

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

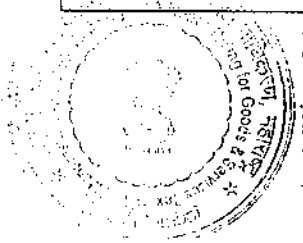
ORDER NO. MAH/AAAR/AM-RM/01/2022-23

Date- 01.04.2022

BEFORE THE BENCH OF

- (1) Shri Ashok Kumar Mehta, MEMBER (Central Tax)
(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Nagpur Waste Water Management Pvt. Ltd, 4 th floor, Madhu Madhav Tower, Laxmi Bhuvan Square, Dharampeth, Nagpur, Maharashtra-440010
GSTIN Number:	27AAECN7738D1ZC
Clause(s) of Section 97, under which the question(s) raised:	(b) applicability of a notification issued under the provisions of this Act;
Date of Personal Hearing:	04.03.2022
Present for the Appellant:	Shri Ashok Chandak, C.A.
Details of appeal:	Appeal No. MAH/GST-AAAR/03/2021-22 dated 26.08.2021 against Advance Ruling No. GST-ARA-65/2020-21/B-35 dated 27.07.2021
Jurisdictional Officer:	State Tax Officer, NAG-VAT-C-023, Nagpur Division



(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.
2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “CGST Act” and “MGST Act”] by M/s Nagpur Waste Water Management Pvt. Ltd having their registered address at 4th floor, Madhu Madhav Tower, Laxmi Bhuvan Square, Dharampeth, Nagpur, Maharashtra-440010 (“hereinafter referred to as “the Appellant”) against the Advance Ruling No. GST-ARA-65/2020-21/B-35 dated 27.07.2021, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as “MAAR”).

BRIEF FACTS OF THE CASE

- 3.1 The Appellant i.e., M/s. Nagpur Waste Water Management Pvt. Ltd, are private limited company registered under the GST Act. The Appellant has entered into a contract on 12.12.2014 with Nagpur Municipal Corporation (NMC) with regard to setting up, and operating of Sewage Treatment Plant for the treatment of sewage water generated in Nagpur city.
- 3.2. For undertaking the aforesaid activities, the Appellant is being paid on the basis of agreed capital expenditure (CAPEX) and operating expenses (OPEX) by the NMC as a consideration. The said consideration is being charged by the Appellant from NMC along with the applicable GST.
- 3.3 In addition to this, the Appellant is also entitled to sell the Tertiary Treated Water to any person for non-potable application. Nagpur Municipal Corporation (NMC), Maharashtra State Electricity Generating Company Limited (MAHAGENCO) and the Appellant had entered into a tri-partite Agreement dated 29.12.2017 for supply of 150 MLD Tertiary Treated Water (hereinafter referred to as “TTW”) to MAHAGENCO on daily basis which was subsequently amended by the Agreement dated 20.11.2018 vide which the supply of the said TTW was increased by 40 MLD, thereby, making the total supply of TTW amounting to 190 MLD on daily basis. Under the said Tri-partite

Agreement, the Appellant was required to set-up a Tertiary Treatment Plant to further treat water from Sewage Treatment Plant (STP) at Bhandewadi and supply the TTW to MAHAGENCO through Pipeline laid by the Appellant from its Bhandewadi TTP to MAHAGENCO's Koradi and Khaperkheda Thermal Power Plant. As per the Agreement, the Appellant will sell the 190 MLD of TTW to MAHAGENCO as per the rate agreed upon under the said Agreement. The water supplied is not potable drinking water but is suitable for the industrial use only.

- 3.4 The processes carried out by the Appellant on the sewage water for its treatment are as under:
- (a) First of all, all the large size floating matter and sand particles are removed from the sewage water, and then the same is pumped through pipeline to the centralized STP location at Bhandewadi, Nagpur.
 - (b) The sewage so brought at the STP is first fine screened to remove all trashes. Then the sewage is passed through detirators to remove the silt & grid particles. Then the sewage is taken through gravity in tanks and oxygen is infused in the sewage to remove impurities through biological process.
 - (c) Chemicals like FeCl_3 and Chlorine too are mixed to remove the bacteria and impurities. Polyelectrolyte is further used for sludge treatment and dewatering the same.
 - (d) This partially purified sewage water is then passed through fiber disk filters to remove the suspended solids and dead biological matter to purify the sewage to the level that the power plants need.
- 3.5 This purified sewage water, which is TTW, is then pumped to Koradi and Khaperkheda power plants through a pipeline. The TTW is used in the cooling towers of power plants.
- 3.6 After receipt of "Tertiary Treated Water" from the Appellant, the same cannot be used directly by MAHAGENCO. MAHAGENCO has to undertake further processes namely Ozonization, Chlorination, H_2SO_4 , Dosing and Chemical dosing before using the said water to remove impurities in the form of Bacteria, Viruses, Phosphate, Chlorides, Silica, Total Suspended Solids, and Hardness.
- 3.7 The Appellant had supplied the "Tertiary Treated Water" to MAHAGENCO effective from 05.06.2020, and had raised its first invoice for this supply under consideration along with the applicable GST @18% (9% CGST and 9% SGST) on the value of the said supply of "Tertiary Treated Water". However, MAHAGENCO disputed the payment of GST on the ground that "Tertiary Treated Water" was exempt from tax under Notification No. 02/2017-Central Tax (Rate) dtd.28.06.2017. Therefore, in view

of the aforesaid dispute with MAHAGENCO, the Appellant had filed an Advance Ruling Application dtd.19.12.2020 before the Maharashtra Authority for Advance Ruling for seeking clarification on the taxability on the supply of the impugned product, i.e., Tertiary Treated Water.

4. The MAAR, vide the impugned Advance Ruling Order No. GST-ARA-65/2020-21/B-35 dated 27.07.2021, has held that the “Tertiary Treated Water” is purified water and therefore, not covered under the exemption Notification No. 02/2017-CT-(Rate) dtd.28.06.2017, and therefore, not exempt from tax. The Authority further held that the impugned product was covered under Schedule III, Entry 24, under the Chapter Heading 2201, and therefore, was liable to GST at the rate of 18 % (CGST@9% and SGST@9%).
5. Aggrieved by the aforesaid Advance Ruling Order, the Appellant has preferred the present appeal before the Maharashtra Appellate Authority for Advance Ruling (MAAAR) on the following grounds:

GROUND OF APPEAL

- 5.1 That on the facts and circumstances of the case, and after applying rule of “Ejusdem-Generis” for true and correct interpretation of Entry 99 of the Notification No. 02/2017 dtd.28.06.2017, it has been submitted that the Learned Authority for Advance Ruling has erred in law, and on facts while holding that the Tertiary Treated Water is purified water, and therefore, not covered by the exemption notification, and hence, liable to tax.
- 5.2 On application of “the common parlance test” for finding the meaning of the term “purification”, it has been submitted that the term “purified water” means water for human consumption, which is not the case here.
- 5.3 That when there is more than one entry which may cover Tertiary Treated Water, the entry, which is beneficial to the assessee, needs to be adopted, and on applying this rule, it may be held that Tertiary Treated Water would be exempt from levy of GST.

THE JURISDICTIONAL OFFICER’S SUBMISSIONS

6. The counter submissions, made by the Jurisdictional Officer vide their letter dated 16.09.2021, are as under:
- 6.1 That as per the tri-partite agreement entered with NMC (Nagpur Municipal Corporation) and MAHAGENCO, the Appellant will carry out processes on sewage water, filled with various organic and inorganic impurities, so as to make it suitable for supply to MAHAGENCO;

- 6.2 That the Appellant are supplying Tertiary Treated Water (TTW) to MAHAGENCO. The said TTW is nothing but purified water as the Tertiary treatment is the final cleaning process that improves wastewater quality before it is reused, recycled, or discharged into the environment;
- 6.3 That this treatment removes the inorganic compounds, and substances, such as nitrogen and phosphorous, thereby, claiming the tertiary treatment of water as a process of purification, and therefore, it has been contended by the Respondent that since the Appellant are supplying purified water to MAHAGENCO, hence, the impugned product, i.e., Tertiary Treated Water is not exempt under Sl. 99 of the exemption Notification No. 2/2017-C.T. (Rate) dated 28.06.2017. They further deposited that the impugned product, i.e., TTW, should be taxed at the rate of 18% (CGST @9% +SGST@9%) in terms of Sl. No. 24 of Schedule III of the Notification No. 1/2017-C.T. (Rate) dated 28.06.2017;

PERSONAL HEARING

- 7.1 The personal hearing in the matter was conducted on 04.03.2022 in the virtual mode via Video Conferencing, which was attended by Shri Ashok Chandak, C.A, on behalf of the Appellant, wherein the Appellant reiterated their earlier submissions made while filing the Appeal under consideration.
- 7.2 Shri Chandak, in the aforesaid hearing, contended that the TTW (Tertiary Treated water) supplied by the Appellant to M/s. MAHAGENCO would not qualify to be “purified water”, as it still contained various chemical impurities, bacteria and viruses due to which the said TTW was not fit for human consumption. Shri Chandak further contended that since the term “purified water” mentioned in the entry at Sl. No. 99 of the Exemption Notification No. 02/2017-C.T.(Rate) dated 28.06.2017 is not defined in the CGST Act, 2017, therefore, in such case, the common parlance meaning may be assigned to the said term “purified water”. As such, since, there is no commodity like purified water in the trade and the trade construes purified water as water purified for some specified purposes like distilled water or water for injection. Therefore, it was contended that the impugned product, i.e., TTW, would not be construed as “purified water”. In this regard, the Appellant have placed reliance upon the **Hon’ble Supreme Court Judgment in the case of M/s. Porritts and Spencer (Asia Limited) V/s. State of Haryana (1978 42 STC 433)**.
- 7.3 The Appellant’s representative also relied upon the legal principle of “**ejusdem generis**” for interpretation of the term “purified water” arguing that the principles of “**ejusdem**

generis” or “**noscitur a sociis**” are well settled principles of interpretation and the words of general and wider import used in an entry surrounded by other relevant terms has to draw its colour and meaning from such surrounding words and that cannot be lost sight of.

- 7.4 The Appellant also relied upon the **Hon’ble Finance Minister Late Shri Arun Jaitley’s speech** made in the parliament at the time of introduction of GST, wherein it was stated that the tax rates under GST would be more or less in the similar band and there would be no surprises in fixing the GST rates. The Appellant also drew attention to Agenda Item 9 of 14th GST Council Meeting held on 18th & 19th May, 2017, wherein it was stated that the committee had recommended the rates after taking into account the present tax incidence on account of Central Excise, Service Tax and VAT. In light of the above, it was submitted by the Appellant that earlier position of taxability of TTW is to be applied under GST Act also, which if applied, would made the TTW exempt from GST as the TTW was not taxable under the erstwhile Central Excise Act as well as erstwhile VAT Act.

DISCUSSIONS AND FINDINGS

8. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with all the additional submissions made by the Appellant during the course of the personal hearing proceedings. We have also examined the impugned Advance Ruling passed by the MAAR, wherein it has been held that “**Tertiary Treated Water**” (TTW), supplied by the Appellant to Mahagenco, will not be eligible for exemption from GST in terms of the provisions of the entry at Sl. No. 99 of the Exemption Notification No. 02/2017- Central Tax (Rate) dated 28 June 2017 (as amended); and that the same will be taxable at the rate of 18% in terms of the entry at the Sl. No. 24 of the Schedule III to the Notification No. 1/2017- C.T. (Rate) dated 28.06.2017.
9. On perusal of the entire case records and the submissions made by the Appellant as well as the Jurisdictional Officer, the moot issue before us is whether the impugned product, i.e., TTW, supplied by the Appellant to M/s. Mahagenco, can be construed as ‘purified water’, or not.
10. Since, the term “purified” is not defined under the CGST Act, 2017, we will resort to the dictionary meaning of the same.

As per the website **Dictionary.com**, the term “**purify**” means:

- 1) to make pure; free from anything that debases, pollutes, adulterates, or

contaminates;

2. to free from foreign, extraneous, or objectionable elements;

As per the **Cambridge Dictionary**, the term “purify” means:

1. to remove bad substances from something to make it pure;

11. Thus, as per the dictionary meaning, the term ‘purify’ means “to make pure”, or “to free from foreign, extraneous, or objectionable elements”. Accordingly, the “purified water” means such water which is free from foreign, extraneous, or objectionable elements.
12. Now, on perusal of the facts of the case, it is seen that the impugned product, i.e., TTW, is obtained after carrying out various physical and biological processes on the sewage water. By carrying out the said physical and biological processes on the sewage water inside the Sewage Treatment Plant and Tertiary Treatment Plant, the sewage water is made free from various organic and inorganic substances, such as suspended particles, grit, clays, pollutants like nitrogen, phosphorus, etc. However, even after carrying out the said physical and biological processes, water coming out from the Tertiary Treatment Plant still contains various biological contaminants, such as bacteria, virus, along with other impurities. Thus, it can be safely concluded that the resultant water is not pure due to presence of the said impurities and foreign elements.
13. Similar view has also been endorsed by the Tamil Nadu AAAR order in the case of *M/s. New Tirupur Area Development Corporation Limited (ORDER-in-Appeal No. AAAR/17&18/2021 (AR))*, wherein the Appellate Authority inter alia held as under:
“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.”
14. Thus, it is adequately clear that water containing anything apart from the Hydrogen and Oxygen will not be construed as pure water. It is further observed that even potable water, which is fit for human consumption, will also not be treated as pure water due to the presence of various minerals and other elements like chlorine, which are added in it to kill the harmful micro-organisms that cause diseases.
15. Further, on application of the legal construction of “*noscitur a sociis*” to derive the meaning of the expression “purified”, which has not been defined under the GST law, it is seen that all the expressions of the exclusion clause of the relevant entry surrounding the word “purified” have got certain specific characteristics and usage. That is, these water at their respective places of their usage cannot be replaced or substituted by any other water. In the instant case, the TTW, which is supplied by the

Appellant to M/s. Mahagenco for use in the power plant, does not have any specific characteristics and usages as those of the other specific water, such as “aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container” mentioned in the exclusion clause of the entry under consideration as the said TTW can be readily replaced by any water for general-purposes. Further, it is also noteworthy that all these groups of specific water mentioned under the exclusion clause of the relevant entry are supplied in the packaged form, i.e., in the sealed container, in order to preserve their characteristics and specificity, while the same is not the case with the impugned product, i.e., TTW, which are supplied through pipelines without any such concerns. Thus, from the foregoing, it is amply clear that the term “purified”, mentioned under the exemption clause of the relevant entry, will definitely not include the TTW. Hence, the impugned product, i.e., TTW, is rightfully eligible for exemption under entry at Sl. No. 99 of the exemption notification no. 02/2017-C.T. (Rate) dated 28.06.2017.

16. The Appellant has also contended that it has never been the intention of the Government, i.e., either Central Government or State Government, to levy any indirect tax on water of general purposes. In this regard, they have stated that even under the erstwhile indirect tax regime, no tax, whether in the nature of Central Excise or in the nature of VAT, was leviable on the water of general purposes, hence the supply of TTW was not subject to any indirect tax under the erstwhile tax regimes. Basis this contention, they have argued that the said impugned product, i.e., TTW, will also not be liable to tax even under the GST regime. They have further contended that since the impugned product was not subject to any indirect tax under the erstwhile tax regime, the same should also not be liable to tax under GST regime.
17. In this regard, we intend to agree with the Appellant’s contention in as much as that the Government, whether the Central Government or State Government, has never intended to tax water of general purposes. Even under the GST regime, Government has clarified its intention of not levying GST on the supply of general-purpose water by way of issuance of the CBIC Circular No. 52/26/2018 dated 09 August 2018, wherein it has been clarified that supply of drinking water, for public purposes, if not supplied in sealed containers, is exempted from GST. Thus, by applying the canon of “purposive construction”, which gives effect to the legislative purpose/intendment, we are inclined to hold that the impugned product, i.e., TTW, which can aptly be construed as water of

general purpose as discussed earlier, is eligible for exemption under the relevant entry at Sl. No. 99 of the exemption notification no. 02/2017-C.T. (Rate) dated 28.06.2017.

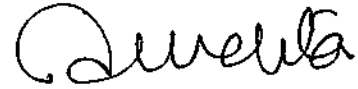
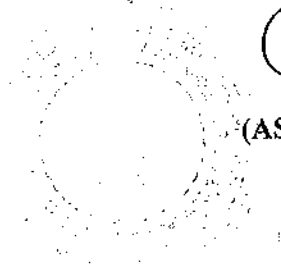
18. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

19. We, hereby, set aside the Advance Ruling Order No. GST-ARA-65/2020-21/B-35 dated 27.07.2021, passed by the Maharashtra Advance Ruling Authority, and hold that Tertiary Treated Water (TTW) will be eligible for exemption in terms of entry at Sl. No. 99 of the Exemption Notification No. 02/2017-C.T. (Rate) dated 28.06.2017. Thus, the Appeal filed by the Appellant is, hereby, allowed.



(RAJEEV KUMAR MITAL)
MEMBER



(ASHOK KUMAR MEHTA)
MEMBER

Copy to the:

1. Appellant;
2. AAR, Maharashtra
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.
4. Commissioner of State Tax, Maharashtra.
5. Deputy/Assistant Commissioner CGST & Central Excise, Division -IV, Mumbai East Commissionerate.
6. Pr. Commissioner, Mumbai East Commissionerate.
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