return the products resulting from processing to them including water and brine solution through pipelines and salt through vehicles.

3.3 The Applicant have enclosed monthly readings and corresponding invoice copies for three customers as a sample. They charge Rs.340 per KLD of effluent processed and a fixed minimum charge for maintaining pipelines and other infrastructure.

3.4 The Applicant have added that, they are facing operational bottlenecks in this method. At times the customer units are not having capacity to receive the products sent by them, resulting in shortage of storage in the plant thereby affecting the processing operations. Hence

they are planning to buy the effluents and sell the products to any of the units based on their requirement to do their operations without any backlog.

3.5 The Applicant have also referred the following Advance rulings pronounced in the identical issue;

1. M/s. Hojiwala Infrastructure Limited (AAR Gujarat – GUJ/GAAR/R/2002/48), wherein it was ruled that ‘Treated Water’ obtained from CETP (classifiable under Chapter 2201) is taxable at 18 per cent by virtue of Sl. No. 24 of Schedule - III of Notification No. 01/2017- CT(Rate) (as amended) and Sl. No. 24 of Schedule - III of Notification No. 01/2017-Integrated Tax (Rate), dated 28-6-2017 (as amended).
2. Same ruling has been pronounced in the case of M/s.Palsano Enviro Protection Limited (AAR Gujarat – GUJ/GAAR/R/2002/47).
3. In the case of M/s. Kasipalayam Common Effluent Treatment Plant Private Limited (AAR Tamilnadu – 23/AAR/2021), it was pronounced that, Water recovered, which is de-mineralized water for Industrial use is classifiable under Heading No. 2201 as Waters described under Sl. No. 24 of Annexure-III of Notification No.01/2017 – Central Tax (Rate), dated 28-6-2017 taxable at rate of 18 per cent GST.

3.6 The central jurisdictional authority has reported that, there are no proposals pending disposal in respect of the applicant.

3.7. The State jurisdiction Authority, Assistant Commissioner (ST), Tiruppur (Rural)-1 Assessment Circle has submitted the following remarks vide letter dated 07.09.2022;

➤ The principal supply done by the applicant is supply of services by way of treatment of effluents in a Common Effluent treatment plant (SAC-999432). The applicant has stated in their letter dated 15.11.2021 that their company has correctly adopted the tariff classification under entry 999432 with description ‘services by way of treatment of effluents by Common Effluent Treatment Plant’. Hence, the classification of the supply of output as sale of goods is not correct. Rate of GST on Services by way of treatment of effluent is 12% (CGST 6%) but Salt (HSN 2501) and water. (HSN 2201) are NIL rated. More so, the applicant have raised tax invoices by mentioning their service description as Textile Manufacturing services (9988).

Hence, the classification as supply of service is correct and the classification as sale of goods may affect the revenue to the Government Exchequer.

4.0 With the above background of facts, the Applicant is before us seeking ruling on the following question:

1. *Whether the classification of supply of outputs as sale of goods is correct.*
2. *Whether the classification of water sold as 'water including natural or artificial mineral waters and aerated waters, not containing added sugar or sweetening matter, not flavoured (other than drinking water packed in 20 litre bottles) under heading 2201 is correct.*

As the question is to determine the nature of supply, which is within the ambit of the authority under section 97 (2) (g) of the CGST Act, the same is taken up for decision.

4.1 We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, submissions/Additional submissions made and the comments of the Central/State Jurisdictional Authority.

4.2 The Applicant is a common effluent treatment plant engaged in rendering hazardous waste treatment and disposal services. The treated water and salt recovered during the treatment /process are being supplied to member units for their reuse. So far, they have paid tax @ 12% classifying their services under the HSN 999432 water treatment and disposal services.

4.3. In order to prevent pollution of River water and ground water, TNPCB has made the Zero Liquid Discharge system (ZLD in short) mandatory for all the highly polluting industries including Textile Dyeing and Bleaching industries, Tanneries etc., which use considerable amount of salt in the process and consume huge quantity of water. The ZLD system ensures recovery of water & salt from the effluent water, thus preventing pollution of River / ground water.

4.4 In this context, the Applicant is functioning as a common plant to treat the effluents generated in the member textile dyeing units during the dyeing and bleaching process recovering maximum quantity of water, salts and other solids which could be beneficially reused, leaving zero discharge at the end of the treatment process.

4.5 As per the submissions made, at present, the Applicant is rendering the service of hazardous waste treatment and disposal services, by treating the effluent water and supplying treated water and other recovered products for reuse by the member units. Now, they have proposed to **purchase** effluent water from the member unit and after treating the same they propose to **supply** the resultant products to their member units so as to classify their activities as supply of goods.

4.6 From the various submissions of the Applicant both during the personal hearing and written submissions, it is clear that the applicant seeks to purchase the raw effluent and proposes to treat the same. The applicant proposes to sell the resultant products at market rates.

4.7 In terms of section 4 of The Sale of Goods Act, 1930,

"4. Sale and agreement to sell.—

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

*(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but **where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.***

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."(emphasis applied)

4.8 The Hon'ble Supreme Court in the case of State Of Madras vs Gannon Dunkerley & Co.,(Madras) (958 AIR 560, 1959 SCR 379) had observed, **interalia**, that

*Thus, according to the law both of England and of India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods which of course presupposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods. **Unless all these elements are present, there can be no sale.** Thus, if merely title to the goods passes,*

but not as a result of any contract between the parties, express or implied, there is no sale. So also if the consideration for the transfer was not money but other valuable consideration, it may then be exchange or barter but not a sale. And if under the contract of sale, title to the goods has not passed, then there is an agreement to sell and not a completed sale.(emphasis applied)

4.9 From the conjoined reading of section 4 of The Sale of Goods Act, 1930 and the Hon'ble Supreme Court judgement cited *supra*, it is clear that the modus of operation as purchase of effluent and sale of output is applicable only if all the elements cited in the Section and judgement cited are present. If that is the case, then the classification of supply of treated water, salt and other products, as sale of goods is correct. However, it is emphasized that the mode of operation intended by the applicant i.e. purchase of raw effluent, treating the same and selling the resultant products, can be classified as sale of goods, if and only if, the applicant follows the procedures envisaged in the Sale of Goods Act and rationale of the observations of Hon'ble Supreme Court. If such is the case, the proposed mode of purchase of raw effluent, treat it on own account and supply of output, can be treated as sale of goods and consequently the first question is answered in the affirmative.

4.10. The next question to be examined is 'whether the classification of water sold as 'water including natural or artificial mineral waters and aerated waters, not containing added sugar or sweetening matter, not flavoured (other than drinking water packed in 20 litre bottles) under heading 2201 is correct.'

4.11 In this context, the Applicant has referred the advance rulings pronounced in the identical issue in the following cases.

1. M/s. Hojiwala Infrastructure Limited (AAR Gujarat – GUJ/GAAR/R/2002/48)
2. M/s.PalsanoEnviro Protection Limited (AAR Gujarat – GUJ/GAAR/R/2002/47)
3. M/s. Kasipalayam Common Effluent Treatment Plant Private Limited (AAR Tamilnadu – 23/AAR/2021)

4.12. In all the above referred advance rulings, it was pronounced that, Water recovered out of effluent treatment process, which is de-mineralized water for Industrial use is classifiable under Heading No. 2201 as Waters described under Sl. No. 24 of Annexure-III of Notification No.01/2017 – Central Tax (Rate), dated 28-6-2017 taxable at the rate of 18 per cent GST.

4.13. To decide upon the taxability of effluent treated water, it is required to analyze the aforesaid classification. Water recovered has been categorized as de-mineralised water in aforesaid rulings, classifiable under Heading No. 2201 under the following entry in Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017;

Sl.No.	Heading	Description of Service	Rate
24	2201	Waters including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured (other than Drinking water packed in 20 litre bottles)	9%

4.14 But, as per the Customs Tariff Act, de-mineralised water has been grouped in chapter 28 under the heading 28.53 - Distilled and conductivity water and water of similar purity. As per explanatory notes, this heading covers only distilled water, redistilled water or electro osmotic water, conductivity water and water of similar purity, including water treated with ion exchange media, which have got special usages.

4.15 Moreover, de-mineralised water is obtained by passing water successively through a cation exchange (in the H⁺ form) and an anion exchange (in the OH⁻ form) resin and it is free from all soluble mineral salts. This makes it ideally suited to a large range of uses from pharmaceutical manufacturing to the automotive industry. (Ref: NCERT Chemistry Text book).

4.16 Upon going through the effluent treatment process, it is observed that the effluent water is not subjected to any such ionization process and as per the report furnished by The South India Textile Research Association (SITRA) Textile Testing and Service Centre, test report No.V2000610 dated 30.03.2021 of Sample No.:V2000610-3, in the case of Kasipalayam CETP, it is seen that the recovered water contains Chlorides, Sulphates, Bicarbonates, etc. Therefore, it is clear that effluent treated water cannot be construed as de-mineralised water.

4.17. On the contrary, Chapter 22- Beverages, Spirits and Vinegar, covers water, non-alcoholic, alcoholic beverages which are meant for human consumption. Effluent treated water does not fit into this group as it is unfit for human consumption.

4.18. More specifically, as per explanatory notes to the Heading 22.01 - Waters including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured; Ice and snow, this heading covers;

(A) **Ordinary natural water** of all kinds (other than sea water – see heading 25.01).

Such waters remain in the heading, whether or not clarified or purified, except that distilled or conductivity water and water of similar purity are classified in heading 28.53.

The heading **excludes** sweetened or flavoured water (heading 22.02)

(B) **Mineral Waters**, whether natural or artificial

Natural mineral waters contain mineral salts or gases. The composition of these waters varies considerably and they are generally classified according to the chemical characteristics or their salts, e.g.:

(1) Alkaline waters

(2) Sulphated waters

(3) Halide waters

(4) Sulphuretted waters

(5) Ferruginous waters

Such natural mineral waters may also contain natural or added carbon dioxide.

Artificial mineral waters are prepared from ordinary potable water by adding the active principles (mineral salts or gases) present in the corresponding natural waters so as to produce waters of the same properties.

(C) **Aerated Waters** (carbonated waters), i.e. ordinary potable waters charged with carbon dioxide gas under pressure. They are often called “soda waters” or “Seltzer” waters although true “Seltzer” water is a natural mineral water.

The heading **excludes** sweetened or flavoured aerated waters (**heading 22.02**)

(D) **Ice and snow**, i.e. natural snow and ice, and artificially frozen water.

4.19. Thus, water grouped under the heading 22.01 is ordinary water whether or not clarified or purified. And this heading specifically excludes distilled or conductivity water and water of similar purity which are classified in heading 28.53. Therefore, it is amply clear

that, water recovered out of the effluent treatment process nothing but an ordinary water which is suitable for reuse by the dyeing and bleaching units as a solvent and as a washing, rinsing medium. Thus, it aptly fits into Sl. No. 99 of Notification No. 02/2017, CT (Rate), dt.28.06.2017 under the heading 2201 rather than Sl.No.24 of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 under the same heading 2201.

4.20. As per Circular No.179/11/2022, dated 03.08.2022, issued by Ministry of Finance, regarding applicability of GST on various goods and services, it has been clarified that treated sewage water attracts Nil rate of tax. The relevant portion of the Circular stated *supra*, is as under:

"5.Treated sewage water attracts Nil rate of GST:

5.1.Representations have been received seeking clarification regarding the applicable GST rate on treated sewage water. Treated sewage water was not meant to be construed as falling under "purified" water for the purpose of levy of GST.

5.2.In general, Water, falling under heading 2201, with certain specified exclusions, is exempt from GST vide entry at Sl. No. 99 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017.

5.3. Accordingly, it is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022.

4.21 The same analogy is applicable to the case on hand. The relevant entry in Notification No. 2/2017 – Central Tax (Rate) dated 28th June 2017 is:

Sl. No.	Heading	Description of Service	Rate
99	2201	Water [other than aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Nil

4.22. In this connection, it is observed that, all the other categories of water as mentioned in the exclusion clause have some special characteristics and specialized uses such as they are used in aerated drinks, medicinal/ health uses, automotive cooling system, sterilization, laboratory application, car battery etc.

4.23. In a similar issue, the AAAR / Maharashtra in its ruling MAH/AAAR/AN-RM/02/2022-23, dated 01.04.2022 in the case of M/s. Rashtriya Chemicals & Fertilizers Ltd. has held that as the water coming out from Sewage Treatment Plant still contains organic and inorganic substances, such as suspended particles, grit, clays, pollutants like nitrogen, phosphorus, etc. is not pure due to presence of the said impurities and foreign elements and therefore will be eligible for exemption in terms of entry at Sl. No. 99 of Notification No. 02/2017, CT (Rate), dt.28.06.2017.

4.24. In this regard, it is observed that the process carried out by the Applicant involves conversion of effluent water into treated water to make it suitable for reuse by the member units. At the same time, the treated water cannot be put into any other usage, as the same is not completely free of impurities, bacteria and other harmful micro-organisms and chemicals.

4.25. The above facts reiterate that the ultimate intention behind the effluent treatment process is to treat the effluent water discharged by textile units to recover water, salt and other chemicals consumed during the course of dyeing and bleaching to the maximum extent possible so as to reuse the same without getting it discharged to pollute water bodies. Moreover, ZLD has been mandated by the TNPCB for all the highly polluting industries including Textile Dyeing and Bleaching industries in order to prevent pollution of River water and ground water. Therefore, it is evident that the common effluent treatment plant has been set up in order to comply with the legislative and environment regulations thereby conserving water through recovery and reuse and not to manufacture water or chemicals.

4.26. Therefore, we find that effluent treated water is eligible for exemption as per Notification No. 2/2017- Central Tax Rate as amended vide notification No.7/2022-Central Tax (Rate), dated the 13th July, 2022 and the relevant entry is as under;

Sl.No.	Heading	Description of Service	Rate
99	2201	Water [other than aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Nil

5.0 In view of the above discussion and findings, we rule as under;

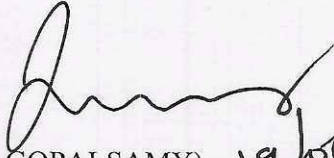
RULING

1. Classification of outputs as supply of goods is correct, subject to the condition that the applicant follows the guidelines mentioned in para 4.9 of this order.
2. The classification of water sold by the applicant is correctly classifiable as per Notification No. 2/2017- Central Tax Rate, as under:

Sl.No.	Heading	Description of Service	Rate
99	2201	Water [other than aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Nil


(N. V. SHA) 19.6.2023
Member (SGST)




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

To

M/s. Mannarai Common Effluent Treatment Plant Private Limited,
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Uthukuli Road, Tiruppur - 641 605.

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2. The Principal Secretary /Commissioner of Commercial Taxes,
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