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

A.R.Appeal No.06 & 07/2021/AAAR Date: 30.06.2021

BEFORE THE BENCH OF

1. Thiru G.V.KRISHNA RAO, MEMBER

2. Thiru M. A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/17&18/2021 (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 98 (5) 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	M/s. New Tirupur Area Development Corporation Limited
GSTIN or User ID	33AAACN3562H1ZP
Advance Ruling Order against which appeal is filed	Order No.5/ARA/2021 Dated: 26 .02.2021
Date of filing appeal	01.04.2021 & 09.04.2021
Represented by	Thiru.P.Giridharan, Advocate
Jurisdictional Authority-Centre	Chennai South Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST) Alandur 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.SBIN 21043300020235 dated 07.04.2021,

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.

1. The subject appeal has been filed under Section 98(5) of the Tamilnadu Goods & Services Tax Act, 2017/Central Goods & Services Tax Act 2017 by Tvl. New Tirupur Area Development Corporation Limited (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AAACN3562H1ZP. The appeal is filed against the Order No. 5 /ARA /2021 dated 26.02.2021 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.The Appellant is in the business of promoting infrastructure development activities in the area of water supply at New Tirupur. They had implemented an integrated water supply project for the town of Tirupur. In order to implement the integrated water supply and sewage treatment project for Tirupur City Municipal Corporation (TCMC), wayside villages and Tirupur Local Planning Area (TLPA), a Concession agreement was signed between the Government of Tamilnadu, Tirupur Municipality (now Corporation) and the applicant to implement a 185 million litre per day (MLD) water supply project expandable upto 250 MLD and a 15 MLD Sewage Treatment plant (STP) expandable up to 30 MLD at the total project cost of Rs.1023 crore.; By virtue of the Concession Agreement entered and the mere nature of the activity, NTADCL assumes the responsibility under Article 243 G and Article 243 W contemplated under the sixth schedule of the Constitution of India.; They had signed a water drawal agreement with TN Government for drawing raw water up to a Maximum of 185 Million Litres Per day from the river Cauvery for supply towards domestic and non-domestic purposes within the Tirupur Municipality.

3.The Appellant had sought Advance Ruling on the following questions:

Whether the following activities of the applicant is taxable or exempt ?

Sale of water

Sewage treatment charges

Consultancy Services such Detailed Project Report (DPR), Project Management Consultancy (PMC) and any other infrastructure related consultancy to TCMC / GoTN

Incidental to main business activities

Interest on receivable on delayed payments

Disconnection Charges

Reconnection charges

Permanent disconnection charges

Cheque Bouncing charges

Non-Revenue – Service provided to Customer on New Connection works-Concept of No Loss No Gain, New Connection Shifting and other works

4.The AAR pronounced the following rulings:

a.The applicant not being the class of persons specified in Notification No. 14/2017-C.T.(Rate) dated 28.06.2017 as amended, they are not eligible for the said Notification as discussed in Para 10.2 .

b.The activity of Sewage offtake and treatment extended to Tirupur Municipal Corporation as per the CA is exempt under Sl.No.3 of Notification No.12/2017- C.T.(Rate) dated 28.06.2017 for the reasons discussed in Para 11.3.

c.The Consultancy Services rendered by the applicant to Tiruppur City Municipal Corporation in respect of the Project- Construction Management and Supervision Consulting Service to assist Project ULBs – Tiruppur City Municipal Corporation exempt under Sl.No.3 of Notification No.12/2017-C.T.(Rate) dated 28.06.2017 for the reasons discussed in Para 11.4 .

d.In respect of the activities incidental to main business activities, it is ruled as under :

i.Interest on receivable on delayed payments being charges received for 'Agreeing to tolerate an act' classifiable under SAC 999794 is taxable @ 9% CGST and 9% SGST as per Sl.No. 35 of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 readwith Sl.No. 35 of Notification No. II (2)/CTR/532(d-14)/2017 vide G.O. (Ms.)No.72 dated 29.06.2017 as amended for the reasons discussed in Para 13.1(a) .

ii. Cheque Bouncing Charges being charges received for 'Agreeing to tolerate an act' classifiable under SAC 999794 is taxable @ 9% CGST and 9% SGST as per Sl.No. 35 of Notification No. 11/2017- C.T.(Rate) dated 28.06.2017 readwith Sl.No. 35 of Notification No. II (2)/CTR/532(d-14)/2017 vide G.O. (Ms.)No.72 dated 29.06.2017 as amended for the reasons discussed in Para 13.1(b) .

iii.New connection works executed as per CA for TCMC , the established asset is accounted as their assets are not taxable being self-service for the reasons discussed in para 13.1(c) .

iv.Connection/ Reconnection/ Disconnection/ Permanent Disconnection Charges are charges received for the services of 'Water Distribution Services' classifiable under SAC 9969 and is taxable @ 9% CGST and 9%

SGST as per Sl.No. 13 of Notification No. 11/2017- C.T.(Rate) dated 28.06.2017 readwith Sl.No. 13 of Notification No. II (2)/CTR/532(d-14)/2017 vide G.O. (Ms.)No.72 dated 29.06.2017 as amended for the reasons discussed in Para 13.1 (d) .

But as regard to the activity of 'supply of Water-goods' by the applicant to the purchasers as per the CA, we have different views on this aspect as discussed in Para 12.2 . Since we have different views on this particular issue, we are making a reference to the Appellate Authority for hearing and decision on this issue in terms of Section 98(5) of the Act ibid which provide that where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

5.Based on the above decision, the Appellant has filed the present appeal. The grounds of appeal are paraphrased as follows:

1 The terms and conditions of the Concession Agreement dated 11.02.2000 maybe read as part hereof. It is submitted that on a perusal of the terms of the Concession Agreement dated 11.02.2000 it can be ascertained that the Appellant is performing a municipal function within the ambit of Article 243G and W, subject to the terms of the Concession Agreement.

2. The activities undertaken by the Appellant are either 'supply of goods' or 'supply of services', which when supplied on an intra-state basis will be subject to a levy of CGST + SGST.
3. The Appellant also under takes the following activities and levy charges as follows:-:

(i) **Charge 1:** In the event of there being a shortfall in the quantity of water consumed when compared with the agreed quantity by any industrial customer in any month, the Appellant levies a 'water capacity charge' or a ' take or pay charge'. This is like monthly minimum billing for a pre-agreed amount of water. This charge is calculated on the quantum of shortfall when compared with the quantity to be taken.

(ii) **Charge 2:** The Appellant levies a re-connection charge in the event of non -payment of bills within due period and if the cheque is dishonoured. Apart from the above, the Appellant levies dishonour charges as levied by the Bank.

(iii) **Charge 3:** In the event of any delay in payment, beyond contracted dates, the Appellant also levies interest on delayed payment at rates prescribed in the service agreement

6. Charges 2 and 3, are in the nature of 'interest or late fee or penalty for delayed payment of any consideration for any supply'. The same will therefore, form a part of the value of supplies made by the Querist which will be subject to a levy of GST or exemption from levy of GST.

7. Charge 1 is in the nature of 'Minimum Take or Pay Charges' ('MTOP'). In the context of the previously existing excise law which also operates on a transaction value basis, that MTOP charges are consideration for the commodity which is actually supplied in cases where there are long term contracts. Seen from that context, the MTOP charges which the Appellant levies is only consideration for the water supplied by the Appellant to an industrial unit and will therefore, form a part of the value of supply which is subject to a levy of GST or exemption from levy of GST.

8. In view of the foregoing, the activities undertaken by the Appellant will therefore be subject to a levy of GST, subject to any exemptions.

9. Without prejudice, it is further submitted that Water *[other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]* falling under tariff heading 2201 is unconditionally exempt from the levy of CGST in terms of Notification No.2/2017-Central Tax (Rate) dated 28th June, 2017.The SGST related provisions/rates are modelled on the CGST related provisions, similar exemption provisions have been provided for under notifications issued under the TNGST Act, 2017, and, consequently the effective SGST rate in Tamil Nadu for supply of water is nil

[other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under tariff heading 2201.[*See* Exemption *vide* G.O. Ms. No.64, Commercial Taxes and Registration (B1), 29th June 2017, Aani-15, Hevilambi, Thiruvalluvar Aandu-2048.]

10. The AAR failed to appreciate that after Notification No.2/2017-Central Tax (Rate) dated 28th June, 2017, Notification no. 12/2017- Central Tax (rate) dated 28th June, 2017 and G.O. Ms. Nos.64 and 74, Commercial Taxes and Registration (B1), 29th June 2017, Aani-15, Hevilambi, Thiruvalluvar Aandu-2048 have been issued, Sewage and waste collection, treatment and disposal and other environmental protection services, falling under Heading 9994 are treated as 'supply of services' and subject to a levy of CGST at 9% in terms of Notification no. 11/2017- Central Tax (Rate) dated 28th June, 2017. However, in terms of Notification no. 12/2017- Central Tax (rate) dated 28th June, 2017, pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution are exempt from the levy of CGST.

11. The AAR failed to appreciate that the services rendered by the Appellant are in relation to a function entrusted to the Municipality under Article 243W of the Constitution and are provided to a local authority. Therefore, on such sewage and waste collection services, the effective rate of CGST will be 'nil' as the same are exempt from the levy of GST.

12. The learned AAR erred in not appreciating that the SGST related provisions/rates are modelled on the CGST related provisions, similar exemption provisions have been provided for under notifications issued under the TNGST Act, 2017, and, consequently the effective SGST rate in Tamil Nadu for such services is 'nil.' [*See* Exemption *vide* G.O. Ms. No.74, Commercial Taxes and Registration (B1), 29th June 2017, Aani-15, Hevilambi, Thiruvalluvar Aandu-2048].

13. The learned AAR failed to note that Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under tariff heading 2201 is unconditionally exempt from the levy of CGST in terms of Notification No.2/2017-Central Tax (Rate) dated 28th June, 2017.

14. The learned AAR erred in not appreciating that SGST related provisions/rates are modelled on the CGST related provisions, similar exemption provisions have been provided for under notifications issued under the TNGST Act, 2017, and, consequently the effective SGST rate in Tamil Nadu for supply of water is nil [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under tariff heading 2201.[*See* Exemption *vide* G.O. Ms. No.64, Commercial Taxes and Registration (B1), 29th June 2017, Aani-15, Hevilambi, Thiruvalluvar Aandu-2048.]

15. The learned AAR failed to appreciate that there is a tremendous difference between making water potable and selling it like the appellant does and purifying water like aeration, mineralisation-demineralization, purification, distillation, medication, ionization, and selling them in a sealed container.

16. The learned AAR failed to note that while the former is exempt the later is subject to the levy of CGST and SGST, and by no stretch of imagination can water which is made potable by the appellant and sold ever classified as aeration, mineralisation-demineralization, purification, distillation, medication, ionization, and selling them in a sealed container.

17. The learned AAR erred grievously in relying on Wikipedia entries for the purpose of passing the impugned order. It is well settled that Wikipedia is open source and can be edited by anyone and articles contained therein cannot form basis for adjudication. Hence, reliance on such statements from Wikipedia ought to be eschewed and set aside.

18. The learned AAR failed to appreciate that Section 15 (1) read with Sec 15(2)(d) of the CGST Act, 2017, the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply and shall include the interest or late fee or penalty for delayed payment of any consideration for any supply; and also include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

19. Hence, the exemption under Notification no. 12/2017- Central Tax (rate) dated 28th June, 2017 and G.O. Ms. Nos.64 and 74, Commercial Taxes and Registration (B1), 29th June 2017, Aani-15, Hevilambi, Thiruvalluvar Aandu-2048 will also apply to the interest component and the late fee or penalty as it forms a part of the value of supply.

20. It is further submitted that it would be absurd to exempt the main supply of goods or service from the ambit of the tax and levy the tax only on the interest / penalty / late fee component. In such a case, the basis of charge to tax of the interest / penalty / late fee component on a different basis would be unknown as it would have to be treated as a stand alone transaction rather than a composite one. Hence, it is submitted that Charges 2 and 3 (as stated in the statement of facts), are in the nature of 'interest or late fee or penalty for delayed payment of any consideration for any supply'. The same will therefore, form a part of the value of supplies made by the Appellant, which is exempted under Notification no. 12/2017- Central Tax (rate) dated 28th June, 2017 and G.O. Ms. Nos.64 and 74, Commercial Taxes and Registration (B1), 29th June 2017, Aani-15, Hevilambi, Thiruvalluvar Aandu-2048.

21. It is submitted that in respect to Charge 1 (as stated in the statement of facts) it is in the nature of 'Minimum Take or Pay Charges' ('MTOP'). In the context of excise law which also operates on a transaction value basis, that

MTOP charges are consideration for the commodity which is actually supplied in cases where there are long term contracts. Seen from that context, the MTOP charges which the Appellant levies is only consideration for the water supplied by the Appellant. The same will therefore, form a part of the value of supplies made by the Appellant, which is exempted under Notification no. 12/2017-Central Tax (rate) dated 28th June, 2017 and G.O. Ms. Nos.64 and 74, Commercial Taxes and Registration (B1), 29th June 2017, Aani-15, Hevilambi, Thiruvalluvar Aandu-2048.

22. As per the judgment of the Hon'ble Supreme Court in **Govt. of NCT of Delhi Vs. Union of India (UOI) (2020) 12 SCC 259,** wherein it was held as to what is a service qua a fire service under Article 243 (W) in the realm of services provided by a Municipality, as follows:

"212. We may first notice that the word 'services' used in the Act has been used in a manner of providing services for fire prevention and fire safety measures. The word 'services' has not been used in a sense of constitution of a service. It is to be noted that fire service is a municipal function performed by local authority. Delhi Municipal Council Act, 1957 contains various provisions dealing with prevention of fire etc. Further fire services is a municipal function falling within the domain of the Constitution deals with functions of the municipalities in relation to matters listed in the 12th Schedule. Entry 7 of the 12th Schedule provides for 'Fire Services' as one of the functions of the municipalities. The nature of the enactment and the provisions clearly indicate that Delhi Fire Services Act falls under Entry 5 of List II and not under Entry 41 of List II."

23. Considering the business model of the Appellant (as explained above) and the decision of the Hon'ble Supreme Court in **Govt. of NCT of Delhi Vs. Union of India (UOI)** *supra,* it is respectfully submitted that the supply of potable water needs in the Tirupur Local Planning Area, is an act falling clearly within the domain of Tirupur Municipality.

24. In a very recent decision of the Madras High Court in **Cuddalore Muncipalty vs Joint Commissioner of GST & Central Excise and Others**

decided on March 2021, the Hon'ble Court discussed in length and detail on negative list of services, mega notification and services provided by government and local authority, the relevant paras are discussed below:

"50. Para 4.1 of Guidance Note 4- Negative List of Services is reproduced below
Guidance Note 4 - Negative List of Services
In terms of Section 66B of the Act, service tax will be leviable on all services provided in the taxable territory by a person to 18

another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66 D. For sake of ease of reference the negative list of services is given in Exhibit A1. In all, there are seventeen heads of services that have been specified in the negative list. The scope and ambit of these is explained in paras below.
4.1 Services provided by Government or local authority
4.1.1 Are all services provided by Government or local authority covered in the negative list?
No. Most services provided by the Central or State Government or local authorities are in the negative list except the following :
(a) services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services carried out on payment of commission on non government business;
(b) services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;
(c) transport of goods and/or passengers;
(d) support services, other than those covered by clauses (a) to (c) above, to business entities.
4.1.2 Would the taxable services provided by the Government be charged to tax if they are otherwise exempt or specified elsewhere in the negative list? No. If the services provided by the government or local authorities that have been excluded

from the negative list entry are otherwise specified in the negative list then such services would also not be taxable.

51. Only Support services provided by the government or local authorities that have been excluded from the negative list entry are in the negative list. Otherwise, all service of government and local authorities are not taxable. Support services was defined in Section 65B of the Act as 'infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis.

52. Services which are provided by government in terms of their sovereign right to business entities, and which are not substitutable in any manner by any private entity, are not support services."

25. The Hon'ble CESTAT, New Delhi, had held in **Rajasthan State Industrial Development & Investment Corpn. Ltd. Vs. CCE, Jaipur –II, Service Tax Appeals Nos. 590, 2425, 2436, 3198, 3204 of 2012**, order dated 12.05.2017, wherein in para 22 it was held that the term 'governmental authority' to include any authority or any other body established by Government, with 90% or more participation by way of equity or control, to carry out any function interested to municipality under Article 243W of the Constitution, and also further held that the said Article empowers legislature of a state by law endow the municipalities with such powers and authority as has been necessary to enable them to function as institution of self- government. It was further considered that the Appellant in the subject case were carrying out municipal function in their industrial areas as laid down in the Municipal Act, 2009 and the municipal body of the concerned area does not undertake such work in the Industrial Areas falling under the jurisdiction of the Appellant.

26. That the Learned Adjudicating Authority failed to consider that the Appellant is the only body engaged in supply of potable water and treatment of

sewerage waste in the Tirupur Local Planning Area, and the Tirupur Municipality does not engage in the said activity.

27. That the Hon'ble CEGAT, South Zonal Bench, Chennai in **NEPC Agro Foods Ltd., Vs. CCE, Coimbatore, order dated 11.05.2001,** wherein it was held in para 4 that in case there is an addition of mineral salt, the product will have to be treated as mineral water and will be liable to duty accordingly. However, the Learned Adjudicating Authority failed to take into consideration that the water which is made potable by the Appellant and sold is not processed for aeration, mineralisation-demineralization, purification, distillation, medication, ionization, and the Appellant is not selling them in a sealed container as well.

28. Similarly, the CEGAT, New Delhi in **Gujarat State Fertilizers Company Ltd. Vs. Collr. Of C. Ex. 1998 (98) ELT 840 (Tri. – Delhi)**, had discussed in para 31 that whether there has been transformation in the water and whether the removing of the two minerals in making water more useful for the purpose for which it has put to use in the boiler, will bring into existence new goods. It is submitted that the Appellant only makes the water potable and does not treat the water under any other process nor does the Appellant mineralise or de-mineralise the water.

29. The Hon'ble ITAT, Ahmedabad Bench, had held in **Acqua Minerals (P) Ltd. Vs. Deputy Commissioner of Income Tax – (2005) 97 TTJ (Ahd) 658**, that any deduction would arise only when an article or thing is manufactured and produced in their industry as discussed in para 9.2 and 9.3 . The Appellant herein admittedly does not manufacture nor produce or treat the water under any process, and only supplies potable water, which is the activity of the Tirupur Municipality.

Therefore it is most respectfully prayed that this Hon'ble Appellate Authority may be pleased to Set aside the Impugned Advance Ruling passed by the Authority for Advance Ruling and issue a fresh Ruling clarifying that services rendered by the Querist are in relation to a function entrusted to the Local

Authority /Municipality / Corporation under Article 243G/243W of the Constitution and are provided to a local authority and the effective rate of CGST will be 'nil' as the same are exempt from the levy of GST, in terms of Notification no. 12/2017- Central Tax (rate) dated 28th June, 2017 and effective rate of SGST will be nil in terms of Exemption *vide* G.O. Ms. No.74, Commercial Taxes and Registration (B1), 29th June 2017, Aani-15, Hevilambi, Thiruvalluvar Aandu-2048 and pass such further or other orders and thus render justice.

6.PERSONAL HEARING:

The Appellant was granted personal hearing through Virtual Personal Hearing as required under law before this Appellate Authority on 15th June 2021. The Authorized representatives of the Appellant Tvl.P.Giridharan , Advocate of the appellant company appeared for hearing. They reiterated the written submissions and emphasized that

(1) the functions entrusted to a Municipality under Article 243 W of the Constitution has been entrusted to them through the concession agreement [Article 3.1] and therefore the services are exempted as per Notification 12/2017 entry no.3 or 4.The supply of water by them is supply of service as per Schedule II of the Act and the exemption under Sl.No.3 of Notification 12/2017 as applicable.

(2) If sale of water is even treated as goods it is exempted as per entry 99 of Notification 2/2017 and the water supplied by them is potable water and not purified water.

(3) Interest, Cheque bounce charges, Miscellaneous charges are exempted as the main services are exempted.

To the specific query as to how the ratio of decision of Cuddalore Municipality relied on by them is applicable to them wherein they are not a Municipality, the Authorised Representative referred to clause (n) of the concession agreement and stated that they substitute the Municipality and therefore the decision applies to them.

DISCUSSION

7.1 We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. We observe that a reference has been made by the AAR during the course of their impugned ruling order with regard to the activity of 'supply of water-goods'. Since the main question on which ruling has been appealed by the appellant has a distinct and inseparable relationship with the point of reference made by the AAR, we wish to take up the appeal along with the reference point and answer the same together during the course of this appeal.

7.2 From the submissions made by the appellant, we find that the issues pertain to a concession agreement entered into by the appellant with the Government of Tamilnadu and Tirupur Municipality on 11th February 2000 by which the appellant, among others, undertook under contractual terms to abstract raw water from the river bed, treat it for making it fit for use and supply the same for domestic and non-domestic purposes to Tirupur Municipality (TM in short) and other purchasers (refer para G in pg 3 of the concession agreement).

7.3 Section 2.4 of the agreement provides for royalty payment by the appellant to the Government of Tamilnadu, one of the parties to the agreement, for the abstraction of such volume of raw water from time to time. Once royalty is charged and collected for the abstraction right, the raw water abstracted becomes the property of the appellant. It is also seen from the agreement that potable water is the output after treatment of the raw water by the appellant, and which is the only supply made by the appellant to all the purchasers, viz., TM, wayside villages and Industrial units (definitions in pg. 15 & 16). The water treatment, etc., are activities done by the appellant on his own account only to achieve the quality standards of the potable water as per the agreement with one of the purchasers, Tirupur Municipality. Further, the consideration for such supply of potable water to all the purchasers is in the form of water charges determined as per the agreement and other miscellaneous amounts for activities essential to supply of water (Article 17, pg 73 of the CA). Thus from the scope, language and the terms and conditions of the agreement, it is clearly seen that the appellant has been awarded a contract for the sole purpose of supply of potable water to the purchasers, among others, after treating the raw water from the river bed. The activity of the appellant is thus only a supply of potable water to its purchasers. In other words, supply of goods and not of services.

7.4 Having determined that the activities of the appellant are nothing but supply of goods (potable water), we proceed to examine the liability or otherwise of GST on the same. We find from the submissions made and from the concession agreement that it is clearly mentioned throughout the agreement that potable water is only supplied to all the purchasers of the appellant irrespective of whether they are villages, industrial units or the municipality or whether the use is domestic or non-domestic. The only differential treatment based on end use and end-users (purchasers) is only with respect to the price of the potable water charged by the appellant. There is no differentiation with respect to the nature of the supply made in the agreement in its entirety. In fact, the definitions of 'raw water', 'potable water' 'purchasers' 'water charges' in Page nos. 15,16, 17 and 21 of the concession agreement categorically pronounce that the supply to all the purchasers including industrial units, municipality and villages and for both domestic and non-domestic use, is of raw water treated to performance standards, which is otherwise called as 'potable water'. Therefore, it is clear from the agreement that the supply of appellants is only potable water.

7.5 There is no dispute regarding the classification of water a such under 2201. However, the main question raised by the appellant and also the point of reference made by the members of AAR is whether the water supplied by the appellant is exempted under sl. No. 99 of notfn. No.02/2017-CT(R) and its equivalent SGST notification published vide TamilNadu GO Ms. No. 63 dated 29/6/2017. Since purified water is excluded from the exemption entry, the point of contention appears to be that since the raw water is treated to various processes to make it potable, whether these processes make the raw water as a 'purified water' or it remains as 'water treated' to make it fit as potable water. As discussed supra in para 7.3, not only the term used in the agreement for the supply denotes it is only 'potable water' which is supplied, but the treatment processes specified elsewhere in the agreement and the intent and the purpose of the whole arrangement is only ensuring sustainable supply of potable water. Potable water is never to be equated to 'purified water'. In fact, the meaning of 'purified water' depends on what use of it people have in mind, like whether it is for washing, pharma use, industrial use or even to swim. In chemical terms, purified water is pure H2O and only contains Hydrogen and Oxygen and no minerals. Distilled water is the most common form of pure water. However, potable water has only one

meaning, water fit for human and animal consumption and has dissolved minerals. Infact, from the performance standards spelt out in Schedule C of the agreement, the quality of potable water would itself indicate that it does not attain the nature and quality of a 'purified water' on any count. Therefore, it can be safely concluded that the supply of the appellant is of raw water, treated to become 'potable water' and nothing more. Once it is distinctly clear that the supply is of 'water' only, and NOT purified water, the same falling under the entry 99 of the notification no. 02/2017-CT (R) is qualified for the exemption.

7.6 In the light of the above discussions, the reference made by the AAR on the divergent views as well as the ruling sought by the appellant, is answered as affirmative with regard to exemption available to the supply of potable water made by the appellant under notfn. No. 2/2017-CT (R) ibid.

7.7 With regard to the other questions raised in the appeal, we concur with the reasoning and the ruling given by the AAR and therefore, the appeal by the appellant is not sustainable.

In light of the above, we rule as under:

RULING

1. The reference made by the AAR and the ruling sought by the appellant in column 17(a) in the prayer in Form ARA—2 dated 9/4/2021 is answered as per Para 7.6 for the reasons discussed.
2. For reasons discussed above, the subject appeal is disposed of accordingly as all the questions raised by the appellant are answered as per AAR's ruling.

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

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

APPELLATE
AUTHORITY FOR
ADVANCE RULING

GOODS AND SERVICE TAX
Chennai, Tamilnadu.

To

Tvl. New Tirupur Area Development Corporation Limited,

Polyhose Towers 1st Floor 86 Mount Road
Chennai Tamil Nadu.

// By RPAD //

Copy to:

1. The Principal Chief Commissioner of GST & Central Excise,
   No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Ch – 600 034.

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.503 B, 5th Floor, Integrated Commercial Taxes Office Complex,
   No.32, Elephant Gate Bridge Road, Chennai-600003

4. The Commissioner of GST & Central Excise,
   Chennai South Commissionerate,
   MHU Complex, No.692, Anna Salai, Nandanam, Chennai – 600 035.

5. Assistant commissioner,
   Alandur Assessment Circle,
   12, Vedagiri Street,
   MKN Road, Chennai 600 016.

6. Master File / spare