

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Ms. Manasa Gangotri Kata IRS., Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai. 34.
and
2. Thiru Kurinji Selvaan V.S. M.Sc. (Agri), M.B.A., Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No. 30/AAR/2020 DATED 12.05.2020

GSTIN Number, if any / User id		33AAATT0438P1ZA
Legal Name of Applicant		Tamil Nadu Textbook and Educational Services Corporation
Registered Address/Address provided while obtaining user id		"EVK SAMPATH MAALIGAI' No.68, college Road, Chennai – 600 006.
Details of Application		GST ARA-01 Application No.16 dated 30.04.2019.
Concerned Officer		State : The Assistant Commissioner (ST), Nungambakkam Assessment Circle, Nungambakkam Taluk Office Building Spurtank Road, Chetpet, Chennai – 31. Centre: Chennai North Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Supply of goods
B	Description (in Brief)	

Issue/s on which advance ruling required	<ol style="list-style-type: none"> 1. Applicability of a notification issued under the provisions of the Act. 2. Admissibility of input tax credit of tax paid or deemed to have been paid. 3. Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	<ol style="list-style-type: none"> 1. Whether the supply of educational aids to students such as school bags, footwear, geometry box, wooden color pencils, crayons, woolen sweater to government and government aided schools based on the State Government educational policy for which the consideration is paid to Tamil Nadu text book and Educational Services Corporation by the State government by means of a budgetary allocation constitutes a supply 2. If the answer to the above is in the affirmative then is Tamil Nadu text Book and Educational Services Corporation is entitled to avail of corresponding Input Tax credit on the procurement made 3. Whether the supply of Rain coats, Ankle Boots and Socks to students without consideration to government /Government Aided Schools located in Hilly areas is a supply 4. If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to discharge its tax liability on such outward supplies at Cost + 10% and avail of corresponding Input Tax Credit on the procurement made 5. Whether Tamil Nadu Text Book and Educational Services Corporation is eligible

	<p>for exemption from payment of GST in respect of services it receives from printers engaged by them for printing of text books.</p> <p>6. Whether the Tamil Nadu Text Book and Educational Services Corporation is required to pay GST on Penalty and Liquidated damages levied by them on suppliers due to violation of the contract terms for supply and if so the rate at which such GST is payable</p>
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Note: Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Tamil Nadu Textbook and Educational Services Corporation (hereinafter called as 'Textbook Corporation' or the Applicant) is a society registered under the provisions of the Societies Registration Act 1860 set out by the Government with the object to acquire and take over the business and other activities of Government of Tamil Nadu relating to Publication of text books and to promote the advancement of General and Technical Education. They are registered under GST Act with Registration No. 33AAATT0438P1ZA. They have sought ruling for the following questions:

- 1) Whether the supply of educational aids to students such as school bags, footwear, geometry box, wooden colour pencils, crayons, woollen sweater to government and government aided schools based on the State Government educational policy for which the consideration is paid to Tami Nadu Text

Book and Educational Services Corporation by the State Government by means of a budgetary allocation constitutes a supply.

- 2) If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to avail of corresponding input tax Credit on the procurement made.
- 3) Whether the supply of Rain Coats, Ankle Boots and Socks to students without consideration to Government/Government Aided schools located in Hilly areas is a supply.
- 4) If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to discharge its tax liability on such outward supplies at Cost +10% and avail of corresponding Input Tax Credit on the procurement made.
- 5) Whether Tamil Nadu Text Book and Educational Services Corporation is eligible for exemption from payment of GST in respect of services it receive from printers engaged by them for printing of text books.
- 6) Whether the Tamil Nadu Text Book and Educational Services Corporation is required to pay GST on Penalty and Liquidated damages levied by them on suppliers due to violation of the contract terms for supply and if so the rate at which such GST is payable.

The applicant has submitted the copy of application in Form GST ARA – 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and TNGST Rules 2017.

2.1 The applicant has stated that the entire affairs of the Applicant is controlled by the Government of Tamil Nadu and therefore they are a government entity as defined in the explanation to notification 12/2017-Central Tax (Rate) dated 28th June 2017 as amended by Notification No. 31/2017- Central Tax (Rate) dated 13th October 2017. They have been entrusted with the responsibility by the Government for printing and distributing textbooks to students studying in government schools and government-aided schools, besides selling textbooks at a price fixed by the government to self-financing private schools. They are also entrusted with the responsibility of handling the procurement and distribution of free kits such as school bags, footwear, geometry box, wooden colour pencils, crayons and woollen sweater to government and government aided schools only based on the instructions from the Education Department, Government of Tamil Nadu. Apart

from this they procure raincoat, ankle boots and socks for distribution to government and government aided schools in hilly areas based on the instructions received from the Education Department, Government of Tamil Nadu as a part of the State Government's Education policy and the relevant extracts are produced below.

2.2 The Applicant has submitted that they procure school bags, footwear, and geometry box, wooden colour pencil, crayons, woollen sweater (collectively termed as Educational Kits) which is supplied to Government and Government aided schools based on the requirements which are provided by the Education Department, Government of Tamil Nadu. Based on the tender floated for procurement of the Educational kits from various suppliers they submit a claim to the Education Department of the State Government for allocating monies for the cost of Procurement of the Educational kits. In the claim so submitted apart from the cost of procurement of the Educational kits the Applicant also claims incidental expenses towards Procurement such as advertisement cost for floating tenders, field inspection Expenses and other related costs and administration charge which is at 1% of the Cost of procurement of the supplies. These claims made by them are scrutinized by the officials of the Education Department of the Government of Tamil Nadu, who after such scrutiny recommend the payment to be made to the applicant from the budgetary allocation made to the Education Department of the State Government in the State Budget and any amendments thereof which are placed before the State Assembly. After making the deduction towards administration charges from the total claim made by the Applicant, the monies are received directly into their nominated Bank Account from the state treasury. They do not avail of any Input Tax Credit on such supplies of school bags, footwear, geometry box, wooden colour pencils, crayons, woollen sweater which they receive from various Suppliers. The Applicant has submitted that by virtue of entry made in Serial No 150 in the Notification 2/2017 – Central Tax (Rate) dated 28th June 2017 and the corresponding notification under the Tamil Nadu state Goods and services Tax Act as amended by Notification No. 35/2017 – Central Tax (Rate) dated 13th October 2017 the supply is Exempt.

2.3 The Applicant has submitted that they procure raincoats, boots and socks based on the requirement as provided by the Education Department, Government of Tamil Nadu and provide these items to the Government schools located in Hilly areas. There is no amount which is reimbursed or paid for such supplies either by the State Government or by the schools to the Applicant. They do not avail of Input

Tax Credit on the Procurement of raincoat/boots and socks from various suppliers. They have submitted that as per Section 7 of the Central Goods and Services Tax Act 2017 and its corresponding provision under the Tamil Nadu goods and Services Tax Act to constitute a supply there has to be consideration. They have stated that for the supply of raincoats / boots and socks as there is no consideration paid, it cannot constitute a supply under Section 7. However, the provisions of Section 7(1) (c) of the Central Goods and Services Tax Act 2017 and its corresponding provision under the Tamil Nadu Goods and Services Tax Act treats certain activities specified in Schedule I made or agreed to made without a consideration as Supply. They have further stated that they are not availing any input tax credit on such supplies and the entry in Item No. 1 of Schedule I is attracted only in respect of supplies on which Input Tax Credit has been claimed. As the Applicant is not availing Input Tax Credit, they claim that supply of such goods which are made by them without consideration cannot fall under the entry in Item 1 of Schedule I of the Central Goods and Services Tax Act 2017 and its corresponding schedule under the Tamil Nadu Goods and Services Tax Act 2017. The Applicant has stated that the definition of **“related party”** is provided as an explanation in Section 15 of the CGST Act. They have further stated that as a case can be made out that as the Applicant and the State Government are related parties, supplies made without consideration can attract the entry made in item No. 2 of Schedule – I of Central Goods and Services Tax Act 2017 and its corresponding provision under the Tamil Nadu Goods and Services Tax Act 2017. They are of the view that the transactions covered under the entry made in item No. 2 of Schedule I of the CGST Act was made as an anti-avoidance measure. The entry was only made to ensure that the tax authorities are not denied GST Revenue in what may be a potentially less than arm’s length transaction between related parties. In the instant case the supply of the goods to the Government is only for achieving the means of improving literacy levels by encouraging children in the hilly areas to go to schools which is a social welfare measure and there is no commercial motive in the aforesaid supply to apply/attract invoking of the entry made in Item 2 of Schedule I of the CGST Act in the instant case. The Applicant has further submitted that when the object of the exemption notification vide entry No. 150 of Notification – 2/2017 was to exempt all supplies of goods made to the state Government where there is a consideration received, it is but only logical that the supply of Goods without consideration should also be put in the Same platform and get covered as such supplies are to the State Government and the value of the grant from the State Government is a

sum equivalent to zero and hence the supplies are to be treated as an exempted supply. In case the above submissions do not find favour then the Applicant has submitted that they are entitled to avail Input Tax Credit for the Procurement of Raincoats/boots and socks and discharge the output tax liability on the basis of one hundred and ten percent of the Actual Cost of the acquisition of the Goods in accordance with Rule 30 of the Central Goods and Services Tax Rules and its corresponding rule under the State Goods and Services Tax.

2.4 The Applicant has stated that they engage printers for printing of text books on job work basis. The printer is provided the paper/board together with the contents by them and the printer carries out the job work of printing the contents by using ink/kraft paper and adhesive material and deliver the printed material to them. The material content in the amount paid to the printer is less than 25% of the value of the composite supply and a copy of a specimen e- purchase order issued in favour of one of the printers engaged by the Applicant is enclosed. Further, CBIC issued a circular no. 11/11/2017-GST dated 20th October, 2017 which clarified that:

Supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

They seek a clarification whether they are entitled for exemption of payment of GST by virtue of the entry made in Notification 12/2017 – Central Tax (Rate) dated 28th June 2017 as amended by Notification 2/2018 – Central Tax (Rate) dated 25th January 2018 and the corresponding notification under the Tami Nadu Goods and Services Tax which reads as under :

Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Provision of education including primary and secondary schools is covered under Article 243G and the above activity of printing is in relation to education and hence should be considered as exempt.

2.5 The Applicant has stated that they being the nodal agency involved in the procurement also levies penalties and liquidated damages on the suppliers for failure to adhere to the tender Conditions which is on account of delay in supply as per the tender condition or non-Adherence to the quality parameters as set out for the items which are supplied.; mere levy of Penalty/Liquidated Damages cannot constitute a supply.; to attract the provisions of Section 7 of the Central Goods and Service Tax Act and its corresponding provision under Tamil Nadu Goods and Services Tax Act and to attract entry no. 5(e) of Schedule II there has to be an Obligation and there has to be an agreement to either:

- Refrain from an act
- To tolerate an act
- To tolerate a situation
- To do an act

The term obligation has not been defined in the Goods and Services Tax Act and hence one has to place reliance on the dictionary meaning which reads as under:

As per the Black's law dictionary, the term "Obligation" has been defined as:

"A Legal or a moral duty to do or not do something."

As per Wharton's law lexicon, the term "Obligation" has been defined as:

"An Act, which binds a person to some performance; or for the Performance of covenant etc."

The intention of the contracting parties emanating from the Purchase order which has been issued and the conditions mentioned in the tender Documents clearly indicates that they intend to receive the goods which are supplied and there is no intention of the contracting parties to really to effect a breach of the contract, which is to be tolerated by the either of them. The levy of the penalty / liquidated damages is only to make good a loss arising due to the delayed / defective performance of a contract which cannot be treated as an obligation on the part of the parties to tolerate an act or situation. It should be noted that effect of levying a Liquidated Damages is not a stand-alone transaction and is a part of a contract and hence cannot be fitted into entry no. 5(e) of Schedule II of the Central Goods and Services Tax Act, therefore the amounts collected toward penalty / Liquidated damages do not constitute a supply.

3. The applicant was extended an opportunity and heard on 19.06.2019. They stated that they are a society Registered under society act and fully controlled by State Government. The State Government issue G.O to procure school bags, footwear, geometry box, wooden colour pencils, crayons, woollen sweaters. School education department issues an indent to the applicant and the applicant process and supplied to schools based on the same. They procure through tender and those suppliers supply directly to schools. They state that they are government entity and receive grants for the supplies and eligible for Sl. No. 150 of Notification 02/2017. For raincoats, Ankle boots, socks they don't get any consideration. They also do not take any ITC and hence should be covered under Entry 1 of Schedule I and not under Entry 2 of Schedule I. In respect of Sl.No. 5, 6, they agreed that being a recipient they cannot obtain a ruling under Advance ruling. They stated that will submit GO for function of the applicant, Registration Certificate of Society, GOs for procurement of all items, indents, claims, reimbursement, audited income and expenditure accounts, GSTRB returns in two weeks. They do not get reimbursement for administrative charges but only paid for the cost of items.

4.1 The state Government Jurisdictional authority also appeared for the hearing and reiterated written submissions furnished in letter Rc. No.416/2019/A4 dated 04.06.2019. In the written submissions, the said authority has remarked that

- in respect of Q1 & 2 of the applicant, the applicant provides certain educational aides to government and government aided schools under the State Government Education Policy, for which the applicant receive money from State Government which is nothing but a supply of goods wherein State Government is recipient
- In respect of Q 3 & 4 of the applicant, the applicant do not receive any money by way of subsidy nor from any other person for the supplies made to the specified persons. Since there is no consideration flowing out of the supply made, there will not be any GST. However, if the goods are supplied to a distinct person as mentioned u/s 25 the same will be treated as a supply and GST will be applicable, the valuation of which will be determined as per Rule 28 to 30 of the CGST Rules and will also be eligible to avail Input Tax subject to chapter V of CGST Act
- Q.5- Under the heading 9989 the rate of GST for printing of books is classified as 12% hence printing service will not be eligible for exemption

- Q.6- As per section 15(2)(d), the value of supply includes-‘interest or late fee or penalty for delayed payment of any consideration for any supply’.; in the given case, the applicant will have to pay GST on the liquidated damages/ penalty levied by the suppliers on account of the above mentioned provision, since the definition of supply includes penalty and liquidated damages GST will be charged at the same rate as the original supply is charged

4.2 The applicant is under the administrative control of Chennai North Commissionerate of Central Excise & GST. The said jurisdictional authority was addressed to report if there are any pending proceedings in the applicant’s case on the issues raised by the applicant in the ARA application and for comments on the issues raised. The said authority did not furnish any report and also has not furnished any comments. Hence, it is construed that there is no proceedings pending in the case of the applicant on the questions seeking Advance ruling before us.

5.1 The applicants as undertook during the hearing, vide their letter Rc.No.3431/ACS/2019 received on 10.07.2019 furnished the following documents:

1. Modus operandi of procurement activity.
2. Audited Financial Statements for the year ended 31.03.2018
3. Sample copies of the letters issued by the Education Department for the procurement of the free kits which are distributed to the various Government and Government aided schools covering the procurement of
 - a. Geometry Box for the FY: 2016-17
 - b. Wooden colour Pencil & Crayons for the FY: 2016-17
 - c. Woollen sweater for the FY 2016-17
 - d. School Bags for the FY: 2016-17
4. The Claim letters for the above items raised by them on the Tamil Nadu Government and other relevant documents as sample mapping to the amount of grant given by them for certain free kits such as:
 - a. Geometry Box for the FY: 2016-17
 - b. Wooden Colour Pencil & Crayons for the FY: 2016-17
 - c. Woollen Sweater for the FY: 2016-17
 - d. School Bags for the FY: 2016-17
5. A copy of GO issued at the time of the formation of the Society
6. Copy of certificate of registration obtained from the Registrar of Society.

7. The copy of GO dated: 15.11.2016 directing Tamil Nadu Textbook and Educational services Corporation to procure and supply Raincoat, Ankle Boots and socks to students studying in hilly areas from its own fund.
8. Copies of GSTR 3B for 2017-2018.

5.2 Further, the applicant has stated that Liquidated damage on which the ruling has been sought is levied by them on the suppliers and therefore requested to take on record the Additional Grounds in respect of the aforesaid matter along with the submission which was made at the time of filing the appeal. Liquidated Damages are levied due to the Supplier supplying deficient goods or delaying the supply of goods; there is no obligation on their part to tolerate the deficiencies on which the Liquidated Damages or penalty is levied. In fact if they do not levy such Liquidated Damages/they will be said to be tolerating an act. The Education Guide which was issued by the CBEC at the time of introducing the new scheme of taxation under service Tax specifically discussed this issue in Para 2.3.1 of the said Education Guide which is reproduced below.

“Would imposition of a fine or a penalty for violation of a provision of law be a consideration for the activity of breaking the law making such activity a ‘service’?”

To be a service, an activity has to be carried out for a consideration. Therefore fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity. Hence the legal consequences arising from delayed/deficient supply of goods which results in payment of penalty in terms of the agreement cannot be considered to be a consideration and more so cannot be fitted into the definition of a service.

6. We have carefully considered the various submissions made by the applicant and the comments of the State Tax Officer. The applicant has sought ruling on the following questions:

- 1) Whether the supply of educational aids to students such as school bags, footwear, geometry box, wooden colour pencils, crayons, woollen sweater to government and government aided schools based on the State Government educational policy for which the consideration is paid to Tamil Nadu Text Book and Educational Services Corporation by the State Government by means of a budgetary allocation constitutes a supply.

- 2) If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to avail of corresponding input tax Credit on the procurement made.
- 3) Whether the supply of Rain Coats, Ankle Boots and Socks to students without consideration to Government/Government Aided schools located in Hilly areas is a supply.
- 4) If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to discharge its tax liability on such outward supplies at Cost +10% and avail of corresponding Input Tax Credit on the procurement made.
- 5) Whether Tamil Nadu Text Book and Educational Services Corporation is eligible for exemption from payment of GST in respect of services it receive from printers engaged by them for printing of text books.
- 6) Whether the Tamil Nadu Text Book and Educational Services Corporation is required to pay GST on Penalty and Liquidated damages levied by them on suppliers due to violation of the contract terms for supply and if so the rate at which such GST is payable.

7. The applicant is a society registered under Societies Registration Act 1860, set up by the Government of Tamil Nadu. As per the G.O.Ms. No. 1174 of Education Department dated 5.8.69, the State government has decided to establish an autonomous Text Book Corporation for Tamil Nadu with Chief Minister as the Chairman, Minister for Education & Industries as Vice-chairman and a Managing director (Government of Tamil Nadu), ex-officio director and have it registered under the Societies registration Act. It is seen from the balance sheet of 2017-18 given by the applicant that the income is mainly 'reimbursement' of cost of books, free kits.

8.1 The first and second question is regarding the supply of **educational aids such as school bags, footwear, geometry box, wooden colour pencils, crayons, woollen sweater** to government and government aided schools based on the State Government educational policy for which the consideration is paid to Tamil Nadu Text Book and Educational Services Corporation by the State Government by means of a budgetary allocation. The applicant has stated that as per the requirements provided by the Education Department, Government of Tamil Nadu, the applicant floats tenders for procurement of the educational kit consisting of

school bags, footwear, geometry box, wooden color pencils, crayons, woolen sweater and submit a claim to the Education Department of the State government for allocating monies for the cost of procurement of the educational kits. The applicant also claim incidental expenses towards procurement such as advertisement cost for floating tenders, field inspection expenses and other related costs and administration charges which is at 1% of the cost of procurement of the supplies. It is seen from the claim bills submitted by the applicant that they raise a claim on the Education Department, Tamil Nadu separately for the supply of the kits and for administrative charges such as advertisement, air ticket, field visit, testing charges, meeting expenses etc.

8.2 Section 2(84) of the CGST/TNGST Act defines 'Person' for the purposes of the Act as

(84) "Person" includes—

(a) an individual;

(b) a Hindu Undivided Family;.....;...;.....;

.....

(l) Society as defined under the Societies Registration Act, 1860;

In the instant case, the applicant is a society registered under Societies Registration Act, 1860 and hence is a 'person' as per Section 2(84) of CGST/TNGST Act.

Section 2(17) of the CGST/TNGST Act states:

(17) "business" includes— (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit; (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

Supply is defined under Section 7 of the CGST Act 2017 and the same is reproduced below for reference:

7. (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

In the instant case, the applicant was formed as a society by the State government for procuring and supplying textbooks and other items. The applicant is supplying the kits for a consideration which includes cost of the goods plus various administrative charges which is claimed by the applicant. Therefore, the supply of

educational aids such as school bags, footwear, geometry box, wooden colour pencils, crayons, woollen sweater by the applicant to the State government for a consideration is a 'supply of goods' in the course of its business as per Section 7 of the Act.

8.3 The applicant has claimed exemption in respect of the above supply vide Sl.No. 150 in Notification No. 2/2017-C.T.(Rate) dated 28th June 2017 as amended by Notification No.35/2017-C.T.(Rate) dated 13th October 2017. The relevant entry is examined as under:

"150	-	Supply of goods by a Government entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority, against consideration received from Central Government, State Government, Union territory or local authority in the form of grants";
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(B) in the *Explanation*, after clause (iv), the following clause shall be inserted, namely:-

“(v) The phrase “Government Entity” shall mean an authority or a board or any other body including a society, trust, corporation, which is:

- (a) set up by an Act of Parliament or State Legislature; or
- (b) established by any Government,

with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State government, Union territory or a local authority.”.

As per the above entry inserted effective from 13th October 2017, Supply of goods to State Government by a Government entity, for which the consideration is received in the form of grants stands exempted. In the case at hand, the applicant is a society established by State Government with Chief Minister as the Chairman of the Board, Educational Minister as Vice-chairman and Secretaries to the Government as members with control by the state government, therefore the applicant is a 'Government entity' as defined under (B) (v) of the Notification No. 2/2017-C.T. (Rate) dated 28.06.2017 as amended. From the submissions of the applicant on the Activities involved in the purchase of Cost Free Kits and the supply of the same, it is seen that based on the Government's Order the Director of School Education places the requirement order with the applicant, who on receipt of the same prepares the Tender Document and initiates the tender process

culminating in issuing of Purchase Order to the Successful bidders. Thereupon, the applicant raises a claim bill with the Department of School/Elementary education for re-imbursement of cost of such kits and incidental expenses incurred by the applicant, which is sanctioned and released out of the Budget of Tamil Nadu School Education Department. Thus, it is seen that the supply of the education kit by the applicant, a Government entity, to the Department of School/Elementary Education, the State Government Department, for which the consideration is paid out of the Budget allocation of the Education Department in the form of grant. Therefore, the supply of educational kit as above is a 'Supply' and the same is squarely covered as supply of goods specified under Sl.No. 150 of Notification no. 2/2017-C.T. (Rate) dated 28.06.2017 as amended by Notification No.35/2017-C.T. (Rate) dated 13th October 2017 and hence is an exempted supply. As such a supply is exempt

9. The second question raised is on their eligibility to Input Tax Credit on the procurement of Educational Kits supplied to the Government. As it is seen that the supply of 'Educational Kit' is fully exempted, the applicant is not eligible to the Credit of Input Tax paid on the procurement of such goods.

10.1 Question No. 3 & 4 raised by the applicant is

Whether the supply of **Rain Coats, Ankle Boots and Socks** to students without consideration to Government/Government Aided schools located in Hilly areas is a supply? If so, whether they are entitled to discharge the tax liability on such outward supplies at Cost + 10% and avail of corresponding Input Tax Credit on the procurement made?

The same are taken up for consideration as under.

10.2 The applicant has stated that they supply raincoats, boots and socks based on the requirement as provided by the Education Department, to the Government Schools located in hilly areas for which no consideration is paid to the applicant by the Department of School/Elementary Education. The applicant claims that these supplies for which no consideration is received separately from the government should also be covered under the exemption at Sl.No. 150 of Notification no. 2/2017-C.T. (Rate) dated 28.06.2017 as amended and therefore exempted from payment of GST. From the submissions made by the applicant it is seen that as per Order No. 204 dated 15.11.2016, it is ordered that based on the announcement

of the Chief Minister during the allocation of grants for the year 2016-2017, decision to supply raincoat, boots and socks with expected expenses of Rs. 8 Crores stands announced, accordingly, sanction has been accorded to meet the expenses from the funds already available with the applicant and no separate sanction is accorded. It is evident that separate grant is not allocated but the funds of the applicant have been ordered to be used for the supply. It is seen from the balance sheet of the applicant that all their income comes from the reimbursement from the State Government with any balances let over after expenses of procurement of the various goods as directed by the government. As seen from the Order No. 204 dated 15.11.2016 for supply of these goods, the Government has directed to use the funds already granted and lying unspent with the applicant. Thus, it is to be construed that the grant for the procurement was already given and part of the previous grants left unspent with the applicant. The entry at Sl.No. 150 of the Notification no. 2/2017 -C.T.(Rate) dated 28.06.2017 as amended exempts supply of goods to Government by a Government entity, the consideration of which is in the form of grants. From the Order of the Chief Secretary furnished by the applicant [G.O. No. 204 dated 15.11.2016], it is evident that these supplies have been considered and sanction for these expenses accorded to be used from the funds of the applicant. Therefore, these supplies also are exempt vide the said entry.

10.3 In as much as the supply of these goods to the Government are held to be exempted, the valuation to be adopted for taxation purposes do not arise and therefore not dealt with. Also, the applicant will not be eligible to avail any input tax paid on these procurements as credit, since the procurement is exclusively towards the exempt supply.

11. Q.No. 5 relates to the availability of exemption in respect of services received. The definition of 'advance Ruling' under section 95(a) of CGST/TNGST Act is given below for ease of reference,

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

As per the above, the ruling can be sought in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant. The Q.No.

5 relates to receipt of service and not supply of service by the applicant, therefore the said question is not taken up for consideration for the reason that it is not covered under the purview of this Authority.

12. The last question to be answered is

Whether the Tamil Nadu Text Book and Educational Services Corporation is required to pay GST on Penalty and Liquidated damages levied by them on suppliers due to violation of the contract terms for supply and if so the rate at which such GST is payable.

The applicant has stated that as per the Purchase Order issued by the applicant for purchase of the goods to be supplied to the Government, they levy penalties and liquidated damages on the Suppliers, for failure to adhere to the tender conditions which is on account of delay in supply as per the tender condition or non-adherence to the quality parameters as set out for the items which are supplied. In this case, the applicant has sought a ruling on a supply to be received by the applicant. However, as per Section 95(a) of CGST/TNGST Act, the ruling can be sought in relation to the supply of goods or services or both undertaken or proposed to be undertaken *by the applicant* and not received by the applicant. Therefore, the said question is not taken up for consideration for the reason that it is not covered under the purview of this Authority.

13. In view of the above discussion, we rule as under:

RULING

1 & 2 Whether the supply of educational aids to students such as school bags, footwear, geometry box, wooden colour pencils, crayons, woollen sweater to government and government aided schools based on the State Government educational policy for which the consideration is paid to Tamil Nadu Text Book and Educational Services Corporation by the State Government by means of a budgetary allocation constitutes a supply. If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to avail of corresponding input tax Credit on the procurement made.

The above activities of the applicant constitutes a supply; but exempt with effect from 13.10.2017, vide entry Sl.No.150 in the Notification No.2/2017-Central Tax (Rate) dated 28.6.2017 as amended by Notification No. 35/2017-C.T. (Rate)

dated 13th October 2017 and therefore the applicant is not entitled to claim credit of tax paid on the related purchases of goods and services.

3 & 4. Whether the supply of Rain Coats, Ankle Boots and Socks to students without consideration to Government/Government Aided schools located in Hilly areas is a supply. If the answer to the above is in the affirmative then is Tamil Nadu Text Book and Educational Services Corporation is entitled to discharge its tax liability on such outward supplies at Cost +10% and avail of corresponding Input Tat Credit on the procurement made.

The above activities of the applicant constitutes a supply; but exempt with effect from 13.10.2017, vide entry Sl.No.150 in the Notification No.2/2017-Central Tax (Rate) dated 28.6.2017 as amended by Notification No. 35/2017-C.T. (Rate) dated 13th October 2017 and therefore the applicant is not entitled to claim credit of tax paid on the related purchases of goods and services.

5. Whether Tamil Nadu Text Book and Educational Services Corporation is eligible for exemption from payment of GST in respect of services it receive from printers engaged by them for printing of text books?

Not answered for the reasons at Para 11 above

6. Whether the Tamil Nadu Text Book and Educational Services Corporation is required to pay GST on Penalty and Liquidated damages levied by them on suppliers due to violation of the contract terms for supply and if so the rate at which such GST is payable.

Not answered for the reasons at Para 12 above



Ms. Manasa Gangotri Kata,
Member, CGST



Shri Kurinji Selvaan V.S.,
Member, TNGST

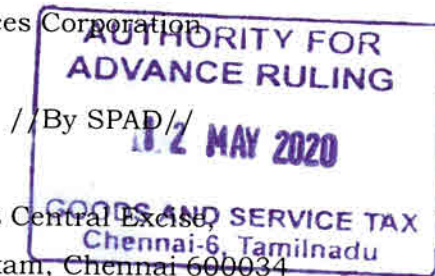
To

M/s. Tamil Nadu Textbook and Educational Services Corporation

“EVK SAMPATH MAALIGAI” No.68, college Road,
Chennai – 600 006.

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi road, Nungambakkam, Chennai 600034
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-5.



Copy to:

1. The Assistant Commissioner (ST),
Nungambakkam Assessment Circle,
Nungambakkam Taluk Office Building, Spurtank Road, Chepet,
Chennai – 31.
2. The Commissioner of GST & Central Excise
Chennai North Commissionerate,
26/1, Mahatma Gandhi road, Nungambakkam, Chennai 600 034.
3. Master file/Spare-2.