

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI-600006
PROCEEDINGS OF THE AUTHORITY FOR
ADVANCE RULING U/S.98 OF THE GOODS AND SERVICES TAX ACT, 2017**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A Valli, M.Sc., Joint Commissioner/Member(SGST), The Authority for Advance Ruling, Office of the Commissioner of Commercial Taxes, Chennai-600 006.
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ORDER No. 1/ARA/2024 Dated: 26.02.2024

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 Services Tax Act and the Tamil Nadu Goods and Services 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 Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.

GSTIN Number, if any / User id		33AACFF4634M2ZE
Legal Name of Applicant		First Choice Outsourcing Services
Registered Address / Address provided while obtaining user id		Door No.53, Periyar Nagar, Thiruvanaikoil, Tiruchirappalli, Tamil Nadu - 620 005.
Details of Application		GST ARA – 01 Application Sl.No. 95/2023 dated 04.08.2023
Jurisdictional Officer		Centre: Tiruchirapalli Commissionerate; Division: Tiruchirapalli-I
Concerned Officer		State: Trichy Division Woraiyur Assessment Circle.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provider
B	Description (in brief)	The applicant is involved in Supply of Labour / Employees to others (Principal Employer) to work under the direct supervision and control of the Principal Employer. These Employees are subject to follow the working process as applicable to the directly employed Employees of the Principal Employer.
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 payable only on the service charges / commission or Income received by whichever name by the Agency Supplying Manpower and not on the salary / wages and related payments made to the Employees?

1. At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services 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 Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. The applicant submitted a copy of challan dated 10.06.2023 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 10.06.2023 was physically received on 25.07.2023 as mandated under Rule 107A.

3.1 First Choice Outsourcing Services (in short 'Applicant') is involved in Supply of Labour / Employees to others (Principal Employer) to work under the direct supervision and control of the Principal Employer. These Employees are subject to follow the working process as applicable to the directly employed Employees of the Principal Employer.

3.2 On interpretation of law, the applicant states that as per Schedule III of CGST Act read with Section 7(2)(a) of CGST Act, service by Employee to Employer are not subject to GST since it is not treated as supply of Services. The payment to these Employees is only routed through them and does not constitute to their income. Employee as defined under the Employees' State Insurance Act, 1948 as any person employed for wages in or in connection with the work of a factory or establishment and

i) who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

ii) who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment

iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

3.3 The applicant further relied on the following case laws

i) The employee supplied by the contractor is working inside the factory premises and are under direct control of the Principal Employer. (Calcutta Electricity Supply Corporation Ltd. and ors. Vs. Subhas Chandrabose-1992(1) LLJ.475))

ii) The employees of the cycle stand and canteen run by contractors in cinema theatre by contractors are employees (Royal Talkies, Hyderabad Vs. ESI Corporation (AIR-1978 S.C. 1478))

iii) The respondents are directed not to deduct any GST or Service Tax from the salary of the employees sponsored by UPNL.(Kundan Singh vs the State & Others - Writ Petition No. 116 of 2018 (PIL) In The High Court Of Uttarakhand At Nainital)

3.4 Based on the Above Laws/Rulings the applicant was of the opinion that when a person is employed in the factory premises either directly or through contractor and directly under the control and management of principal employer is "EMPLOYEE" and falls within the Third Schedule of the CGST Act, 2017. Payment to Employees through Contractors is always as good as payment made directly to Employees. They further stated that if tax is collected on the amount of wages earned by the indirectly employed person it leads to increase in the cost of production and is ultimately charged on Consumer/end user and is illegal. Hence the applicant was of the view that GST is payable only on the Portion of Service Charges/Commission Received and not on the wages and other related payment made by Principal Employer to the employees which are only routed through the applicant.

4.1 The applicant is under the administrative control of Central 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.

4.2 The concerned Central authority vide letter GEXCOM/REV/MISC/436/2021-LEGAL dated 06.09.2023, stated that in respect of the applicant investigation was completed and a Show cause Notice dated 30.06.2023 has been issued.

4.3 The State jurisdictional officer vide letter dated 04.09.2023, stated that there are no proceedings pending in that Assessment Circle in respect of the same issue raised by the Petitioner.

PERSONAL HEARING

5. The applicant, was given an opportunity to be heard on 09.01.2024. Mr. P Selvakumar, Managing Partner and Mr. Janaki Raman, Advocate appeared for the personal hearing as the Authorised Representatives (AR) of the Applicant. When the Members queried whether any proceedings against the applicant on the issue raised in the Advance ruling application, the Authorised representatives accepted that a show cause notice has been issued to them for various issues, out of which one issue is for short payment of GST.

The Members stated that the applicant cannot file Advance ruling application with questions on an issue for which proceedings have already been initiated against the applicant. The Members further stated that since the present application is filed after such proceedings are initiated, the same may not be admitted as per first proviso to Section 98(2) of the CGST Act, 2017.

6. The applicant vide letter dated 17.01.2024 submitted that the question of law raised in the Application is as to whether the employees supplied by the contractor loses the status 'Employee' when there exists employee-employer relationship and the principal has control over such employee including supervision. The service of such employee is not taxable according to section 15 read with the explanation to it; the status of employees engaged through contractor is on par with the employees directly employed by the Principal employer; All labour enactment consider those employees as employees only; the CGST Act does not define the term employee. In such circumstances other enactment including Industrial Disputes Act must be referred to; Advance Ruling is sought only upon the status of contract employee and whether his service rendered is taxable service; the Honourable Members have deviated from the issue raised and advance ruling sought for and considered the proceedings by the Tax Authority which is entirely different. The proceedings comes to play only when the question as to the service rendered by the contract employees is taxable service or not is decided; the Honourable Members paid attention to the proceeding which is consequential to the ruling confirming the status of contract employee and the service rendered is taxable service; charging tax on the contract Employees' Provident wages seriously affects the public and the end user in general and they have to pay more indirect tax on the commodity or service which is not legally due; the Taxing authority cannot claim tax where there is no tax chargeable and lawful entitlement.

6.2 In the light of the above mentioned points, the Applicant requested to consider their application denovo and also submitted that the proceeding commenced by the authorized officer is not directly related to the issue upon which Advance Ruling is sought for.

DISCUSSION AND FINDINGS

7.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made vide letter dated 17-01-2024. 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., GST payable on Service Charges / Commission or Income received by whichever name by the Agency supplying manpower and not on the salary / wages and related payments made to the Employees fulfills the requirement of Section 95(a) of the Act in as much as the same is covered under Section 97(2)(e) of GST Act, 2017.

7.2 However, while examining the application of the applicant in terms of Section 98(2), it was brought to notice that the applicant was investigated by the Headquarter Preventive Unit, Trichy and a Show Cause Notice dated 30.06.2023 has been issued to the applicant which interalia involves a case of short payment of GST. As per Section 98(2) of the 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 applicant under any of the provision of the Act.

7.3 Hence during the personal hearing the Members specifically queried whether any proceedings against the applicant on the issue raised in the Advance ruling application. Only on being confronted with a specific query, the Authorised representatives accepted that a show cause notice has been issued to them for various issues, out of which one issue is for short payment of GST. Hence the Members informed the Authorised Representative that the applicant cannot file Advance ruling application with questions on an issue for which proceedings have already been initiated against the applicant. The Members also stated that since the present application is filed after such proceedings are initiated, the same may not be admitted as per first proviso to Section 98(2) of the CGST Act, 2017.

7.4 However, after the personal hearing the authorized representative of the applicant vide E-mail dated 17.01.2024 submitted that the Members have deviated from the issue raised and advance ruling sought for and considered the proceedings by the Tax Authority which is entirely different. That the proceedings comes to play only when the question as to the service rendered by the contract employees is taxable or not is decided. The applicant has also submitted that the proceeding commenced by the authorized officers is not directly related to the issue upon which Advance Ruling is sought for.

7.5 The questions raised in advance ruling application is whether GST is payable only on the service charges / commission or Income received by whichever name by the Agency Supplying Manpower and not on the salary / wages and related payments made to the Employees. Further the applicants' interpretation is that GST is payable only on the Portion of Service Charges/Commission Received and not on the wages and other related payment made by Principal Employer to the employees which are only routed through the applicant.

7.6 In this regard the definition of consideration as provided in Section 2(31) of the CGST Act, 2017 and the provisions regarding Value of Taxable Supply as provided in Section 15 of the CGST Act, 2017, is reproduced below for ease of reference;

Section 2. Definitions-

(31) "consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Section 15. Value of Taxable Supply.-

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

As per Section 2(31) of the CGST Act, 2017, the entire payment received by the applicant will be considered as consideration and GST would be payable on the entire amount received for provision of services which includes the salary / wages and other related payments made to the employees in the instant case. Further, Section 15 of the CGST Act, 2017 clearly stipulates that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services where the supplier and the recipient are not related and the price is the sole consideration for the supply. The value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST. Therefore, it is clear that the entire

consideration charged by the supplier of Labour shall be the taxable value for the purpose of GST.

7.7 We find that applicant is of the opinion that the payment to employees through contractors is always as good as payment made directly to employees and that if tax is collected on the amount of wages earned by the indirectly employed person it leads to increase in the cost of production and is ultimately charged on Consumer/end user and is illegal. Hence the applicant is of the view that GST is payable only on the Portion of Service Charges/Commission Received and not on the wages and other related payment made by Principal Employer to the employees which are only routed through the applicant. We find that the applicant has cited three case laws and stated that based on the decisions in the said case laws when a person is employed in the factory premises either directly or through contractor and directly under the control and management of principal employer is "Employee" and falls within Third Schedule of CGST Act, 2017.

7.8 We find that the first two case laws cited by the applicant i.e **Calcutta Electricity Supply Corporation Ltd. and ors. Vs. Subhas Chandrabose-1992(1) LLJ.475)** and **Royal Talkies, Hyderabad Vs. ESI Corporation (AIR-1978 S.C. 1478)** pertain to the determination of liability to make contribution to the Employees Insurance Fund under the Employees' State Insurance Act, 1948 and do not have any relevance with regard to the determination of valuation of supplies made under the GST law. In both the cases the persons employed by the contractors were held to be employees under the provisions of Employees' State Insurance Act, 1948 and contribution towards Employees Insurance Fund was required to be made under the said act.

7.9 With regard to the third case law i.e **Kundan Singh vs the State & Others - Writ Petition No. 116 of 2018 (PIL)**, in The High Court Of Uttarakhand At Nainital cited by the applicant we find that the applicant has relied upon the following extract of judgement as mentioned by the applicant in his application " *the respondents are directed not to deduct any GST or Service Tax from the salary of the employees sponsored by UPNL*". We find that the said case was filed by the Uttarakhand UPNL Savinda Karamchari Sangh through its General Secretary highlighting therein the exploitation of the workmen by the State Government as well as local bodies and Honourable High Court of Uttarakhand while disposing the Writ Appeal apart from the direction mentioned supra, also directed the State Government to regularize the employees sponsored through UPNL within a period of one year as per regularization schemes framed from time to time and to ensure that the employees sponsored by UPNL get minimum of pay- scale with dearness allowance along with arrears. We find that the case is one where the aggrieved employees through their union have filed a Writ Appeal seeking better pay and the Honourable High Court of Uttarakhand while providing relief has directed not to deduct any GST or Service Tax from the salary of the employees sponsored by UPNL. We find that here the emphasis is to be laid on the word '**from**'. The intention is not to deduct GST or Service Tax from the salary of the employees so that the

salary of the persons appointed through UPNL, which is lesser compared to the regularly appointed counterparts, is not further reduced. We find that the above ruling has no bearing on the issue raised by the applicant in the subject application.

7.10 We find that it is imperative to mention here that the labour / employee supplied by the applicant are the employees of the applicant and the employee - employer relation as put forth in Schedule III of the CGST Act, 2017 is between the applicant and the labour / employee supplied by him and not between the principal employer and the labour / employee supplied by the applicant. As per the sample work order submitted by the applicant it is seen that the applicant is responsible for paying the salary, and depositing the EPF, ESIC etc pertaining to the labour / employee supplied by him to the principal employers. The applicant through the labour / employee is supplying security service, cleaning service etc to the recipients of services as per their requirement and hence the total consideration charged by the supplier of labour shall be the taxable value for the purpose of GST. Further with regard to the applicant's submission that the payment to these employees is only routed through them and does not constitute to their income, we find that the applicants understanding is misplaced. Unlike Income Tax which is a direct tax levied on the income of the individuals and business, GST is an indirect tax applicable to the supply of goods and services and is leviable on the consideration in relation to the supply of goods or services or both. As can be seen from Section 15 of the CGST Act, 2017., there is intent to include even all taxes, duties, cesses, fees and all charges, including the amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient of supply, in the value of supply.

7.11 Hence it can be seen that applying the interpretation as put forth by the applicant i.e the salary / wages and related payments made to the employees do not form part of the taxable value, leads to **undervaluation** of supplies made by the applicant and **short payment of GST**.

7.12 But, before venturing to decide the questions on merits, the question of admissibility of the application needs to be decided in view of the investigation conducted by Headquarter Preventive Unit, Trichy Commissionerate and consequent issue of show cause notice dated 30.06.2023.

7.13 The applicant was issued with a show cause notice dated 30.06.2023 which involves issues of short declaration of taxable outward supply, availment and utilization of ineligible input tax credit, excess availment of input tax credit etc. It is a fact that the case was initiated on 12.11.2020 by the Headquarter Preventive Unit, Trichy GST Commissionerate and a DRC-01A dated 15.06.2023 was issued by the Headquarter Preventive Unit, Trichy GST Commissionerate which consequently resulted in issuance of show cause notice dated 30.06.2023.

7.14 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. Vide first proviso to Section 98(2) which restricts admitting application seeking advance ruling on questions which are already pending in any proceedings, an important check mechanism has been inserted so that the Advance Ruling mechanism does not hinder in or become prejudicial to the proceedings which are already pending or concluded.

7.15 The relevant portion of the Section 98(2) 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.

7.16 'Proceedings' is not defined under CGST Act. In the absence of statutory definition, the term 'proceedings' shall be accorded a literal interpretation. The term 'proceedings' has been used in various Sections of the Act under different context and one such mention is made in the Form DRC-01A. The subject of Form DRC-01-A mentions '**Case proceedings reference no**' and the body of the form starts with '**Please refer to case proceedings. In this regard the amount of tax, interest, penalty payable....**'. Hence, it is clear that 'proceedings' is said to have been pending in as much as the investigation had commenced much before the filing of the advance ruling application by the applicant. Therefore the appellants' contention that the proceedings comes to play only when the question as to the service rendered by the contract employees is taxable service or not is decided is not correct.

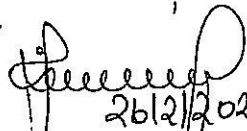
7.17 On considering the first proviso to section 98(2) of the Act comprehensively, It is apparent that the first proviso covers **any** 'proceedings' in the case of an applicant under any of the provisions of the Act including Section 67 and Section 74 of the Act, under which investigation was conducted by the Headquarter Preventive Unit, Trichy GST Commissionerate.

7.18 In the instant case the applicant has submitted that the proceeding commenced by the authorized officer is not directly related to the issue upon which Advance Ruling is sought for, however we find that neither during the personal hearing nor till date the applicant has differentiated the question on which advance ruling is asked and the issues covered in the show cause notice issued to the applicant, particularly with regard to short payment of GST. Hence, as the proceedings had commenced much before the filing of advance ruling application, we hold that the subject application is liable to be rejected under first proviso to Section 98(2) of the Act.

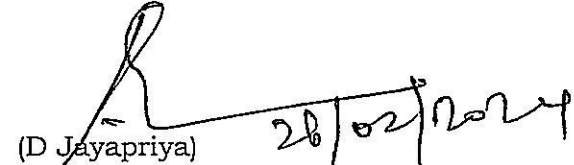
8. In view of the above, we order as under;

RULING

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


(A Valli)
Member(SGST)




(D Jayapriya)
Member (CGST)

To

M/s FIRST CHOICE OUTSOURCING SERVICES,
Door No.53, Periyar Nagar, Thiruvanaikoil,
Tiruchirappalli, Tamil Nadu, 620005

//By RPAD//

Copy submitted to:

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

Copy to:

1. The Commissioner of GST & C.Ex.,
Tiruchirapalli Commissionerate,
No.1, Williams Road, Contonment,
Tiruchirapalli – 620 001.
2. The Assistant Commissioner,
Woraiyur Assessment Circle, Trichy – 18.
3. Master File / spare – 1.