

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.207, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI -600 006.**

**RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.**

Members present:

Sri. Balakrishna S, I.R.S., Additional Commissioner/ Member (CGST), Office of the Commissioner of GST & Central Excise. Audit II Commissionerate, Chennai -600 035.	Smt. A. Valli, M.Sc., Joint Commissioner/Member (SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
---	--

Advance Ruling No.20/ARA/2024 Dated: 27.09.2024

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed, is communicated.

2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

5. The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein referred to as the Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.

GSTIN Number, if any / User id		33AACAT1667P1Z2
Legal Name of Applicant		Tamil Nadu Medical Council
Registered Address / Address provided while obtaining user id		New No.914 Old No. 569, Poonamalle High Road, Arumbakkam, Chennai 600 106.
Details of Application		GST ARA – 01 Application Sl.No.01/2023 dt. 05.01.2023 (Filed online on 30.12.2022)
Jurisdictional Officer		State: Arumbakkam Assessment Circle Chennai (Central) Division
Concerned Officer		Center: Chennai North Commissionerate Division: Annanagar
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provider
B	Description (in brief)	Applicant previously known as Madras Medical Council was constituted under Madras Medical Registration Act IV of 1914 by the Local Legislature. The Applicant caters to the registration of Registered Medical Practitioners practicing or completing their study in the state of Tamil Nadu, Pondicherry and Andaman & Nicobar Islands. The Council imparts medical ethics to the RMP's and ensure scientific practice by them and issues Provisional, Under Graduate, Post Graduate Registration Certificate, No Objection Certificate and Certificate of Good standing and CME certificates.
Issue/s on which advance ruling required		1. Determination of the liability to pay tax on any goods or services.
Question(s) on which advance ruling is required		Whether GST is applicable on various fees collected by Tamil Nadu Medical Council a Government Authority?

1. The applicant submitted a copy of challan dated 30.12.2022 evidencing payment of application fees of Rs. 5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.1 Tamil Nadu Medical Council (in short 'Applicant') previously known as Madras Medical Council was constituted under the Madras Medical Registration Act IV of 1914 by the Local Legislature. It caters to the registration of Registered Medical Practitioners practicing or completing their study in the State of Tamil Nadu,

Pondicherry and Andaman & Nicobar Islands. The Council imparts medical ethics to the RMP's and ensure scientific practice by them and issues Provisional, Under Graduate, Post Graduate Registration Certificate, No Objection Certificate and Certificate of Good standing and CME certificates.

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

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

2.4 On interpretation of law, the applicant, states that Fees is not defined in GST Acts; according to Black's Dictionary, Fees is a charge fixed by law for services of public officers or for use of a privilege under control of Government; applicant is a statutory body set up by an Act of State Government and the fees collected is for a privilege under control of Government and takes a position equivalent to taxes and duties which is not covered by GST Act; applicant is a Government entity under GST law; fees collected by the applicant are for discharging the applicant's statutory functions as stipulated in the Act and no service is rendered to the parties from whom the fees are collected. The above facts conclusively prove that the applicant is discharging its sovereign function and no service is rendered by the applicant.

2.5 The applicant vide letter dated 05.01.2023 relied on the ruling of Maharashtra Authority for Advance Ruling given to M/s Children of the World India Trust, as a second alternate ground for interpretation of law, while Doctrine of mutuality is the first alternate ground for interpretation of law.

3.1 The applicant vide letter dated 16.03.2023, as additional grounds, has stated that GST officials inspected their council office and collected information/documents and called for certain details u/s Section 67 of CGST Act and that the Applicant also received Summons u/s 70 of CGST Act. Further, when the Members raised question of suppression of the said information in AAR application during the personal hearing, it was stated by the applicant that Section 70 of CGST Act spells out only powers vested with the investigating officer as prescribed by Section 193 and 228 of Indian Penal Code in relation to Summons / Statement on oath and the same do not amount to "proceedings" under CGST Act. 'Proceedings' is not defined in CGST Act and in the absence of statutory definition, it shall be accorded literal interpretation. The fact that the term 'proceeding' 'adjudication proceedings' and 'investigation' has been used separately and not interchangeably in the CGST Act suggests that the term 'proceeding' does not include 'investigation' and 'inquiry' within its ambit.

3.2 The applicant further relied on the judgements of Hon'ble Supreme Court in the case of *Liberty Union Mills Vs Union of India* and *Radha Krishna Industries vs State of Himachal Pradesh and Ors* to distinguish 'proceedings' from enquiry / summons. They also relied on the judgement of Hon'ble Allahabad High Court in the case of *G.K. Trading Company vs Union of India*. The applicant contests that non-disclosure of enquiry / summons under Section 70 of CGST Act as 'proceedings' in the advance ruling application of the applicant does not amount to suppression and they are eligible for a ruling by AAR and requested for ruling.

4. The applicant is under the administrative control of State Tax. The concerned authorities of the Center and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

4.1 The concerned State authority vide letter RC No.16/2022/A4 dated 13.02.2023, stated that Tamil Nadu Medical Council was established for the State of Tamil Nadu consisting of fifteen members and controlled over by State of Tamil Nadu and that no certificate required by law to be given by a Medical Practitioner or Officer shall be valid unless signed by a Registered Practitioner; without registered as a member in Tamil Nadu Medical Council, the Medical students who completed their M.B.BS/MD/M.S/DNB completed in Foreign Countries etc. cannot practice/appoint as Physician, Surgeon or other Medical Officer in any Hospital, Asylum, Infirmary, Dispensary as Medical Officer or Health in the State of Tamil Nadu; that Tamil Nadu Medical Council Collects Registration Fees for Membership from the medical students and inform the same to the State Government, who after verifying the proof of Medical degree and consulting the Council, permit the Registration as Member to the Medical Practitioners; no person shall be eligible to be a member of the Council unless he is a registered practitioner. The concerned State authority further stated that the Registration particulars of Doctors are stored safely and securely in their Database; the fees collected by the Medical Council for Registration from Medical Practitioners are mandate of the State Legislature and carrying out the statutory obligations and responsibility; the list of registered Medical Practitioners are published in Tamil Nadu Government Gazette every year. The Council is functioning with the source of Registration Fees received from Medical Practitioners for incurring expenses such as salary to employees, building maintenance, payment of Electricity and water charges etc., as they are not receiving any grant from the Government, either State or Central.

4.2 The concerned State authority, with regard to the question of the applicant that Whether GST is applicable on various fees collected by Tamil Nadu Medical Council, a Government Authority has stated that Tamil Nadu Medical Council is not a Service provider or doing any business activities, and therefore, GST is not applicable for various fees collected by Tamil Nadu Medical Council, a State Government Authority.

4.3 The jurisdictional authority of 'Center', has neither furnished their comments on the question raised by the applicant nor informed about any pending proceeding against the applicant on the question raised.

5. The applicant, after consent, was given an opportunity to be heard in person on 16.03.2023. Sri. V.Swaminathan, Chartered Accountant, the Authorized Representative (AR) of the applicant appeared for the Personal hearing and reiterated the submissions. However, members asked about the investigation being conducted by DGGI vide Summons dated 30.11.2022 and 20.12.2022 and suppression of the said information in the Advance Ruling Application. The AR admitted receipt of Summons before filing Advance Ruling Application on 05.01.2023 and requested time till 20.03.2023 to file reply with regard to the said Summons issued by DGGI, before passing any order with regard to admission of advance ruling application.

6.1 The Additional Director, DGGI, Chennai Zonal Unit vide letter in F.No.DGGI/INV/GST/3924/2022-Gr.Z dated 03.04.2023 addressed to Authority for Advance Ruling (TAMILNADU) has informed that their office has initiated an investigation against M/s Tamil Nadu Medical Council (in short TNMC) on account of non-payment of GST on Registration fees, etc., collected and that in this regard two Summons have been issued to TNMC and a statement of Shri R Shanmugam, Registrar of TNMC has been recorded on 09.01.2023. It is further stated that it has come to the knowledge of their office that M/s Tamil Nadu Medical Council has filed application before Authority for Advance Ruling (TAMILNADU) and that as per proviso to Section 98(2) of CGST Act, the Advance Ruling Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings under any of the provisions of the Act. It was further stated in the said letter that it appears that TNMC have suppressed the fact about the ongoing investigation by DGGI, CZU, Chennai, and sought for Advance Ruling on the very same issue. DGGI office has also quoted High Court of Andhra Pradesh order dt.23.11.2022 in W.P No.5571 of 2021 which states that issuance of SUMMONS under Section 70 of CGST Act, 2017 is the commencement of Investigation/proceedings as per CGST Act, 2017.

6.2 As it was apparent that the first proviso to Section 98(2) of the CGST Act, 2017, covers any 'proceedings' in the case of an applicant under any of the provisions of the Act including Section 70 of the Act, and as an investigation was being conducted by DGGI, Chennai Zonal Unit during the relevant point of time, the advance ruling application filed by the applicant was rejected vide Advance Ruling No.18/ARA/2023 dated 19.06.2023.

6.3 Aggrieved, the applicant filed an appeal before the Appellate Authority for Advance Ruling, Tamilnadu, who vide Order-in-Appeal No. AAAR/04/2023 (AR) dated 09.12.2023, remanded the matter back to the Lower Authority for consideration and passing of appropriate orders, after following the principles of

natural justice. While doing so, the Appellate authority has observed in para 6.7 of the said order as follows:-

6.7. Therefore, we are of the considered opinion that the principles of natural justice have not been followed in the instant case since the advance ruling authority had erred in not sharing the documents and comments forwarded by DGGI, with the appellants. Accordingly, we are of the view that justice will be met by restoring the application for advance ruling to its original position, by way of remanding the case to the lower authority, with a direction to forward the letter dated 03.04.2023 of DGGI alongwith its enclosures, if any, to the appellant enabling them to comment on the same, and to offer them another opportunity of personal hearing before deciding the case as per the provisions of law. We further find that this authority is empowered vide Section 101(1) of the CGST/TNGST Acts, 2017 to pass such orders as deemed fit.”

6.4 Accordingly, the relevant documents were shared with the applicant and in response they furnished their comments, vide their letter dated 23.02.2024, in which the following points were highlighted, viz.,

- Judicial proceedings referred to in Section 70 of the CGST Act, does not mean any proceedings as referred to in Section 98(2) of the CGST Act.
- CGST Act does not define proceedings. While Section 78 deals with ‘recovery proceedings’, Section 84 deals with ‘continuation and validation of certain recovery proceedings’ and Section 160 deals with ‘Assessment proceedings, etc., not to be invalid on certain grounds’. Further, the CGST Act refers to the word ‘proceedings’ in 101 places, and out of the above in 98 places, the word is used without referring to any other Act. In 3 places, the word proceedings were used referring to the word judicial proceedings within the meaning of Section 193 and 228 of the IPC (45 of 1860) in sections 70, 105, 111. All the three section referred uses the word ‘deemed to be judicial proceedings’ within the meaning of sections 193 and 228 of the IPC.
- While Clause 193 of the IPC provides for punishment for intentionally giving false evidence, clause 228 is meant for intentional insult or interruption to public servant sitting in judicial proceeding.
- A judicial proceeding is any proceeding over which a judge presides over and may include quasi-judicial proceedings. Section 70 refers to proper officer who has the power to summon persons to give evidence and produce documents. The proper officer under GST is not a judge and the summoning under Section 70 of the CGST Act is not a quasi-judicial proceeding.
- A deeming provision is therefore added to give power to the proper officer under Section 70 for matters arising during the process, viz., false evidence, intentional insult or interruption to public servant, and the word proceeding used in Section 70 is restrictive and confined to issues relating to investigation/survey process and hence at any stretch of imagination construe as any proceedings under GST Act.
- Based on the above, Section 70(2) only confers the power under clauses 193 and 228 of IPC for punishment referred, and therefore 70(2) does not fall

under any proceedings referred to in Section 98(2). Further it is a settled principle of interpretation of taxing statute that a deeming provision has to be interpreted strictly in terms of the language employed. It is also cardinal principle that a deeming fiction over a deeming fiction cannot be applied.

- Deeming provisions creates a legal fiction. This fiction establishes something which is not in existence. By inserting a deeming fiction in Section 70(2) of the CGST Act, the power not conferred to the proper officer under the CGST Act, is given power by deeming provisions in Section 70(2).
- That it is well settled, as has been observed by the Supreme Court in Bengal Immunity Company Ltd., Vs. State of Bihar (1955) SCR 603 at page 606, that legal fictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond that legitimate field. To this effect, they have referred the case laws, viz., CIT Vs. Mother India Refrigeration Industries (P) Ltd., - SC 155 ITR 711, and CIT Vs. Sarathy Mudaliar - 83 -TR 170, passed by the Hon'ble Supreme Court of India.
- Further, the Telengana High Court in the case of M/s. Srico Projects Pvt. Ltd., in WP No.26145 of 2022 has held that power to summon persons to give evidence and produce documents under Section 70 of the CGST Act, is not proceedings under this Act.

PERSONAL HEARING

7. The applicant was given an opportunity to be heard on 21.08.2024. Dr. S. Sivam Kannan, Member, TN Medical Council and Shri. V. Swaminathan, Chartered Accountant and the authorized representative (AR) of the applicant, appeared for the personal hearing. The AR reiterated the submissions made in their application. They stated that in view of the Order No.AAAR/04/2023 dated 9.12.2023 of the Appellate Authority for Advance Ruling, Tamilnadu (under which the matter has been remanded), they have furnished additional submissions dated 23.02.2024. The AR reiterated the contents of the said letter and requested the authorities to take the same on record.

8. DISCUSSION AND FINDINGS

8.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the submissions made during the personal hearings, the comments furnished by the State Tax Authorities and the additional submissions made by the applicant. The applicant filed advance ruling application for determination of the liability to pay tax on service involving collection of various fees by the applicant, which is covered under Section 97(2)(e) of GST Act, 2017. However, while examining the application of the applicant in terms of Section 98(2), it was noticed that the questions raised in the application were being investigated by DGGI, Chennai Zonal Unit, Chennai. As per Section 98(2) of the Act, the Advance Ruling Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provision of the Act.

8.2 Therefore, before proceeding to decide the questions on merits, it becomes imperative that the question of admissibility of the application needs to be decided in view of the investigation initiated by DGGI, on the questions raised in the advance ruling application, which was communicated through the letter received from DGGI, Chennai Zonal Unit dated 03.04.2023.

8.3 For ease of reference, the relevant provisions of Section 98(2) of the CGST Act, 2017, is reproduced below :-

"(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order."

8.4 Since the first proviso to Section 98(2) restricts admitting application seeking advance ruling on questions which are already pending in any proceedings in the case of an applicant under any of the provisions of the Act, the term 'proceedings' assumes immense significance in the context of the instant case. More so, because the applicant opines that the inquiry or investigation initiated by DGGI, would not fall within the ambit of the word 'proceedings' impacting the admissibility of the original application for advance ruling filed by the appellant.

8.5 It is quite clear that the term 'proceedings' has not been defined under the CGST Act, 2017. However, the word 'proceedings' is seen to have been widely used in the Act, *ibid*, either as it is, in the context of the situation, or with a prefix bringing out the meaning and purpose in an unambiguous manner like 'Recovery proceedings', 'Assessment proceedings', etc.

8.6 To highlight a few, the table affixed below, brings out the picture as to when and where the term 'proceedings' has been referred to in the CGST Act, 2017, and in what context the same has been used, i.e.,

Section	Referred as	Context/Phrase
6(2)(b)	Any proceedings	Cross jurisdiction – "has initiated any proceedings on a subject matter"
Proviso to 29(1) and 29(2)	The proceedings	Cancellation or Suspension – "during pendency of the proceedings relating to cancellation of registration"

66(1)	Any other proceedings	Special Audit – “If at any stage of scrutiny, inquiry, investigation or any other proceedings before him”
67(2)	Any proceedings	Power of inspection, search and seizure – “which in his opinion shall be useful for or relevant to any proceedings under this act”
70(2)	Judicial proceedings	Power to summon – “deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code”
73(8)	All proceedings	Determination of tax – other than fraud – “all proceedings in respect of the said notice shall be deemed to be concluded”
74(8)	All proceedings	Determination of tax – by reason of fraud – “all proceedings in respect of the said notice shall be deemed to be concluded”
75(10)	Adjudication proceedings	General provisions – Determination of tax – “The adjudication proceedings shall be deemed to be concluded”
78	Recovery proceedings	Initiation of Recovery proceedings
122(1) (xvii)	Any proceedings	Penalty for certain offences – “furnishes false information or documents during any proceedings under this Act”
127	Any proceedings	Power to impose penalty in certain cases – “the same is not covered under any proceedings under sections 62/63/64/73/74/129/130”.
130(7)	Any other proceedings	Confiscation of goods or conveyances – “after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act”
160(1)	Other proceedings	Assessment proceedings not to be invalid on certain grounds – “No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings”
160(2)	Earlier proceedings	Assessment proceedings not to be invalid on certain grounds – “in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.”

8.6.1 Section 6 of the CGST Act, 2017, that talks about ‘cross jurisdiction’ of officers of Central tax with that of State/Union Territory, specifies in clause (b) to sub-section 2 of Section 6 as follows :- “where a proper officer under the State Goods and Services Tax or the Union Territory Goods and Services Tax Act has initiated **any** proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.”. That is to say, that once a subject

matter has been touched upon by a tax officer at one end (State), the tax officer at the other end (Center), is barred from initiating any proceedings which includes inquiry or investigation through summoning or through any other procedure that precedes issue of show cause notice, if the proceedings relate to the same subject matter.

8.6.2 Section 66 of the CGST Act, 2017, that talks about 'Special Audit', specifies in sub-section 1 of Section 66 as follows :- *"If at any stage of scrutiny, inquiry, investigation or **any other** proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner."* It is clear from the above that 'any other proceedings' refer to proceedings in the nature of scrutiny, inquiry, investigation, etc., that precedes the issue of show cause notice. This is so because, the said provision enables the proper officer to refer the case for special audit, if in his opinion the case is of complex nature. The fact that these proceedings precede issue of show cause notice, is confirmed by the manner in which the provisions of sub-section 6 of the same section 66 has been worded, i.e., *(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer **may initiate action under section 73 or section 74.**"*

8.6.3 Section 127 of the CGST Act, 2017, that talks about 'Power to impose penalty in certain cases', runs as follows :- *"Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under **any proceedings** under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person."* In this regard, it may be seen that the proceedings referred to under various sections, relate to the following aspects, viz.,

Section 62 – **Assessment** of non-filers of returns

Section 63 – **Assessment** of unregistered persons

Section 64 – **Summary assessment** in certain special cases

Section 73 – Determination of tax not paid or short paid or erroneously refunded or input credit wrongly availed or utilized for **any reason other than fraud or any wilful-misstatement or suppression of facts.**

Section 74 – Determination of tax not paid or short paid or erroneously refunded or input credit wrongly availed or utilized **by reason of fraud or any wilful-misstatement or suppression of facts.**

Section 130 – **Confiscation** of goods or conveyances and levy of penalty.

Therefore, it becomes clear that while Sections 73, 74 and 130 talk about proceedings, post the issue of show cause notice, Sections 62, 63 and 64 on the other hand clearly discusses about the proceedings involving assessment, that precedes the issue of any show cause notice.

8.6.4 Section 70 of the CGST Act, 2017, that talks about 'Power to summon persons to give evidence and produce documents', specifies in sub-section 2 of Section 70 as follows :- *"Every such inquiry referred to in sub-section (1) shall be deemed to be "judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860)."* From the above, it could be seen that an inquiry is deemed as 'judicial proceedings' but within the meaning of sections 193 and 228 of Indian Penal code (IPC). In this regard, it may be seen that while Clause 193 of the IPC provides for punishment for intentionally giving false evidence, clause 228 is meant for intentional insult or interruption to public servant sitting in a judicial proceeding. The act of giving false evidence, or intentional insult or interruption to public servant, is liable for punishment under IPC as they are to be seen as offences of criminal nature. However, the commission of these offences which may take place during the inquiry or investigation are ancillary in nature, as against the case of 'GST tax evasion' which is the main offence in question. Therefore from the above, it becomes clear that an inquiry is to be seen as initiation of judicial proceedings, and the crucial aspect is that such proceedings precedes the issue of show cause notice. Accordingly, we are of the opinion that the moment an inquiry or investigation gets started, it amounts to initiation of proceedings under the provisions of the Act, irrespective of the fact whether it culminates in the issue of show cause notice or not, depending upon the facts and circumstances of the case.

8.6.5 Therefore the term 'proceedings' used in the CGST Act, 2017 is not restricted to proceedings which commence after the issue of show cause notice alone, and that the same also denotes proceedings prior to the issue of show cause notice, or proceedings which may not culminate in the issue of any show cause notice at all. Accordingly, the notion of the applicant that the process relating to commencement of inquiry/investigation under summon procedure do not get covered within the category of the term 'proceedings', under the CGST Act, 2017, is misconceived and misplaced, for the reason that apart from such 'judicial proceedings', even the other proceedings relating to assessment, audit, detention/seizure/release of goods and conveyance which may or may not entail any issue of show cause notice, are also treated as 'proceedings' under the CGST Act, 2017, as discussed in detail above. Further, the term 'proceeding', is a very comprehensive and general term as used in the CGST Act, 2017, which denotes a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which a judicial action is invoked. Investigation is activated when there is enough predication to show that there is an alleged tax evasion and the essence of investigation is to carry out an in-depth review of the taxpayer's records and activities to ensure that the tax due to the Government is not lost in evasion. Therefore, the commencement of

investigation or inquiry is to be seen as the start of a proceeding to safeguard Government revenue.

8.7 The introduction of GST is considered a paradigm shift in the history of tax reform and the statute relating to it has been framed afresh keeping in mind the new concept of taxation embarked upon. Accordingly, the context in which the terms like proceedings, inquiry, assessment, etc., have been used in the GST enactments differ from the enactments of the erstwhile era like the Central Excise Act, 1944, the Finance Act, 1994, etc. The same applies to the contemporary enactments like the Customs Act, the Income Tax Act, etc. Under these circumstances, we are of the opinion that any reference or reliance on any case law made by the applicant involving the enactments referred above are not comparable to the instant case involving GST, and so they do not come to their aid. Apart from the above, it may be seen that while the term '**any** proceedings' contained in the phrase in question, viz., "in **any** proceedings in the case of the applicant **under any** of the provisions of this Act", by itself conveys an exhaustive picture, the additional usage of the words '**under any** of the provisions of the Act', makes it all the more broader and all encompassing. We are therefore of the opinion that the usage of the words 'any proceeding' in the proviso to Section 98(2) of the CGST Act, 2017, will encompass within its fold not just investigation, but any other proceedings as well. Accordingly, the contentions of the applicant in the additional submissions filed by them through their letter dated 23.02.2024 is of no avail to them.

8.8 In this regard, we find that the applicant has relied on the following case laws that merit consideration, viz., (i) Judgement dated 17.08.2022 of the Hon'ble High Court of Telengana in the case of M/s.Srico Projects (P) Ltd., in W.P.No.26145 of 2022, wherein it was held that inquiry or investigation do not come within the ambit of the word 'proceedings', and (ii) Judgement dated 02.12.2020 of the Hon'ble High Court of Allahabad in the case of M/s. G.K.Trading Company in Writ Tax No.666 of 2020, wherein it was held that the word "inquiry" in Section 70 is not synonymous with the word "proceedings" in Section 6(2)(b) of the U.P.G.S.T. Act / C.G.S.T. Act. It was further held therein as follows :- "The words "any proceeding" on the same "subject-matter" used in Section 6(2)(b) of the Act, which is subject to conditions specified in the notification issued under sub-Section (1); means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties etc., proceedings for demands and recovery under Section 73 and 74 etc".

8.9 On the other hand however, we notice that the Hon'ble High Court of Andhra Pradesh in its Order dated 23.11.2022 in W.P. No.5571/2021 in the case of Master Minds Vs Appellate Authority for Advance Ruling (2022) 1 Centax 288 (A.P.)/2023 (70) G.S.T.L. 45 (A.P.), has held that Application for advance ruling is not admissible when proceedings in relation to same issue had commenced prior to filing of such application and had ruled that the rulings of both AAR and AAAR were liable to be

set aside. Apart from discussing the legalities involved, the Hon'ble High Court has also discussed the following citations in detail, viz.,

(i) Appellate Authority for Advance Ruling, Karnataka Vs. M/s. Karnataka Co-operative Milk Producers Federation Limited,

(ii) Appellate Authority for Advance Ruling, Gujarat, Vs. J.K.Papad Industries, and

(iii) Appellate Authority for Advance Ruling, Maharashtra, Vs. Arihant Enterprises.

Accordingly, the Hon'ble Court observed that *"any proceedings referred to in 98(2) proviso encompasses within it the investigation against the applicant as per the provisions of CGST/APGST Act and if by the date of filing of the application before the ARA, **already such proceedings were commenced, the ARA shall not admit the application inviting advance ruling.**"* Further in paras 12 and 13 of the said order, the Hon'ble Court has observed as follows :-

*"12. Coming to the instant case, summons were issued to the petitioner on 01.07.2019 by Senior Intelligence Officer, DGGSTI and the panchnama was recorded on 01.07.2019. Copy of panchnama proceedings filed along with the writ petition contains a detailed examination of the petitioner by the Senior Intelligence Officer. The question numbers 9 to 16 relate to the courses conducted by the petitioner, the registration of the petitioner institution under GST Act and its payment of tax etc. particulars, which can be said to be concerning to the provisions of the CGST/APGST Act. **Therefore, it can be said that the investigation was commenced even prior to the filing of the application by the petitioner before ARA.***

*13. Having regard to the legal position that when investigation has already commenced prior to the filing of application, the ARA shall not admit the application as per proviso to sub-section (2) of Section 98, **we are of the view that the ARA should not have admitted the application in the instant case and issued its ruling.** Therefore, the said order dated 05.03.2020 is vitiated by law. This fact was brought to the notice of the appellate authority in the grounds of appeal. Though the said ground is mentioned, unfortunately, the appellate authority has not given its finding on the said ground raised by the petitioner. Therefore, the order of the appellate authority is also vitiated by law. Hence, we find force in the submission of learned counsel for petitioner that both the orders are liable to be set aside."*

8.10 We are therefore of the opinion that an advance ruling is not required to be pronounced once an investigation is initiated against the applicant under the provisions of the CGST Act, or the GST Act of the respective State or Union Territory, involving the same issue on which the query for advance ruling has been raised. We are also of the opinion that pronouncing a ruling on the same issue in respect of which a show cause notice has been issued, may vitiate the adjudication proceedings involving the said notice. At this juncture, it becomes imperative to analyse as to whether the query raised in the application for advance ruling is the same on which the investigation was initiated, and whether the investigation proceedings precedes the application for advance ruling. Accordingly, in the instant case, it is seen that a summons dated 30.11.2022 was issued by the Senior Intelligence Officer, DGGI, Chennai Zonal Unit to the Registrar, M/s. Tamil Nadu

Medical Council, Chennai-106, requesting the Registrar to appear in person on 07.12.2022 to give evidence and to produce the following details/documents, viz.,

1. Month-wise details of amounts collected towards the services provided by TNMC to its members and others, for the period from 01.07.2017 to 30.11.2022;

2. Ledger copies for the period from 01.07.2017 to 30.11.2022;

3. Sample invoices/receipts/copy of certificates (year wise).

8.11 Subsequently, another summon dated 20.12.2022 was also seen to have been issued to the applicant for appearance on 09.01.2023. Further, the Show Cause Notice No.72/2023 dated 09.09.2023 is seen to have been issued to the applicant requiring them to show cause as to why taxes under GST should not be demanded on the consideration received towards registration fees, fees collected for continuing medical education (CME), etc., Perusal of the show cause notice also reveals that

(i) a letter dated 19.12.2022 has been submitted by the applicant to the Senior Intelligence Officer, Chennai furnishing the details of 'Registration fees of Doctors' and 'Continuing Medical Education Certificate Import fees' for the period from 01.07.2017 to 30.11.2022, in response to the summons dated 30.11.2022, and

(ii) a statement dated 09.01.2023 has been recorded from Shri Dr. R. Shanmugam, Registrar of TNMC, wherein he has explained about the various fees collected by TNMC, and the reason as to why GST was not paid on the fees collected.

Accordingly, it is clear that the issue involved in the investigation carried out by DGGI, Chennai Zonal Unit, and the one covered under the query for advance ruling raised by the applicant, viz., ***"Whether GST is applicable on various Fees collected by Tamil Nadu Medical Council (TNMC) a Government Authority."***, is one and the same.

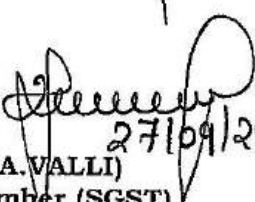
8.12 Further, it is seen that while the application for advance ruling in the instant case was filed by the applicant online on 30.12.2022, the first summon issued by the Senior Intelligence Officer, DGGI, Chennai Zonal Unit is dated 30.11.2022 for appearance on 07.12.2022. It is seen that the date of issue of the second summon is 20.12.2022 for appearance on 09.01.2023. It is quite clear from the above, that the initiation of proceedings by way of issue of both the summons that seeks the details/documents in relation to the issue involved in the instant case, precedes the date of filing of advance ruling application by the applicant. More specifically, the letter dated 19.12.2022 of the applicant furnishing the details of fees collected, unambiguously proves the case in point.

8.13 We are therefore of the considered opinion that the application for advance ruling filed online dated 30.12.2022 by the applicant is liable for rejection under the first proviso to Section 98(2) of the CGST / TNGST Acts, 2017, in view of the fact that 'proceedings' on the same issue was already pending against the applicant.

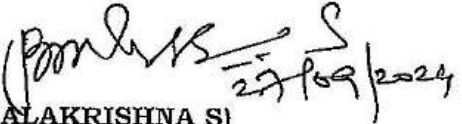
9. In view of the above, we rule as under;

RULING

The advance ruling application is rejected for the reasons discussed in para 8 supra.


(A. VALLI)
Member (SGST)




(BALAKRISHNA S)
Member (CGST)

To

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

//By RPAD//

Copy submitted to:

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai - 600 034
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.
3. The Principal Commissioner of GST & C.Ex.,
Chennai North Commissionerate.

Copy to:

1. The Assistant Commissioner (ST),
Arumbakkam Assessment Circle,
No.1, Greams Road,
Chennai.
2. Master File / spare - 1.