

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No. 2/2020/AAAR

Date: 05.03.2021

BEFORE THE BENCH OF

1. Thiru G.V.KRISHNA RAO, MEMBER

2. Thiru M. A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/06/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act, 2017/Tamilnadu Goods & Services Tax Act, 2017 ("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate 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. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	Tvl. Padmavathi Hospitality & Facilities Management Service No.51, Old No.117,2-B, JVL Towers, 2 nd Floor, Nelson Manickam Road, Aminjikai, Chennai-600 029.
GSTIN or User ID	33AAIFP7751M1ZR
Advance Ruling Order against which appeal is filed	Order No. 1/ARA/2020 dated 31.01.2020
Date of filing appeal	14.02.2020
Represented by	Thiru.P.Ramachandran,C.A, Tmt.G.Anitha,C.A and Thiru.P.Lokesh Kumar, C.P.A
Jurisdictional Authority-Centre	Chennai North Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Koyambedu Assessment Circle.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.CNRB 20023300131188 dated 12.02.2020

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.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 by Tvl.Padmavathi Hospitality & Facilities Management Service, (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AAIFP7751M1ZR. The appeal is filed against the Order No. 1/ARA/2020 dated 31.01.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The appellant is providing Manual and Mechanised House Keeping services, Man Power Supply and Security Services to Directorate of Medical Education under whom all the Tamil Nadu State Government Medical Colleges and Hospitals are functioning.

3. The application was accepted and taken up for hearing by AAR and during the course of hearing on 26/09/2019 the **state** jurisdiction officer also appeared for the hearing and submitted that a WP was filed in Hon'ble High court and gave a written submission stating that the appellant is not eligible for exemption at Sl no 3 of the Notification no 12/2017 as they provide only man power services. The Bench Members informed the appellant that as per section 98(2) of the CGST Act 2017, they cannot give ruling as the similar issue was raised in WP 24412 dt 19/08/2019 with Hon'ble High Court Chennai which was pending in the High Court and passed an order to that effect.

4. Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

- The AAR ought to have considered the order of the High Court dt 14/11/2019 wherein it is clearly stated that on request of the learned senior counsel appearing for the petitioner seeking clarification from the court in view of the first proviso to section 98(2) of the central goods and service tax act 2017 to enable the sixth respondent to WP namely AAR to pass orders in that application, the Judge Justice Audikesavulu has passed order stating that the pendency of the Writ petition 24412 dt 19/08/2019 **shall not preclude the AAR from deciding the application** made by the Petitioner namely the PHFMS.

PERSONAL HEARING:

5. The Appellant was granted personal hearing as required under law before this Appellate Authority on 3rd February 2021 and on 09.02.2021. The Authorized representatives of the Appellant, Thiru P.Ramachandran,C.A, Tmt.G.Anitha,C.A and

Thiru.P.Lokesh Kumar, C.P.A of the appellant company appeared for hearing. They reiterated the written submissions filed along with the Appeal. They submitted a compendium of statutory provisions and case laws relied upon by them.

DISCUSSION & FINDINGS:

6. We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. The appellant has stated that the Writ Petition No.24412 dated 19/08/2019 filed in Hon'ble High Court was not for seeking clarification on applicability of GST on the services provided by them to DME but for questioning the validity of the Tender process.

7.1 We find that the appeal was filed by the appellant mainly on the ground that in spite of the facts mentioned in detail on the merits of the case in the application before AAR along with the documentary evidences submitted before the AAR, the AAR have not given their ruling citing the section 98(2) of the CGST Act, as a constraint in giving their rule on the issue raised by the applicant.

7.2 The applicant has filed this appeal with Appellate authority for Advance Ruling with prayer to direct the AAR to consider their application dt 15/08/2019 and pass appropriate orders as per the law and facts put before them or alternatively modify the order passed by AAR by giving clarification on issues raised by the applicant whether GST is applicable on above said services to be provided by the applicant to DME or whether the said services are exempted under notification no.12/2017 among other grounds of appeal that may be adduced at the time of hearing.

8. The authorised representative during the course of hearing stated that the Hon'ble High Court (Division Bench) in its order dated 9/9/2020 allowed the appellant petitioner to withdraw their petition filed by them, without prejudice to the right of the appellant petitioner to pursue their application before the AAR and requested the ruling on merits.

9. In view of the above facts, we pass the following Order:

RULING

The Order of the Advance Ruling Authority was right, since at the material time there was a petition filed by the appellant, pending before the Hon'ble High Court in this matter. Therefore, there is no need to interfere with the order of the AAR; however, the appellant is free to file a fresh application before the AAR, if he wishes to do so, since there is no pending proceedings at the Honourable High Court. The subject appeal is disposed of accordingly.


(M.A.SIDDIQUE)
Principal Secretary/
Commissioner of Commercial Taxes,
Tamil Nadu/Member, AAAR.


(G.V.KRISHNA RAO)
Pr.Chief Commissioner of GST & Excise
Chennai Zone/Member, AAAR.

APPELLATE
AUTHORITY FOR
ADVANCE RULING

05 MAR 2021

// By Speed Post with Ack. Due //

To
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Copy to:

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26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/The Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. Joint Commissioner(ST)/Member,
Authority for Advance Ruling, Tamil Nadu,
Room No.503B, 5th Floor,
Integrated commercial taxes Office complex,
No. 32, Elephant Gate Bridge Road,
Chennai-600 003.

4. The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
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5. The Assistant Commissioner (ST),
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6. Master File/ Spare.