

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri. Rajiv Magoo, Joint Commissioner of Central Tax, (Member)
(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAACR2831H1ZK
ARN Number	AD271119008609W
Legal Name of Applicant	M/s.Rashtriya Chemicals and Fertilizers Limited
Registered Address/Address provided while obtaining user id	RCF Office Complex Priyadarshini 9th floor Eastern Express Highway ,Sion Maharashtra Mumbai 400022
Details of application	GST-ARA, Application No. 67 Dated 27.11.2019
Concerned officer	Division-I, Commissionerate-Mumbai-East
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
Issue/s on which advance ruling required	(ii) Applicability of a notification issued under the provisions of this Act
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.



PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Rashtriya Chemicals and Fertilizers Limited the applicant, seeking an advance ruling in respect of the following questions.

1. Whether "Treated Water" obtained from STP (classifiable under Chapter 2201) will be eligible for exemption from GST by virtue of Sl. No. 99 of the Exemption Notification No. 02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended) as "Water (other than aerated, mineral, purified, distilled, medical, ionic, battery, de-mineralized and water sold in sealed container)"? or
2. Whether "Treated Water" obtained from STP [classifiable under Chapter 2201] is taxable at 18% by virtue of Sl. No. 24 of Schedule - III of Notification No. 01/2017- Integrated Tax (Rate) dated 28th June 2017

(as amended) as "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 liters bottles]"?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

A. Statement of relevant facts having a bearing on the question (s) raised

1. RCF is engaged in the business of manufacture and sale of fertilizers and industrial chemicals to customers. RCF has two manufacturing plants located in Maharashtra – one at Trombay and the other at Thal. RCF has warehouses/ distribution network across various states in India.

2. RCF has been successfully operating one STP at its Trombay premises since January 2000. This plant uses sewage water and converts it into water fit for industrial use. This water is then used in the RCF factory for manufacture of the fertilizers. The water supplied by the STP meets about 60% of the daily process water requirement of Trombay unit. The balance process water requirement is being met by Municipal Corporation of Greater Mumbai ('MCGM').

3. RCF has set up a New Sewage Treatment Plant and it became operational on 10th September 2019 (herein after referred to as 'New STP') with an objective of becoming self-dependent in meeting daily process water requirements of Trombay unit. RCF has entered into an MOU with BPCL for supply of treated water which is suitable for use in industry. The surplus treated water from the new STP is being supplied to BPCL as per the terms and conditions of MOU as under:

- The new STP shall be named as "RCF-BPCL Sewage Treatment Plant" and shall be displayed at the site.
- RCF shall commit to supply pre-agreed quantum of treated water from the said STP to BPCL through the pipeline on daily basis for the period of 15 years commencing from the date of commissioning of plant.
- Quality of treated water shall be in accordance with the parameters as stated in Annexure-II of MOU. RCF shall make best efforts to maintain the treated water quality as per / better than that specified at

Annexure-II of MOU.

- *RCF is under obligation to provide daily analysis report of the treated water.*
- *In case, STP is unable to generate treated water at design capacity due to reasons beyond the control of RCF, the Company shall commit to supply treated water to BPCL on pro-rata basis, till the production level reaches its designed capacity.*
- *In case RCF is capable of supplying more than the pre-agreed quantum of water from the STP, the same shall be received by BPCL based on their requirement.*

4. The process followed by the Applicant for generation of treated water from sewage water is given below:

- *Sewage is received in a receiving chamber;*
- *From receiving chamber, the said sewage is passed through screen chamber. The screen chamber has auto operated fine bar screens. These screens remove suspended particles above a particular size;*
- *After screening, sewage passes through the grit separation units where inorganic grit having higher specific gravity is removed from the sewage;*
- *De-gritted sewage then flows to Raw Waste Water Channel containing Parshall flume for flow measurement;*
- *Therefore, sewage flows to second stage fine screening chamber (with 2 mm opening) to remove floating impurities > 2mm from the waste water. These operations will remove floating and grit like impurities from sewage and increase the life of rotating equipment;*
- *The flow after grit separation units is led to Nutrient removal sections for removal of Nitrogen and Phosphorous called pre-anoxic tank;*
- *From this stage treated sewage flows to Aeration section. The aeration tank is designed with diffused aeration system;*
- *The aerobic tank is provided for reduction of Biological Oxygen Demand ("BOD") and Chemical Oxygen Demand ("COD") and Ammonical nitrogen from raw sewage.*
- *The aerobic treatment is a biological process that uses oxygen to break down organic matter and remove other pollutants like nitrogen and phosphorus. It converts the organic matter into carbon dioxide and new biomass. The forced air from an air blower is mixed with the waste water where the aerobic bacteria feed on the waste in the water and aerobic treatment takes place;*
- *MBR process comprises of a suspended growth biological reactor integrated with a membrane based solids/liquid separation system. Membranes are immersed in an aerated tank, in direct contact with*



mixed liquor. The reactor is housed in a tank having membrane cassettes, a permeate collection system, recirculation pumps, compressed air and membrane cleaning systems;

- The permeate (i.e. the good water) from the MBR is fed to the R.O. membranes using high pressure pumps. The basic purpose of R.O. system is to reduce the dissolved solids present in water. The Reverse Osmosis system consist of auxiliary systems such as Maintenance Cleaning (MC) and Cleaning in Place (CIP) Systems and continuous Inlet online dosing of SMBS (Sodium Meta bi sulphite) & Antiscalant. The complete system shall be automated to the maximum possible extent and will be operated through PLC.
- Then water is then passed through the degasser unit to remove dissolved Carbon Dioxide.
- The treated water (15 MLD) from the R.O. trains shall be treated for pH adjustment and then shall be flows to Final Storage Tank (FST) for pumping and distribution. This tank is made up of concrete where chlorine solution is added to prevent formation of algae and for disinfection.

A copy of the Sewage Treatment Plant Package having complete steps / sequence are followed for treatment of sewage along with Screenshot is enclosed here-with as "Exhibit -2"

From the above process, it can be observed that the sewage water is converted into a treated water by treating the sewage through various advanced process to make it suitable for industrial use and as per the specific quality parameter agreed between the parties.

5. In order to determine how a treated water does is different from normal drinking water, a comparative statement of quality of new STP treated water and MCGM drinking water is given below for ease of reference. A certified copy of the same is also enclosed and marked as 'Exh.-3'

Sr. No	Parameter	New treated STP water parameters	MCGM drinking water
1	pH	6.8-7.2	7.1-7.3
2	Total Suspended Solids (TSS), ppm	Nil	10-20
3	Total dissolved solids (TDS), ppm	Max.25	80-120
4	Total Hardness as CaCO ₃ ,ppm	Max.50	60-80
5	Chemical Oxygen Demand (COD), ppm	Not traceable	Not traceable
6	Biological oxygen Demand (BOD) ppm	Not traceable	Not traceable
7	Chlorides as Cl, ppm	Max.15	15-30
8	Sulphates as SO ₄ , ppm	Max.15	15-25
9	Silica as SiO ₂ , ppm	<1	7-8
10	Oil and Grease, ppm	Not traceable	Not traceable
11	Ammonical Nitrogen as N, ppm	Not traceable	Not traceable

From the above parameter, it can be seen that while MCGM water can be used for drinking purposes as well as for other purpose. However, the treated water can be used only for specified industrial use.

6. The broad process involved for treatment of sewage water is summarized below for ease of reference:

Steps	Process involved
Step 1	Receipt of sewage
Step 2	Removal of suspended particles through screen chamber
Step 3	Inorganic grit having higher specific gravity is removed from sewage
Step 4	Remove floating and grit like impurities from sewage and increase the life of rotating equipment
Step 5	Removal of Nitrogen and Phosphorous called pre-anoxic tank
Step 6	Biological process that uses oxygen to break down organic matter and remove other pollutants like nitrogen and phosphorus
Step 7	Converts the organic matter into carbon dioxide and new biomass
Step 8	Air blower is mixed with the waste water where the aerobic bacteria feed on the waste in the water
Step 9	Membranes are immersed in an aerated tank, in direct contact with mixed liquor
Step 10	R.O. system to reduce the dissolved solids present in water.
Step 11	Removal of dissolved Carbon Dioxide
Step 12	Water from the R.O. shall be treated for pH adjustment and then flows to Final Storage Tank.

B. Statement containing the Applicant's interpretation of law and /or facts

A. Submission on admission / maintainability of Advance Ruling

1. Section 95(c) of the CGST Act states that an application for Advance Ruling can be made by an 'applicant'.

The relevant extract of the definition of the term 'applicant' is given below:

(a) "Applicant" means any person registered or desirous of obtaining registration under this Act

2. The Applicant submits that it is registered under GST law in Maharashtra having GSTIN 27AAACR2831H1ZK. Copy of GST registration certificate of the Applicant in the State of Maharashtra is enclosed herewith as 'Exhibit – 4'. Therefore, the Applicant submits that it is an eligible person to make an application for Advance Ruling.

3. Sub Section 2 of Section 97 of the CGST Act prescribes the questions, which can be raised before the Advance Ruling Authority, which specifically covers questions pertaining to applicability of notification issued under the provisions of the GST Act. An extract of the relevant clause is as follows:

(2) The question on which the advance ruling is sought under this Act, shall be in respect of-

“(a) classification of any goods or services or both;

(b) Applicability of a notification issued under the provisions of this Act;

(c) ... (d) ...

(e) Determination of the liability to pay tax on any goods or services or both;

(f)

4. The Applicant submits that the questions of law sought in this application, is neither pending nor has been decided in any proceedings in the Applicant's case, under any of the provisions of the Act. Accordingly, the Applicant submits that this application of Advance Ruling satisfies the above condition and should be allowed by the Honorable Members.
5. The Applicant prefers this application for Advance Ruling under Section 97 of Central Goods and Services Tax Act, 2017 ("CGST Act") and Maharashtra Goods and Services Tax Act, 2017 ("MGST Act") on the question of law as to:

Whether "Treated Water" obtained from STP [classifiable under Chapter 2201] will be eligible for exemption from GST by virtue of Sl. No. 99 of the Exemption Notification No- 02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended) as "water [other than aerated, mineral, purified, distilled, medical, ionic, battery, de-mineralized and water sold in sealed container]"

OR

Whether "Treated Water" obtained from STP [classifiable under Chapter 2201] is taxable at 18% by virtue of Sl. No. 24 of Schedule- III of Notification No. 01/2017 – Integrated Tax (Rate) dated 28th June 2017 (as amended) as "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 litres bottles]"?

GST Provisions:

1. For determining the applicable GST rate of Treated Water, we have extracted the relevant entries from the GST rate schedule and the Exemption Notification (supra), pertaining to water for ease of reference:

Exemption Notification No. 2/2017 – Integrated Tax (Rate) dated 28 June 2017 (as amended):

Sl. No	HSN	Description of goods	GST rate
99	2201	Water [other than aerated, mineral, <u>purified</u> , distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Exempt

Schedule III – Notification No. 01/2017 Integrated Tax (Rate) dated 28 June 2017 (as amended):

Sl. No	HSN	Description of goods	GST 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 litres bottles]	18%

The treated water obtained through the process carried out by the Applicant in the STP plant may be categorized under HSN 2201. However, the question that arises for consideration is whether the treated water can be said to be exempt and covered under Entry 99 of the Exemption Notification No. 02/2017 (supra). Further, if such water cannot be said to be exempt, then can the same be said to attract GST @18% as per Sl. No. 24 of Notification 01/2017-IGST (supra).

2. Submissions to understand the scope of Entry 99 of the Exemption Notification

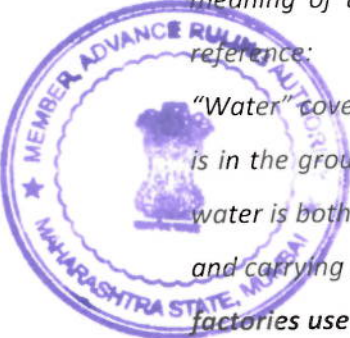
2.1 As per Entry 99 of the Exemption Notification, **the following is exempt:**

- All water

Further, as per exclusion clause in Entry 99, the **following has been excluded from the purview of exemption and hence will be liable to GST at the applicable rate:**

- Aerated water, Mineral water, Purified water, Distilled water, Medicinal water, Ionic water, Battery water, Demineralized water and Water sold in sealed container

2.2 It is herein submitted that to understand the scope of the exemption notification, it would be relevant to understand the meaning of the term 'Water' and what it covers so that the scope of the exemption can be clearly understood. The term 'Water' has not been defined in the GST Law. Thus, the dictionary meaning of the word 'Water' from the law lexicon has been reproduced here-in below for ease of reference:



"Water" covers more than seventy percent of the earth's surface. It fills the oceans, rivers and lakes and is in the ground and in the air we breathe. Without water there can be no life. Today more than ever, water is both slave and master to the people. We use water in our homes for cleaning, cooking, bathing and carrying away wastes. We use water to irrigate dry farmlands so that we can grow more food. **Our factories use more water than any other mineral.** We use water in rushing rivers and thundering water falls to produce electricity.

The word 'water' has been used in the Act in both the senses namely (i) it is a mineral and (ii) the most common, readily and freely available substance on earth [Ichchapur Industrial Coop. Society Ltd. vs. Competent Authority ONGC (1997) 2 SCC 42 , 52, para 28] [Petroleum and Minerals Pipelines (Acquisition of Rights of User in Land) Act (50 of 1962) , S. 2 (ba)]

2.3 From the above it can be seen that water used in factories as an industrial input is also covered under the term 'Water' and has been considered by the Law Lexicon to be included in the definition of the word 'Water'.

2.4 It is also worthwhile to note that as per the scheme of classification under the erstwhile Central Excise Tariff Act (here-in-after referred to as 'CETA'), manufacture and sale of water was exempt from Central

Excise.

- 2.5 Further, in the case of Commissioner of C.Ex. Jamshedpur vs. Kamani Foods [1999 (114) ELT 644 (Tribunal)], the Hon'ble Calcutta Tribunal in respect of matter related to classification of the product 'Treated Pure Water' held that the treated pure water is not excisable as no mineral salts are added in the treated water.

In this respect, it is most humbly submitted that the process carried out by the Applicant involves converting the sewage water into treated water of an agreed quality to make it suitable for industrial use but does not involve addition of any minerals to the water to make it fit for drinking purposes. The comparative presented by the Applicant between the water generated from sewage and between normal drinking water (not mineral water) has been submitted in Para 5 of Annexure II. From the difference, it can be seen that the processes through which the sewage water is subjected to certainly purifies the water and make it suitable for industrial use but the same does not contain the essential characteristics to make it fit for drinking.

- 2.6 Thus, such treated water generated from the STP Plant and used in the factory by either RCF or by BPCL is squarely covered under the term 'Water' as used by Sl. No. 99 of the Exemption Notification.

- 2.7 Further, as per the Maharashtra VAT Act, 2002 (here-in-after referred to as 'MVAT Act, 2002') also, 'Water' has been covered under Schedule A which is for NIL rated goods. Thus, even in MVAT regime, there was no VAT on sale of 'Water' in the State of Maharashtra.

Thus, as mentioned above, even as per the erstwhile excise regime and the MVAT law, the intention was not to levy excise duty or VAT on 'Water'.

Exclusions from the exemption clause:

- 2.8 As mentioned in Paragraph 2.1 above, certain categories of water have been excluded from the exemption notification which have been listed in the same paragraph. The meaning of such categories of waters are not defined in the GST law. Hence, we have extracted the dictionary meaning (or the meaning understood in common parlance) for ease of reference as under:

Aerated Water:

Aerated water (https://en.wikipedia.org/wiki/Aerated_water)

"Aerated water is, correctly speaking, water to which air is added".

"The term is, however, frequently applied to carbonated water".

Mineral water:

Mineral water (<https://dictionary.cambridge.org/dictionary/english/mineral-water>)

"natural water from underground, containing dissolved minerals that are believed to be good for your health"

Purified Water:

Purify - Dictionary meaning (<http://www.dictionary.com/browse/purify>)

"to make pure; free from anything that debases, pollutes, adulterates, or contaminates"

"to free from foreign, extraneous, or objectionable elements"

Purified Water (<https://encyclopedia.thefreedictionary.com/purified+water>)

"Purified water is water that has been mechanically filtered or processed to remove impurities and make it suitable for use..... Purified water in colloquial English can also refer to water which has been treated ("rendered potable") to neutralize, but not necessarily remove contaminants considered harmful to humans or animals."

Distilled water:

Distilled water (<https://dictionary.cambridge.org/dictionary/english/distilled-water>)

"Water that has been made purer by being heated until it becomes a gas and then cooled until it becomes a liquid again"

Medicinal water:

Medicinal (The Law Lexicon)

"Having the properties of medicine; adopted to medical use or purpose; curative (Century Dict.) Having healing properties, attributes, relating or pertaining to the science and art concerned with the cure, alleviation and prevention of disease and with restoration and prevention of health".

Ionic water:

Ionic (<https://dictionary.cambridge.org/dictionary/english/ionic>)

"relating to an atom or small group of atoms that has an electrical charge because it has added or lost one or more electrons"

Battery Water:

Water battery (<https://www.thefreedictionary.com/Water+battery>)

"(Elec.) A voltaic battery in which the exciting fluid is water".

"(Mil.) A battery nearly on a level with the water".

Demineralized Water:

Demineralized water ([https://envicaresystems.com/demineralization-water-treatment-plants-](https://envicaresystems.com/demineralization-water-treatment-plants-pune.html)

[pune.html](https://envicaresystems.com/demineralization-water-treatment-plants-pune.html)). "Demineralised Water is Water completely free (or almost) of dissolved minerals as a result of one of the following processes :



- 5.1.1 Distillation
- 5.1.2 Deionization
- 5.1.3 Membrane filtration (reverse osmosis or nanofiltration)
- 5.1.4 Electrodialysis
- 5.1.5 Or other technologies”.

2.8.2 As per the erstwhile Central Excise Tariff Act, 1985, under Chapter Heading 2201, what was covered was ‘Water including natural or artificial mineral water and aerated water, not containing added sugar or other sweetening matter or flavoured; ice and snow’.

2.8.3 As per the Explanatory Notes to the HSN published by the World Customs Organisation, the terms ‘Mineral Water’ including ‘Natural Mineral Water’ and ‘Artificial Mineral Water’ and the term ‘Aerated Water’ have been specifically explained.

Further, as per the explanatory notes, it also includes ‘Ordinary natural water of all kinds (other than sea water), **whether clarified or purified**, except that distilled or conductivity water and water of similar purity which is covered under Chapter 28.53.

2.8.4 Of the above categories of water, treated water obtained through the STP may be said to resemble ‘**purified water**’. It may be said that as the water generated from the STP Plant is purified or treated water to make it suitable for industrial use, the same is to be excluded from the exemption notification.

2.8.5 It is here-in submitted that all the other categories of water as mentioned in the exclusion clause have some special characteristics and specialised uses such as they are use in aerated drinks, medicinal/ health uses, automotive cooling system, sterilisation, Laboratory application, Car battery, etc. However, as the term ‘purified’ has not been defined, it is not clear whether the process carried out by the Applicant to convert sewage water into water fit for industrial consumption can be said to be covered under ‘purified water’.

2.8.6 In the case of the Applicant, the process essentially involved is removing bio-waste, grit and removing undesirable chemicals, biological contaminants, suspended solids, and gases from sewage water. The goal is to produce water fit for being used in the factory of RCF as well as if available in surplus then the same shall be also sold for usage as an Industrial Input. The process carried out on raw sewage water in the STP, making it suitable for industrial use may be said to be covered under ‘purification process’.

2.8.7 While on the above, it would also be relevant to note that to further understand the meaning of the word ‘purified water’ in the exclusion to the exempted water, one should apply the legal maxim of

noscitur a sociis i.e. the meaning of a word may be construed in conjunction with the other words and phrases used in the text.

Thus, as the words 'purified water' have not been defined under the GST Law, the meaning of the accompanying words should be looked into to derive the intent of the usage of the words in Sl. No. 99 after 'other than'. The words 'aerated', 'mineral', 'purified', 'distilled', 'medicinal' etc. excluded from the exemption notification seem to indicate the intent to excluding water which has been processed from naturally available water and also used for specialised purposes. Thus, the source of initial process is water whereas in case of Applicant, the source is sewage.

2.8.8 In this regard, reliance is placed on the judgment of CTO, Anti-Evasion, Circle-II, Jaipur vs. MRF Ltd. [2009 (235) ELT 802 (Raj.)] wherein the Hon'ble Rajasthan High Court has held that Words of general and wider import used in an entry surrounded by other relevant terms has to draw its colour and meaning from such surrounding words and that cannot be lost sight of. The relevant text of the judgment is reproduced here-in-below for ease of reference:

"The principles of ejusdem generis or noscitur a sociis are well settled principles of interpretation and the words of general and wider import used in an entry surrounded by other relevant terms has to draw its colour and meaning from such surrounding words and that cannot be lost sight of. Though this Entry No. 91 as such was not referred by any of the authorities below and discussed in detail as to whether the same would apply to the commodity in question or not but this being the only relevant entry regarding synthetic adhesives providing for 16% rate of tax and this being the only core question of law arising out of the order of the Tax Board and there being no other competing entry prescribing 16% rate of tax exercised on synthetic adhesive, this question can very well be decided in the present revision petitions and this Court is of the opinion that there is no need to remand the case back to the Appellate Courts below for this purpose."

As submitted above, the intention of the usage of the word 'purified' seems to indicate purification for some specialized purpose. The Applicant is using sewage water and is carrying out certain processes such that the water can be used for Industrial purposes. There are no processes carried out on naturally available water by the Applicant and such water is also not used specifically for certain specialized purposes. The water can be used by the Applicant or it can also be sold to any other industry which uses water as an Industrial input. Thus, ideally such water should not be covered under the exclusion clause of Entry 99 and may be said to be exempt. However, as discussed above, owing to the lack of clarity in understanding the term 'purified' in the exclusion clause, the Applicant is hereby filing this Advance Ruling to understand whether the Water generated and supplied by the Applicant from the STP plant



can be said to be covered under the main entry 'Water' of Sl. No. 99 or would be covered under 'Purified' and hence covered under the exclusion part of the exemption notification.

3. Treated water supplied by RCF is not sold in sealed container and is thus eligible for exemption from GST

3.1 The treated water is supplied by RCF to BPCL through a pipeline and not in a sealed container. On a perusal of the position in the erstwhile VAT and Excise regime, it is evident that the intention of the law is to tax only those waters which are normally sold in sealed containers. In other words, the intention of the law is never to levy any tax on "water which is not cleared in sealed containers." Hence, even under GST regime, the intention of law seems to provide the exemption from levy of GST for any kind of water which is not cleared in sealed container as the rates for various goods prescribed in the GST Tariff have been almost aligned with the earlier rates of Excise/ VAT.

3.2 It is pertinent to note that "waters" excluded from the exemption notifications as per Entry 99 of Notification No. 2/2017 – C.T.(Rate) (supra) are of specific nature, which, if not sold in sealed containers, shall be susceptible to losing their distinguishing characteristic. For example, aerated water is necessarily required to be sold in a sealed container as it will lose the "aerated" nature of the same if sold otherwise. Similarly, distilled, medicinal, ionic, battery, de-mineralised and waters of like nature, are necessarily required to be sold in sealed containers as the quality/ nature of such water may get compromised due to any kind of contamination in an open container or any other manner of sale of the same.

3.3 Further, Circular No. 52/26/2018 dated 09.08.2018 at Paragraph Number 6 also clarifies that "Accordingly, supply of water, other than those excluded from S. No. 99 of Notification No. 2/2017 (supra) would attract GST at "NIL" rate. Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in sealed container, is exempt from GST."

3.4 Accordingly, it can be said that the Exemption Entry also applies to sewage treated water which is not cleared in sealed containers i.e. the same is nothing but treated water cleared through pipelines.

4. Submissions to understand the scope of Entry 24 of Schedule III of Notification No. 01/2017

4.1 As per Entry 24 of Schedule III i.e. goods taxable under 18%, the following categories of water is covered:

- Waters
- Water including:
 - Natural or artificial mineral water
 - Aerated water

The following are excluded:

- The above water should not contain added sugar or other sweetening matter and



- The water should be other than drinking water packed in 20 litres bottles

4.2 Basis the above, it is seen that mineral water and aerated water which were covered under the exclusions as per Sl. No. 99 of the exemption notification have been specifically included in Sl. No. 24 and chargeable to 18% rate of GST.

4.3 Further, this entry at Sl. No. 24 has mentioned the words 'Waters, including..' which essentially means that all kinds of water apart from the one that is specifically excluded i.e. water containing sugar / sweetened matter and water packed in 20 litres bottles, rest all kinds of water should be included in this entry.

4.4. In this regard, it would be worthwhile to understand the meaning of the term 'including' and that by usage of the words 'including', the law draftsmen have intended to widen the scope of the words preceding it.

Reliance in this regard is placed on the decision of The Supreme Court in the case of **Krishi Utpadan Mandi Samiti vs. Shankar Industries, (1993) Supp (3) SCC 361(1)** wherein it was held that where the legislature uses the words 'means' and 'includes' such definition is to be given a wider meaning and is not exhaustive or restricted to the items contained or included.

Thus, placing reliance on the above, Sl. No.24 is starting with the word 'Water' and then after a comma separator mentions "including natural or artificial mineral water ". Thus, one may contend that the other varieties of water is excluded from Sl. No. 99 of the exemption Notification and is sought to be included in this Sl. No. 24 and liable to GST rate of 18%.

4.5 However, if the actual intention of this entry is understood, it seems that the intention is to charge GST @18% on all kinds of water which is fit for human consumption such as 'Aerated Water' or 'Mineral water' and the intention is not to levy tax on sewage which has been subjected to certain process to purify the water. Hence, question is whether the same can be said to be excluded from the exemption notification and covered under Sl. No. 24 under 'Waters including ... "and thus subject to GST at 18%.

4.6 In the instant case, the treated water generated in the STP plant of the Applicant is neither natural or artificial water nor aerated water but it may be included in first part of this entry as 'Water' and it may be said that by specifically including aerated and mineral water the other categories of water excluded in Sl. No. 99 are also intended to be included here.

4.7 Thus, in view of the above, due to lack of clarity as to whether the water supplied from the STP Plant by the Applicant is covered under the exemption notification or the same should be subject to GST at 18%. The Applicant is herein filing this Advance Ruling before your good self to provide clarity as regard to the classification of the water generated from the STP Plant and supplied for industrial use to BPCL.

PRAYER IN ADVANCE RULING

In view of the above facts and circumstances, the Applicant prays before the Hon'ble Authority that:

1. The Applicant for advance ruling on the determination of applicable GST rate on supply of treated water be accepted/ admitted for advance ruling.
2. The Applicant be granted an Advance Ruling on the determination of applicable rate i.e. whether supply of treated water will be liable to GST at 18% or will be exempted from GST.
3. Any other or further relief as Hon'ble Authority deems fit, proper and reasonable, on the facts of the case, may be granted.

APPLICANT SUBMISSION DATED 03.08.2021:-

A. Description in brief:

Rashtriya Chemicals and Fertilizers Limited ("Applicant") is engaged in business of manufacture and sale of fertilizers and industrial chemicals to customers.

The Applicant has set up a **Sewage Treatment Plant ('STP')** with an objective of becoming self-dependent in meeting daily process water requirements of Trombay unit. In sewage treatment process, **sewage water** is treated through various processes to make it suitable for industrial use. The surplus water from the STP is being supplied to Bharat Petroleum Corporation Limited ('BPCL') through a pipeline.

B. Question(s) on which advance ruling is required:

RCF has sought Advance Ruling on the **applicable rate of GST on supply of the sewage treated water** to BPCL under the following entry:

Exemption Notification no. 2/2017-Integrated Tax (Rate) dated 28 June 2017:

Entry	HSN	Description of goods	GST Rate
99	2201	Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Exempt (NIL rate)

Schedule III – Notification no. 1/2017 Integrated Tax (Rate) dated 28 June 2017:

Entry	HSN	Description of goods	GST Rate
24	2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured	18%

C. Additional submissions on merit:

1. Applicable GST rate on goods has been determined by GST Council considering the tax rates under the erstwhile regime (Central excise, VAT regime):

It is worthwhile to note that during planning and implementation of GST, the Hon'ble Finance Minister Mr. Arun Jaitley had announced that the tax rates under GST would be more or less in the similar band as the rates under the erstwhile indirect taxes (i.e. Central excise, VAT, etc.). An extract of the statement made by the Finance Minister and reported in <https://www.news18.com/news/business/arun-jaitley-promises-no-surprises-in-gst-rate-fixation-1386285.html> is given below:

"We are now in final stages of fixing tariffs for different commodities.

"The formula under which it is being done has also been explained and therefore nobody is going to be taken by surprise, it's **not going to be very significantly different (from present)**," he said. **Fitment will be done by adding the total incidence of current taxation (central plus state levies) and then putting the goods or service in the tax bracket closest to it.** And therefore all states representing different political complexions, have all agreed (on GST structure)," he said Further, an **Extract of the 14th GST Council Meeting held on 18th & 19th May 2017 is reproduced below:**

Agenda Item 9: Approval of the Fitment of goods and services into the various rate slabs: 15.1. Introducing this agenda item, the Secretary stated that in the 4th Council Meeting (held on 3-4 November, 2016), the **Council had laid down a set of guiding principles in respect of bands of rates of GST** and GST Compensation mechanism and that officers of the Fitment Committee consisting of the Central Government and ten State Governments met three times (for a total of six days) **and finalized its recommendations on rates on the basis of these guiding principles.** He stated that the Committee had recommended the **rates after taking into account the present tax incidence** on account of Central Excise, Service Tax and VAT (including cascading on account of these taxes) as well as embedded taxes and the incidence of CST, Octroi, Entry Tax, etc.

[<http://www.gstcouncil.gov.in/14th-gst-council-meeting>]

In view of the above, under the erstwhile Central Excise Tariff Act, manufacture and sale of water not sold in sealed containers was exempt from Central Excise Duty as stated below:



General Exemption No.50:

Sr. No	Chapter	Descriptions of excisable goods	Rate	Condition No.
39	22019090	Waters not cleared in sealed containers	Nil	-

Further, as per the Maharashtra VAT Act, 2002, 'Water' was covered under **Schedule A** which is for NIL rated goods. Thus, even in MVAT regime, there was no VAT on sale of 'treated water' in the State of Maharashtra. The relevant entry is reproduced below:

Schedule A- Maharashtra VAT Act, 2002:

Sr. No	Name of the commodity	Conditions and exceptions	Rate of Tax
49	Water other than,- (a) aerated, mineral, distilled, medicinal, ionic, battery, demineralized water, and (b) Water sold in sealed container. (c) Water for injection.	-	0%

In view of exemption for water under excise and the MVAT law and the decision taken by the GST Council, it is evidently clear that the intention of the Government was not to levy any tax on sale of 'Water'. Accordingly, supply of water (not sold in sealed container) should be exempted from payment of GST.

2. If any treatment on water would amount to purification of water, then nothing should fall under exemption entry:

As you are aware, raw water obtained from ground (well/pond/bore well) and rain cannot be used in its natural form for any purpose without any minimal treatment to it. It is a general practice across the globe that water would need to be processed to the extent required for the specific end use.

Basis the generic meaning of purified water, any water on which any treatment is done would amount to purified water. If that be the case, no supply of water would be eligible for such exemption as every supply would be subject to minimal treatment and would fall under the meaning of purified water and be excluded from the exemption entry.

In case of the above, the intention of the Government to grant exemption for supply of water would be defeated wholly.

3. Test of purposive interpretation:

We understand that objective of the law was not to levy tax on supply of water (other than aerated, mineral, distilled, medicinal, purified, ionic, battery, de-mineralized and water sold in sealed

container). It is well settled principle that the law would have to be interpreted having regard to the objective it seeks to achieve. Hence, it is important to look at the substance of the transaction and determine the levy of GST accordingly.

- When supply of water from well or bore well is not subject to GST, how can water obtained from STP be treated as purified water and levy tax thereon.
- In this regard, reference can be made to the decision in the case of *State of West Bengal vs. Union of India* [AIR 1963 SC 1241 at p. 1265], wherein the learned Chief Justice stated that the Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.
- The said principle has been reiterated in *R.S. Raghunath vs. State of Karnataka and another* [AIR 1992 SC 81 at p. 89].
- With reference to the above judicial precedents, the exemption entry must be read with the intention of the Government on exempting supply of water (other than in sealed containers) from tax in erstwhile as well as GST regime. The entry should be interpreted having regard to the objective of the Government.

4. Water supplied by RCF is not 'Purified Water' as contemplated under the GST law:

- Purified water is water that has been processed to remove impurities like chemicals and other contaminants such as bacteria, algae, fungi, parasites, metals like copper and lead, chemical pollutants.

It is worthwhile to note that water obtained from STP and sent to BPCL contains bacteria, virus etc. The Applicant has not undertaken ultraviolet treatment on such treated water for removing the bacteria, virus and E. coli. Therefore, water obtained from STP cannot be construed to be purified water as the same still contains impurities.

- Further, in the case of *Commissioner of C.Ex. Jamshedpur vs. Kamani Foods* [1999 (114) ELT 644 (Tribunal)], the Hon'ble Calcutta Tribunal in respect of matter related to classification of the product 'Treated Pure Water' held that the treated pure water is not excisable as no mineral salts are added in the treated water.

5. Wikipedia post are not authentic and reliable:

- On perusal of the comments provided by Pr. Commissioner, GST/CX, we understand that reliance has been placed on the definition of 'Water treatment' available on Wikipedia basis which it has been concluded that water obtained from STP is 'Purified water'.



However, it is a well-settled position that Wikipedia posts are not authentic and reliable. Wikipedia posts can be edited by anyone at any time, any information it contains at a particular time could be a work in progress or just wrong. Wikipedia entries are made by volunteer editors and contributors and are always subject to corrections and revisions. Further, the Hon'ble Supreme Court in its judgment in *Comm. of Customs, Bangalore vs. ACER India Pvt.* (Citation 2007(12) SCALE581) held that Wikipedia is an online encyclopedia and information can be entered therein by any person and as such it may not be authentic and cannot be relied upon"

In view of the above submissions, the Applicants pleads before the Hon'ble Advance Ruling Authority to issue appropriate order clarifying on the applicable rate of GST on the supply of treated sewage water to the customer.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The submissions, as reproduced verbatim, could be seen thus-

"The assessee engaged in the manufacture and sale of fertilizers and industrial chemicals to customers. They have its factories at Trombay and Thal in Maharashtra. They have already an existing Sewage Treatment Plant at Trombay which is unable to meet the complete requirement. Hence, the assessee has set another Sewage Treatment Plant (hereinafter referred to as "STP") with an objective to become independent in meeting daily process of water requirements of their factory at Trombay. After this new STP plant becomes operational and there will be surplus water after meeting the complete requirement at Trombay.

M/s Bharat Petroleum Corporation Limited (hereinafter referred to as "BPCL") desired of buying such surplus water from the assessee i.e. M/s RCF Ltd. and for this purpose, both the companies entered into "Memorandum of Understanding (MOU) to the effect. On the basis of MOU, the sewage water procured by M/s RCF Ltd. shall be subjected to various process and once the water has reached its level of quality as prescribed in the Annexure to MOU, the water then would be supplied through pipelines by M/s RCF Ltd. to BPCL. The said water has been manually referred by both the companies as Treated Water.

Therefore, M/S RCF Ltd. has preferred an application for Advance Ruling under Section 97 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act and Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as "SGST Act") on the question of law relating to applicable rate of GST on supply of the treated water to BPCL as to:

Whether Treated Waters obtained from ST) (classified under Chapter 2201) will be eligible for exemption from GST by virtue of Sl.No:99 of the Exemption Notification No. 02/2017 - Integrated Tax

(Rate) dated 28.06.2017 (as amended as "Water (other than aerated, mineral, purified, distilled, medical, tonic, battery, de mineralized and water sold in sealed container")

- (1) Whether Treated Water" obtained from STP (Classified under Chapter 2201) is taxable at 18% by virtue of Sl.No.24 of Schedule-III of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) as "Water, including natural or artificial mineral waters and aerated water, not containing added sugar or other sweetening matter nor flavoured (other than Drinking water packed in 20 litres bottled")

GST Provision: Exemption Notification No.2/2017 - Integrated Tax (Rate) dated 28.06.2017 (as amended)

SI.NO	HSN	Description of goods	GST Rate
99	2201	Water (other than aerated, mineral, purified, distilled, medicinal, tonic, batter, de-mineralized and water sold in sealed container	Exempt

Schedule-III – Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2019 (as mended)

SI.NO	HSN	Description of goods	GST 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 litres bottle)	18 %

PRAYER

- According to Wikipedia "Water treatment is any process that improves the quality of water to make it more acceptable for a specific end-use. The end use may be drinking, industrial water supply, irrigation, river flow maintenance, water recreation or many other uses, including being safely returned to the environment. Water treatment removes contaminants and undesirable components, or reduces their concentration so that the water becomes fit for its desired end-use. This treatment is crucial to human health and allows humans to benefit from both drinking and irrigation use" Hence water obtained from Sewage Treatment Plant can be considered as 'purified water.'

- Entry Sl. No. 99 of the Exemption Notification No-02/2017- Integrated Tax(Rate) dated 28 June 2017 (as amended) as "water (other than aerated, mineral, purified, distilled, medical, ionic, battery, de-mineralized and water sold in sealed container}" clearly excludes "purified" water from the scope of exemption.
- As per Exhibit 1, BPCL and RCF entered in Memorandum of Understanding and "BPCL has agreed to pay interest free deposit for a sum of Rs.8284.70 lakhs for an estimated capital cost of STP Project of Rs19778.91 lakhs (including Interest during Construction of Rs 487.64 lakhs and pipeline cost of Rs. 621.89 lakhs between RCF and BPCL) to RCF by way of a Demand Draft/Cheque in consideration".

Also RCF is taking consideration for day to day supply of treated water to BPCL. BPCL will use this water in course of furtherance of business that is industrial use

4. As per Exhibit 2, Sewage Treatment Plant undertakes processes of screening, grit removing, nutrient removing, aeration, Reverse Osmosis on the sewage water. This amounts to treating water and purifying it.

Hence department contends that "Treated Water" obtained from STP (classifiable under Chapter 2201) will not be eligible for exemption from GST by virtue of SI. No. 99 of the Exemption Notification No-02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended) as "water (other than aerated, mineral, purified, distilled, medical, ionic, battery, de-mineralized and water sold in sealed container"

And "Treated Water" obtained from STP (classifiable under Chapter 2201) is taxable at 18% by virtue of SI No, 24 of Schedule- III of Notification No.01/2017 - Integrated Tax (Rate) dated 28th June 2017 (as amended) as & quote; 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 litres bottles)" .

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 07.01.2020. Shri. Santosh Sonar, learned CA appeared, and requested for admission of the application. Jurisdictional Officer Shri. Rajeev Kadam, Superintendent also appeared.

- 4.2 The application was admitted. Final e-hearing was conducted on 03.08.2021. The Authorized representatives of the applicant, Shri. Santosh Sonar, CA, Shri. Pravin Jain, Senior Manager, Shri. Nagesh Chandan, Asst. Manager and Smt. Mrudula Godbole were present. The Jurisdictional officer Shri. Ashok Gamre, Superintendent, Range IV, Division I, Mumbai East was present. The Authorized representatives made oral and written submission.

- 4.3 **Heard both sides.**

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department. The issue involved is limited to the rate of tax i.e. classification of the impugned product, I.e. 'Treated Water' processed from sewage water; whether it is exempt or not and the applicable tax rate thereon under the GST ACT.

5.2 M/s RCF, the applicant engaged in the business of manufacture and sale of fertilizers and industrial chemicals to customers, has been successfully operating one Sewage Treatment Plant (STP) at its Trombay premises since January 2000, which uses sewage water and converts it into water fit for industrial use. This water is then used in the RCF factory for manufacture of the fertilizers. Applicant has set up a New Sewage Treatment Plant (New STP) which is operational since 10th September 2019 and has entered into an MOU with BPCL for supply of treated water which is suitable for use in industry. The surplus treated water from the new STP is being supplied to BPCL as per the terms and conditions as mentioned in MOU.

5.3 We find that, the process followed by the Applicant for obtaining the treated water from the sewage water, is given in its aforesaid submission in point no. 4 of statement of facts in para 2 in details. It is not repeated here. Applicant has submitted that from the process of sewage treatment, the sewage water is converted into a treated water; by treating the sewage water through various advanced processes to make it suitable for industrial use and output water is as per the specific quality parameters agreed between the parties. The treated water obtained through the process carried out by the Applicant in the STP plant may be categorized under HSN 2201. However, the question that arises for consideration is whether the treated water can be said to be exempt and covered under Entry 99 of the Exemption Notification No. 02/2017 (supra). Further, if such water cannot be said to be exempt, then can the same be said to attract GST @18% as per Sl. No. 24 of Notification 01/2017-IGST (supra).

5.4 The applicant has submitted that the process carried out it involves converting the sewage water into treated water of an agreed quality to make it suitable for industrial use but does not involve addition of any minerals to the water to make it fit for drinking purposes. The comparative details (presented by the Applicant) of the waters showing the comparison between the water generated from sewage and the normal drinking water (not mineral water) is submitted in Para 5 of Annexure II. From the perusal of the comparison, it can be seen that the processes through which the sewage water is subjected to, certainly purifies the sewage water and makes it suitable for the industrial use but the same does not contain the essential characteristics to make it fit for drinking.


5.5 It is contended by the applicant that such treated water generated from the STP Plant and used in the factory by either RCF or by BPCL is squarely covered under the term 'Water' as used by Sl. No. 99 of the Exemption Notification. In addition, it is submitted that, as per the Maharashtra VAT Act, 2002 also, 'Water' was covered under Schedule 'A' which has NIL rate of tax. The above category of water, i.e. treated water obtained through the STP, may be said to resemble '**purified water**'. However, it

is noticed that since the water generated from the STP Plant is purified or treated water which makes it is suitable for industrial use, the same is to be held as excluded from the exemption notification.

5.6 We find from the submission of the applicant that the essentially involved process is removing bio-waste, grit and removing undesirable chemicals, biological contaminants, suspended solids, and gases from sewage water. The goal is to produce the water which is fit for being used in the factory of RCF, as well as, if it is available in surplus then the same shall be also sold; for usage as an Industrial Input. The processes are carried out on raw sewage water in the STP, making it suitable for industrial use, may be said to be covered under the term 'purification processes'. The Applicant is using sewage water as an input and is carrying out certain processes on said sewage water so that the output water obtained can be used for Industrial purposes. These processes are not carried out on naturally available water by the Applicant. The output water can be used by the Applicant for captive consumption or it can also be sold to any other industry which uses water as an Industrial input. According to applicant, such water should not be covered under the exclusion clause of Entry 99 and may be said to be exempt.

5.7 In view of the above, the applicant has raised a specific question about such '**treated water**' which is the forward supply of the applicant. To decide the present issue of rate of tax thereon, we find that, the 'water' is covered under Chapter heading 2201 of GST Tariff. We also find that there are two schedule entries for 'water' under Chapter headings 2201 under the CGST ACT. The first is Entry No. 99 of Notification No. 02/2017-Central Tax (Rate), dt. 28-06-2017 which is an exemption notification. The second is Entry No. 24 of Notification No. 1/2017-Central Tax (Rate) dt. 28.06.2017.

5.8.1 Sr. No. 99 of exemption Notification No. 2/2017 dt. 28.6.2017, is reproduced as under:



Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
99	2201	Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Nil	Nil

5.8.2 The aforesaid entry at Sr. No. 99 reveals that it covers "water" other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container.

The said entry and HSN speaks about only “**water**” whereas other category of **waters** mentioned therein including purified water, are not provided exemption from tax. The said entry therefore covers simple and natural type of water and further it does not contain water which has been subject to processes like purification or treated etc.

- 5.8.3 It is observed that the applicant has processed the sewage water which contains various kinds of organic and inorganic impurities like sand, silt, clay, chemicals, organisms, etc. It is found from the processes undertaken by the applicant that it essentially involves removing bio-waste, grit and removing undesirable chemicals, biological contaminants, suspended solids, and gases from sewage water. The sewage water cannot be used, in any way, in its original form. Sewage water can be used only after it is purified and even the purified sewage water is not used for drinking purposes. It is, however, found to have industrial uses. Such sewage water is purified by applying different processes in the STP plant as mentioned by the applicant in the above written submission. Thereafter, such obtained water is called as treated water and is sold to the ‘BPCL’ for the industrial use. We do not find that Applicant has used it as potable or drinking water for public use. The applicant specifically admitted this fact.

- 5.8.4 As per the parameters tested by the applicant, the properties of processed water generated from the sewage is different than the properties of the original sewage water received in the STP plant. Therefore in our view, ‘Treated Water’ is purified sewage water and since it is purified water, the same will not fall under Sr. No. 99 of Notification 02/2017-C.T. (Rate) dated 28.06.2017. Since the said entry at Sr. No. 99 mentions that water, other than **purified**, aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container, only will get exemption, therefore the impugned product being **purified sewage water** will not get benefit of exemption.


- 5.8.5 It is clear from the wording used by the legislation that it is not expected to exempt such purified water from GST. We feel that the subject product is out of purview of this entry and hence the subject product, is not covered under “water” as prescribed in the schedule entry no. 99 of Notification no. 2/2017-C.T. (Rate) dated 28.6.2017. The contention of the applicant that the treated water should be covered under water of entry 99 of notification 2/2017-C.T. (Rate) dated 28.6.2017 and is exempted from Taxes is not found acceptable.

- 5.9 The second Entry No. 24 prescribed in Schedule III of Notification No. 1/2017-Central Tax (Rate) dt. 28.06.2017 is reproduced as below: -



Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
	(3)	(4)	(5)	(6)
24	2201	<u>Waters</u> , including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured.	9	Nil

5.10.1 It is further observed from the said Entry 24 of Schedule III of Notification No. 1/2017 which relates to “Waters” that it is amended vide Notifications No. 06/2018- Central Tax (Rate), dt. 25-01-2018. New entry relating to water is inserted vide the said amended Notification (at Sr. No. 46B of Schedule II of the Notification). Effect of all above mentioned notifications, with effect from 29.02.2018, is reproduced as under:



Schedule	Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
(1)		(3)	(4)	(5)	(6)
Schedule II- 6%	46B	2201	Drinking water packed in 20 litres bottles	6	Nil
Schedule III- 9%	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 litres bottles	9	Nil

5.10.2 On perusal of the above notification entries, it is found that, “*Drinking water packed in 20 litres bottles*” are liable to tax 12% and the “*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 litres bottles*” are taxable and liable to tax @18% GST.

5.10.3 In the subject case, the impugned water is used by the applicant for its own use i.e. in its factory and is also supplied to BPCL. The said water is obtained after the treatment to sewage water as submitted by the applicant and the said water is not potable i.e. it is not potable. It is not mentioned in the written contention of the applicant that the said water is used as normal drinking water for human consumption or is used for any manufacturing of 'aerated water' or 'Mineral water' or 'distilled' or 'iconic' or 'sweetening matter' etc'. So it is clear that the said water is never to be used for human consumption as well as never to be used as normal water. Hence in our view entry No. 46 B which pertains to drinking water only is not applicable to the impugned product.

5.10.5 The Dictionary meaning of Purification is "the removal of contaminants from something." Thus, Purified water means water on which any process has been carried out for removal of contaminants for making it fit for use. In the present case applicant has undertaken certain processes which involves removing of bio-waste, grit and removing undesirable chemicals, biological contaminants, suspended solids, and gases from sewage water. As per the applicant's submissions, it is clear that various contaminants are removed from the sewage water, thus purifying it to make it purified sewage water which is useful for Industrial purpose. As per the contention of applicant 'Treated Water' is not potable but it can be used for Industrial use. Hence the contention of the applicant that it is to be covered under exemption entry no 99 of Notification No. 2/2017 is not correct. We do not find any reasons to agree with the applicant's views. We are of the firm opinion that, the Treated water obtained from the STP supplied by the applicant is "purified Water" and is covered Entry No.24 of Notification No. 01/2017-C.T. (Rate) dated 28.6.2017.

5.10.6 Entry No. 24 of Schedule III of Notification No. 01/2017-C.T. (Rate) dated 28.6.2017, as amended, uses the word "**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 litres bottles". The words 'waters' is used in plural form and further specifically mentions inclusion of different type of waters which are to be covered under the said Sr. No. 24. Thus, it is clear that different type of waters are covered in Entry No. 24, prescribed as "**waters**" and the same excludes the entries of 'water' covered under Sr.No. 99 of Notification No. 02/2017-C.T. (R) dated 28.06.2017 and Entry 46B of Schedule II of Notification No. 01/2017-C.T. (Rate) dated 29.2.2018. The words mentioned in the statute and notification under GST Act is to be read strictly to allow any exemption of taxes.

5.10 Applicant has submitted that Circular No. 52/26/2018 dated 09.08.2018 at Paragraph Number 6 clarifies that "Accordingly, supply of water, other than those excluded from S. No. 99 of Notification No. 2/2017 (supra) would attract GST at "NIL" rate. Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in sealed container, is exempt from GST." Accordingly, it can be said that the Exemption Entry also applies to sewage treated water which is not cleared in sealed containers i.e. the same is nothing but treated water cleared through pipelines.

On the perusal of the clarification, we find that it is clearly mentioned that 'supply of drinking water for public purposes, if it is not supplied in sealed container, is exempt from GST' but in the present matter, we find that the treated water is neither supplied for to be use as **drinking water for public purposes**, nor supplied in sealed container, as drinking water, to BPCL. Applicant has not submitted that the said treated water from sewage, is used for drinking water for public purposes, hence it should be liable for exemption under entry 99 of notification 2/2017. Therefore the contention of the applicant to allow the exemption to its impugned product, is not found acceptable.

5.11 In view of the above discussions, we agree with views of jurisdictional officer and hold that the impugned goods, called as "**Treated Water**", is purified water which is used for own factory purposes and excess quantity sold to 'BPCL' for its further industrial use falls under Entry No. 24 of Notification No. 01/2017 mentioned above.

5.12. During the course of hearing and in the written submission, applicant has cited different case laws which are on record. The same are considered. Levy of GST is based on supplies made and the description shown in the HSN code mentioned in Notification Schedule rate entries under GST Act. In the present matter, we have considered the proper wording as used in the statute i.e. specific Schedule Entry to decide the GST Rate thereon. Therefore, the contention of the applicant in aforesaid written submission to allow the impugned goods (Treated water) as exempt of taxes is not found acceptable.

5.13 Considering the facts of the case and provisions of specific notifications of entries under CGST/IGST Act, the term '**waters**' is specifically prescribed for the levy of taxes under Entry No.24 of schedule rates. Eventually, we conclude and hold that the purified "Treated water" from the sewage is covered under Entry No. 24 of HSN 2201.

5.14 Considering above facts, in our opinion, the "Treated water" obtained from sewage is covered under term "**waters**". Hence it is taxable and same would be taxable @18% (9% SGST & 9% CGST)/ IGST under Entry 24 of Schedule-III of Notification No. 1/2017 Central Tax (Rate) dtd.28.06.2017 as amended by Notification No. 06/2018 and Central Tax (Rate) dtd.25.01.2018.

06. In view of the discussions made above, we pass order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 67/2019-20/B- 57 Mumbai, dt. 09.09.2021

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1. Whether "Treated Water" obtained from STP (classifiable under Chapter 2201) will be eligible for exemption from GST by virtue of Sl. No. 99 of the Exemption Notification No. 02/2017- Integrated Tax (Rate) dated 28 June 2017 (as amended) as "Water (other than aerated, mineral, purified, distilled, medical, ionic, battery, de-mineralized and water sold in sealed container]"?

Answer:- Answered in the negative.

Question 2. Whether "Treated Water" obtained from STP [classifiable under Chapter 2201] is taxable at 18% by virtue of Sl. No. 24 of Schedule - III of Notification No. 01/2017- Integrated Tax (Rate) dated 28th June 2017 (as amended) as "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 litres bottles]"?

Answer:- Answered in the Affirmative.




RAJIV MAGOO
(MEMBER)


T.R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.