

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU  
NO.207, 2<sup>ND</sup> 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.
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**Advance Ruling No. 21/ARA/2024 Dated: 30.09.2024**

- 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		Unregistered
Legal Name of Applicant		Tamil Nadu Nurses and Midwives Council
Registered Address / Address provided while obtaining user id		Jayaprakash Narayanan Maligai, No.140, Santhome High Road, Mylapore, Chennai 600 004.
Details of Application		GST ARA – 01 Application Sl.No.38/2022 dated 28.06.2022
Jurisdictional Officer		<b>Center :</b> Chennai North Commissionerate; Division : Mylapore
Concerned Officer		<b>State :</b> Mandaveli Asscssment Circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provider
B	Description (in brief)	Applicant was constituted under the provisions of Tamil Nadu Nurses and Midwives Act, 1926, Gazetted on 29.06.1926. It was to provide for the registration of Nurses, Midwives, Health visitors, Auxiliary Nurse and Midwives, and Dhais in the State of Madras. The Act was enacted with the aim and advancement of Nursing education and champion the cause of nursing profession against collection of fees.
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 Nurses and Midwives Council a Government Authority?

1. The applicant submitted a copy of challan dated 24.06.2022 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. The online application form for advance ruling dated 27.06.2022 was physically received on 28.06.2022 as mandated under Rule 107A.

2.1 The Tamil Nadu Nurses and Midwives Council (hereinafter referred to as "Applicant") was formed under "The Tamil Nadu Nurses and Midwives Act, 1926. It is an act to provide for registration of Nurses, Midwives, Health Visitors, auxiliary Nurse-Midwives and Dhais in the State of Tamil Nadu.

2.2 The said Act vide Section 11, inter alia, provides for regulating the conduct of any examination which may be prescribed as a condition of admission to the register, and any matters ancillary to or connected with such examinations; determining the manner in which all fees levied under the said Act and all moneys received by the Council shall be applied for the purposes of the said Act.

2.3 Section 12 of the said Act, inter alia, provides for regulating the compilation, maintenance and publication of the register; for regulating and supervising the practice of their profession by registered nurses, midwives, health visitors, auxiliary nurse-midwives and dhais; for regulating the publication of the names of registered nurses, mid-wives, health visitors, auxiliary nurse-midwives and dhais and their residences; for prescribing the rates of fees to be charged for examinations prescribed for admission to the register and for registration.

2.4 On interpretation of law, the applicant, inter alia, 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 05.1.2023 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.

2.6 The applicant submitted three different letters dated 13.01.2023 to substantiate their ground that no proceedings were initiated by GST officials that would invalidate the present application for advance ruling. According to the applicant, initiation of proceedings under GST Act are covered by section 73 and 74 of the Act; department can initiate proceedings under section 73 and 74 of the Act under various situation; one among the situation is inspection /survey by the department U/s 67; GST officials inspected their council office and called for certain details; personal hearing was made and details were collected including summon issued for which Registrar attended and gave her statement. Only inspection was done by the department under section 67 which is only a process to initiate the proceedings and a proceeding under GST Act. Further no SCN or order was issued before the application filed for AAR on 28/06/2022 and no notice was served on the applicant for initiation of proceedings under section 73 and 74 of the GST Act. Therefore, the applicant is eligible for a ruling from Authority for Advance Ruling.

2.7 The applicant also made a claim that the functions entrusted to the applicant by the Government of Tamil Nadu come under public health as stated in Sl. No.6 of Article 243W of the Constitution of India. The said service to the government qualifies for exemption as pure service to government vide Sl. No. 3 of Notification No.12/2017 CT dated 28.06.2017.

3. The applicant was given an opportunity to be virtually heard on 12.01.2023. Sri V.Swaminathan, Chartered Accountant, the Authorized Representative (AR) of the applicant appeared for the personal hearing and reiterated the submissions. However, when the members enquired about the investigation being conducted by DGGI, the AR stated that DGGI had collected information from the applicant and they are not aware of any case booked by DGGI. The personal hearing was continued on 16.03.2023, in physical mode, wherein the AR appeared and stated that DGGI had issued summons under Section 70 and collected information / documents. He further requested to take on record their submissions on 13.01.2023 and sought further time to submit additional grounds as to why they are eligible for advance ruling and submitted the same vide letter dated 16.03.2023 supra.

3.1 The applicant vide letter dated 16.03.2023, as additional grounds, stated 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.

4.1 The applicant has registered as an unregistered applicant in GST portal on 24.06.2022 for filing advance ruling application under the category of statutory body. 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.

4.2 The concerned State Authority vide letter RC No.524/2022/A4 dated 03.08.2022, inter alia, stated that Tamil Nadu Nurses and Midwives Council is an autonomous body. As per GST Act, a statutory body, corporation or an authority created by the parliament or a State Legislature is neither 'Government' nor a 'local



authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. They are separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the Government or local authorities for the purpose of GST Acts. Therefore it was stated therein that the Council which is a regulatory body is liable to be registered under GST Act, 2017.

4.3 The said State authority relied on Student's Registration fee structure and various fee prescribed for processing, recognition, inspection, enhancement of seats and re-inspection fee for various courses displayed in the website of the Council to state that the Council charges fees not only from colleges affiliated, but also from the students on various aspects. Further relied on the definition of 'supply' as per Section 7 and definition of 'Outward Supply' as per section 2(83) of GST Act, 2017.

4.4.1 The concerned State authority, with regard to the question of the applicant that fees collected by the Council is not for supply of goods, service or both, stated that it is clearly mentioned in their website that the Council charges various fees for the services rendered. Therefore, the services rendered should be treated as taxable services.

4.4.2 With regard to the applicant's question that fees collected does not have the character of sale, transfer, barter, exchange, license, rental lease or disposal made or agreed to be made, the concerned State authority states that as per Notification No.11/2017 dated 28.06.2017 vide Sl. No.608 of Annexure has specific entry 99314 Nursing and physiotherapeutic services and Sl. No. 600 with entry 999294 - 'Other Education and training services nowhere else classified' attracts 9% CSGST and 9% SGST.

4.4.3 With regard to the applicant's question that fees are not a consideration since there is no supply involved, the State authority states that the services offered by the Council are against Primary Processing fees, Annual Recognition fee, Inspection fee, and Enhancement of seats / Re-inspection fee. These services are rendered only when fees mentioned are paid, which clearly establishes that the service is for a consideration and therefore, there is supply of services involved.

4.5 Intelligence-II of the State vide letter RC. No.4272/2022/A9 dated 20.07.2022 informed that no proceeding is pending with them in respect of the applicant.

5. The DGGI, Chennai Zonal Unit vide email dated 28.07.2022 forwarded the following details/documents, viz.,

- (i) a letter dated 28.07.2022 signed by the Additional Director, DGGI, Chennai Zonal Unit, Chennai;

(ii) Statement dated 18.04.2022 recorded from Dr. S. Ani Grace Kalaimathi, Registrar of Tamil Nadu Nurses and Midwives Council;

(iii) The details of charges/fees collected by Tamil Nadu Nurses and Midwives Council for the period from 01.07.2017 to 31.03.2022; and

(iv) Statement dated 14.06.2022 recorded from Dr. S. Ani Grace Kalaimathi, Registrar of Tamil Nadu Nurses and Midwives Council.

(v) Incident Report No.89/2022 dated 24.06.2022 signed by the Principal Additional Director General, DGGI, Chennai Zonal Unit, Chennai; wherein non-payment of GST to the tune of Rs.474 lakhs on the consideration for the supply under section 7 of the CGST Act, 2017 in the form of fees collected, which is not exempted by any notification, has been pointed out.

6.1 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.17/ARA/2023 dated 19.06.2023.

6.2 Aggrieved, the applicant filed an appeal before the Appellate Authority for Advance Ruling, Tamilnadu, who vide Order-in-Appeal No.AAAR/05/2023 (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 28.07.2022 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."*

6.3 Accordingly, the relevant documents were shared with the applicant and in response they furnished their comments, vide their letter dated 16.02.2024, 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. Ani Grace Kalaimathi, Registrar, TN Nurses and Midwives 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/05/2023 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 16.02.2024. The AR reiterated the contents of the said letter and requested the authorities to take the same on record.

## 8.0 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 28.07.2022.

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)	<b>Any</b> proceedings	<b>Cross jurisdiction</b> – "has initiated <b>any</b> proceedings on a subject matter"
Proviso to 29(1) and 29(2)	<b>The</b> proceedings	<b>Cancellation or Suspension</b> – "during pendency of <b>the</b> proceedings relating to cancellation of registration"
66(1)	<b>Any other</b> proceedings	<b>Special Audit</b> – "If at any stage of scrutiny, inquiry, investigation or <b>any other</b> proceedings before him"
67(2)	<b>Any</b> proceedings	<b>Power of inspection, search and seizure</b> – "which in his opinion shall be useful for or relevant to <b>any</b> proceedings under this act"
70(2)	<b>Judicial</b> proceedings	<b>Power to summon</b> – "deemed to be <b>judicial</b> proceedings within the meaning of section 193 and section 228 of the Indian Penal Code"
73(8)	<b>All</b> proceedings	<b>Determination of tax – other than fraud</b> – "all proceedings in respect of the said notice shall be deemed to be concluded"
74(8)	<b>All</b> proceedings	<b>Determination of tax – by reason of fraud</b> – "all proceedings in respect of the said notice shall be deemed to be concluded"
75(10)	<b>Adjudication</b> proceedings	<b>General provisions – Determination of tax</b> – "The <b>adjudication</b> proceedings shall be deemed to be concluded"
78	<b>Recovery</b> proceedings	Initiation of <b>Recovery</b> proceedings

122(1)(xvi) i)	<b>Any proceedings</b>	<b>Penalty for certain offences</b> – “furnishes false information or documents during <b>any</b> proceedings under this Act”
127	<b>Any proceedings</b>	<b>Power to impose penalty in certain cases</b> – “the same is not covered under <b>any</b> proceedings under sections 62/63/64/73/74/129/130”.
130(7)	<b>Any other proceedings</b>	<b>Confiscation of goods or conveyances</b> – “after satisfying himself that the confiscated goods or conveyance are not required in <b>any other</b> proceedings under this Act”
160(1)	<b>Other proceedings</b>	<b>Assessment proceedings not to be invalid on certain grounds</b> – “No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or <b>other</b> proceedings”
160(2)	<b>Earlier proceedings</b>	<b>Assessment proceedings not to be invalid on certain grounds</b> – “in the <b>earlier</b> 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 16.02.2024 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 statement dated 18.04.2022 has been recorded from Dr. S. Ani Grace Kalaimathi, Registrar of Tamil Nadu Nurses and Midwives Council, in response to a **summon** dated 12.04.2022 issued by the Senior Intelligence Officer, DGGI, Chennai Zonal Unit wherein vide her answer to Question No.3 of the said statement, she has explained about **the details of charges/fees collected** by Tamil Nadu Nurses and Midwives Council for the period from 01.07.2017 to 31.03.2022, through their letter in Ref. No.1538/NC/2022 dated 18.04.2022. Likewise, in her answer to Question No.4 of the said statement, she has explained the reason as to why GST was not paid on such charges/fees collected.

8.11 Subsequently, it is seen that in response to summon dated 09.06.2022, another statement dated 14.06.2022 has also been recorded, wherein the legalities relating to taxability in the instant issue, is seen to have been discussed in a detailed manner. The DGGI vide letter dated 28.07.2022 forwarded the copies of the said statements along with the details of various fees collected by the applicant from July 2017 to March 2022, and the Incident Report No.89/2022 dated 24.06.2022 issued by the DGGI, Chennai Zonal Unit, pointing out the non-payment of taxes under GST by the applicant. Further, a Show Cause Notice No.104/2023 dated 28.09.2023 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 by them towards various charges/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 Nurses and Midwives Council a Government Authority.”***, is one and the same.

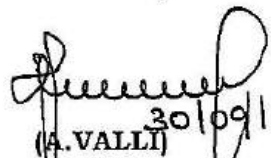
8.12 Further, it is seen that while the application for advance ruling in the instant case was received on **28.06.2022**, the first summon issued by the Senior Intelligence Officer, DGGI, Chennai Zonal Unit is dated **12.04.2022** based on which a statement has been recorded from Dr. S. Ani Grace Kalaimathi, Registrar of Tamil Nadu Nurses and Midwives Council on **18.04.2022**, wherein the details of charges/fees collected by Tamil Nadu Nurses and Midwives Council for the period from 01.07.2017 to 31.03.2022, through their letter in Ref. No.1538/NC/2022 dated **18.04.2022** is seen to have been communicated. Through another statement dated **14.06.2022**, the legalities relating to taxability in the instant issue, is seen to have been discussed in a detailed manner. Apart from the same, perusal of the Incident Report No.89/2022 dated **24.06.2022** issued by the DGGI, Chennai Zonal Unit, clearly brings out the fact that the issue relating to non-payment of taxes under GST on the charges/fees collected by the applicant has already been taken up for investigation. It is quite clear from the above, that the initiation of investigation by way of issue of summons; recording of statements dated 18.04.2022 and 14.06.2022; furnishing of details/documents by the applicant on 18.04.2022 in relation to the issue involved in the instant case; issue of Incident Report No.89/2022 dated 24.06.2022 issued by the DGGI, Chennai Zonal Unit, all precede the date of filing of advance ruling application, i.e., 28.06.2022 by the applicant.

8.13 We are therefore of the considered opinion that the application for advance ruling dated 28.06.2022 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 initiated and pending against the applicant.


9. Accordingly, we rule as under;

#### **RULING**

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

  
(A. VALLI)  
Member (SGST)  
30/09/2024



  
(BALAKRISHNA S)  
Member (CGST)  
30/09/2024

To

M/s. Tamil Nadu Nurses and Midwives Council,  
Jayaprakash Narayanan Maligai,  
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//By RPAD//

Copy submitted to:-

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

Copy to :

1. The Assistant Commissioner,  
Mandavcli Assessment Circle,  
4<sup>th</sup> Floor, Integrated Building for Commercial Taxes  
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Saidapet, Chennai-35.
2. Master File / spare – 1.