TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING

(Constituted under Section 99 of

Tamil Nadu Goods and Services Tax Act 2017)

A.R.Appeal No. 02/2022 AAAR

Date: 23.03.2022

BEFORE THE BENCH OF

1. Thiru.M.V.S.CHOUDARY, MEMBER(CENTRE)

2. Thiru. K.PHANINDRA REDDY, MEMBER(STATE)

ORDER-in-Appeal No. AAAR/08/2022 (AR)

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

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu 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 ab-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	Tamilnadu Skill Development Corporation Alandur Road, Thiru Vi Ka Industrial Estate, Guindy, Chennai -600032
GSTIN or User ID	Unregistered
Advance Ruling Order against which appeal is filed	Order No.02/ARA/2021 Dated: 25.02.2021
Date of filing appeal	21.01.2022
Represented by	i. Thiru.T.John Bosco, Project Director, TNSDC, ii. Tmt. S.R.Pushpa,CAO, TNSDC iii. Thiru. K.Murali, Senior Partner, M/s. G Natesan & Co , CA, Internal Auditor of TNSDC
Jurisdictional Authority-Centre	Chennai South Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Guindy Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- CPIN:22013300093417 dated 12.01.2022 & 22013300405665 dated 21.01.2022 in the head 'TAX' and transferred to the head 'fee' from 'TAX' vide ARN AA330322038377G dated 14.03.2022

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,2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act,2017.

The subject appeal is filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by Tamilnadu Skill Development Corporation (hereinafter referred to as 'Appellant' or TNSDC). The appellant is unregistered for the purposes of GST and the appeal is filed against the Order No.02/ARA/2021 dated

25.02.2021 passed by the Tamil Nadu State Authority for Advance ruling on the application for advance ruling filed by them.

2.1 The Appellant has stated that Tamil Nadu Skill Development Corporation is a company incorporated under Section 25 of the Companies Act and is wholly owned and managed by Government of Tamil Nadu. The core activity is to provide employable Skill Training to the youth of Tamil Nadu. The appellant is a Government Entity providing service in the form of up-skilling training to persons specified under the schemes of Central and State Governments for which consideration is received in the form of Grants. They had filed an application before Hon'ble Authority for Advance Ruling, seeking clarification on the following question:

> Whether the applicant is required to be registered under this Act – National Skill Development Corporation has been Registered under the Act similarly State Government has formed this corporation for giving Training to unemployed youth. Hence requested we may be registered under the act vide G.O. No.73, Commercial Taxes and Registration(B1), 29th June 2017, Serial No. 69 Heading 9992 or Heading 9983 or Heading 9991 and Serial No. 70 Heading 9985.

3. The Original Authority has ruled as follows:

Tamil Nadu Skill Development Corporation is not exempted vide entry Sl.No. 69 and Sl.No.70 of Notification No. 1212017-C.T.(Rate) dated 28.06.2017 and therefore, required to be registered under the CGST/TNGST Act 2017

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

- The focus of the submission as well as AAR's ruling was only on application of Entry 69 & 70. The fact of Grants and Entry 9C was not brought out. The accent was alignment of the TNSDC's activity with NSDC and therefore ought to be exempt on the same lines. AAR applied the Entries 69 & 70 by the letter and rejected TNSDC's contention.
- The executive head of the corporation is its Managing Director who is from the IAS cadre. Its Board of Directors are secretaries of the State Government drawn from various related departments like Finance, Labour, Education etc. All Directors are appointed by the state Government. The

Board also has representatives from CII, FICCI and Tamil Nadu Small and Tiny Industries Association. It comes under the supervision of the Ministry of Labour and Employment.

- They receive funds from the State Government as a grant. Each grant has a condition attached to it specifying the purpose of the grant and the nature of training to be imparted. The specification of nature of training is generally with reference to industries, like up-skilling of garment workers, automobile mechanics, re-skilling for IT enabled services etc. The funds received from the Government are banked and spent only for the purpose for which it is received. Any excess fund is kept in bank account in accordance with the directions of the Government. The direct expenditure of the corporation is on professional charges to trainers and conveyance allowance to attendees. Indirect expenditure consists of overheads and administrative cost.
- They have empanelled training institutions for each sector. Such empanelled institutions are spread throughout Tamil Nadu. There are also skilled individuals who are commissioned by the corporation for specific programs. They publicize their training schedule through appropriate channels. Such publicity draws students and trainees who register themselves for specific programs. They have a selection process for trainees based on their existing skill sets, educational background and suitability for the specific program. Such selected trainees are then allowed to attend the training programs. Each attendee is provided with a certificate on completion of the training program. The corporation also conducts training programs scheduled by it through its training partners. It also conducts programs under the schemes of the Central Government and National Skill Development Corporation (NSDC). The training programs under the Central Government umbrella is done on sharing basis where the Central and State Governments share the expense on agreed proportion.
- They provide training services to identified persons through its Training Partners and District Offices in the implementation of programs and schemes of the Central and State Governments. The trainees for each program is specified in the respective schemes. They receive consideration for implementation of various programs and projects of the Central and State Governments only in the form of grants

- TNSDC is a Tamil Nadu Government entity incorporated under the directions of GO: Ms.No.30 dated 11.01.2013 as a Company under the Companies Act, 1956. The Hon'ble Governor holds 49,994 shares of the total 50,000 shares.
- Clause 5 of Main Objects clause of MOA of TNSDC reads that TNSDC is established to act as a Nodal Agency/Apex Institution for all the State Government Departments and State Public Sector Undertakings involved in imparting skill trainings.
- The LA had been sensitized of the fact that only revenues of TNSDC are grants from Government, nature of their activities, operational model and various schemes implemented by them.
- The appellant has tabulated the details of NSDC & TNSDC as below:

NSDC	TNSDC
Incorporated as a non-for -profit organization under Companies Act	Incorporated as a non-for -profit organization under Companies Act
A Public-private partnership with 49-51 share holding	State Government has 100% shareholding of TNSDC
Aims to promote skill development by catalyzing creation of large, quality and for-profit vocational institutions. Further, the organisation provides funding to build scalable and profitable vocational training.	Acts as the nodal agency for all skill development programs designed
Acts PAN India	Acts in state of TN
Mandate is also to enable support system which focusses on quality assurance, information systems and train the trainer academies either directly or through partnership	Mandate is to design training systems ensuring quality, use of updated training aids. Sensitizes training partners of policies and changed therein. Monitors training partners.
NSDC formulates, plans and implements skill development schemes through state implementing agencies and training partners	TNSDC formulates and implements skill development programs in the state of Tamil Nadu through training partners and district administrations.

- TNSDC has been granted registration u/s 12AB of the Income Tax Act 1961 from Assessment year 2022-23 to 2026-27.
- The Appellant submits that the Hon'ble Authority for Advance Ruling ought to have seen the following facts:
    - The appellant is an undertaking incorporated and wholly owned by the Government of Tamil Nadu
    - They are carrying out the functions entrusted by the State Government and is the nodal agency for Skill Development in Tamil Nadu
    - They are a Government Entity under GST Law.
    - The appellant only provided skill development training to the persons specified by the Central and State Governments and they execute the Skill Development programmes as per the orders (GO) of the State or Central Government.
    - They receive money for spending towards its Skill Development programme only as Government grants and the Appellant as a Government entity provides service to Governments for which consideration is received in the form of grants.
    - The LA should therefore confirm that their nature of service will fall under entry 9c of Notification 12/2017 and their services are not taxable under GST and therefore no registration is required.

5.1 The Appellant was granted personal hearing through Digital mode (Virtually) on the consent of the appellant, as required under law before this Appellate Authority on 09.02.2022. The Authorised representatives appeared for the hearing virtually. They stated that they receive grants from the State Government; The AG (Accounts) has given remarks that they are exempted from GST. They stated that their functions are similar to NSDC and therefore, they can be provided exemption from GST. They were told that when they had originally sought their eligibility to GST exemption under Sl.No.69 & 70 of Notification No.12/2017 CT(rate) dated 28.06.2017 which had been considered by the Lower Authority, their claim before the Appellate forum under a different entry '9c' of the said Notification cannot be taken up, as the merits of the said entry has not been claimed/dealt with by the Original Authority. They stated that they are similar to NSDC and requested to consider their eligibility to GST exemption under Sl.No. 69 & 70 of the Notification.

They were allowed to furnish further submissions in this regard, if any, on or before 15.02.2022.

5.2 The appellant on 07.02.2022 made the following submissions:

They are a wholly owned PSU of the Government of Tamil Nadu. Their only activity is providing training and up-skilling of persons in accordance with programs and schemes formulated by the State and Central Governments. The funding for the programs are received in the form of Grants. The appellant does not have any revenue vertical other than Government Grants and Interest on Bank accounts. They have submitted that their services fall on all fours to the exempt services specified in Entry 9C of Notification CGST (Rate) 12/2017 as amended on 13.10.2017.

Entry 9C-Limbs	Applicability of TNSDC
Supply of service	TNSDC provides only service. There is no supply of goods.
Government Entity "means an authority or any other body including a society trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.".	TNSDC is a company incorporated on 05.07.2013 board or any other body including a society, under Section 8 of Companies Act, 2013.Its shares are wholly owned by the Government of Tamil Nadu.
Services to any person specified by the State Government	The State Government would frame various schemes and programs for up-skilling of specified persons for various Departments. The specification could be on the nature of industry, the geographical area where the trainees are domiciled or based on educational qualification of the trainees. Central Government would also frame programs and

	schemes in a similar manner. The mandate to the appellant is to conduct programs as approved by the Governments or in accordance with schemes framed by the Governments. The appellant does not initiate any program on its own and without approval from the State Government.
against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.	The schemes would specify the nature of training, the consideration for trainers, allowances for trainees and time windows, among other specifications. The appellant would be sanctioned a Grant. The appellant would draw the grant and meet the expenses of the schemes.

- Extract of Entry 9C of Notification 12/2017 as amended by Notification 32/2017

  Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.

- In view of the above facts, the appellant has submitted that their services would fall under entry 9C of the said notification.

5.3 The Appellant vide their letter Rc.No. 543/SDC-A/2020 dated 24.02.2022 submitted the following :

- During the course of hearing the Members indicated that they should only justify their stand vis-a -vis entry nos. 69 and 70 of Notification No.12/2017 Ct(rate) dated 28.06.2017, since it was the ground on which the LA has based their ruling. The bench had not objected to the reliance or applicability of Entry 9c of the same notification.

- The fundamental issue for which the appellant petitioned the AAR was regarding registration. The present appeal is on the ruling of the LA on the question raised before viz. "Whether the applicant is required to be registered under this Act"
- They had relied upon two entries in the exemption notification in support of their contention that their supplies are exempt. The LA had opined that the said two entries are not applicable to the appellant and issued ruling accordingly.
- The substantial question before the LA was only registration and not whether a particular entry of the notification is applicable or not. It could be appreciated that reference to entry numbers in the AAR ruling was not part of the question referred to it
- The reference to the entry numbers in the ruling are descriptive. The operative part of the ruling is "they are required to be registered under CGST/TNGST Act, 2017"
- They, in the present appeal has prayed for a direction that the appellant is not required to be registered under GST laws. The reference to entry numbers are only supports drawn.
- The fundamental issue for which the ruling was sought was regarding registration and the appellant at that point believed that its supplies were exempt and drew support from two entry numbers.
- After the AAR ruling, they are now guided and rightly that registration is not required under GST laws in as much as its supplies are exempt. They rely on Entry 9c of the said notification as amended.
- The Appellate Authority is a deemed judicial forum and is bestowed with powers of a civil court. The appellant is a PSU and an arm of the Government. The reference to specific entry and adherence thereto are technical in nature

They have requested to hold that TNSDC is not required to be registered under GST Laws.

6. We have gone through the entire facts of the case, documents placed on record, Order of the Lower Authority & submissions made by the appellant before us. From the submissions, it is seen that prima facie, the appeal is made against Order dated 25.02.2021, which was received on 02.03.2021. The appeal stands filed with a delay of 9 months in filing the appeal. The appellant has requested to condone the delay and to admit the application. In this connection, we find that

CBIC vide Circular dated 20th July 2021 has stated that owing to the prevailing pandemic situations, the applicable timelines for filing of the appeal are covered by the Order of Hon'ble Supreme Court dated 23rd September 2021 issued in Suo Moto W.P.(C) No. 3 of 2020, by which the timeline for filing the appeal ends with 31st December 2021. Hon'ble Supreme Court vide Order dated 10.01.2022, has modified its Order dated 23rd September 2021 and has held that the period from 15th March 2020 to 28th February 2022 would stand excluded for the purpose of Limitation in Misc. Appeal No. 21 of 2022 of Suo Moto W.P.(C) No. 3 of 2020. Therefore, the appeal is to be considered as filed within the timeline and admitted for consideration on merits.

7.1 The appellant is a 'Government entity' and a Nodal agency for imparting training to persons specified under the schemes of Central and State Governments. They had sought ruling on the question

> Whether the applicant is required to be registered under this Act – National Skill Development Corporation has been Registered under the Act similarly State Government has formed this corporation for giving Training to unemployed youth. Hence requested we may be registered under the act vide G.O. No.73, Commercial Taxes and Registration(B1), 29th June 2017, Serial No. 69 Heading 9992 or Heading 9983 or Heading 9991 and Serial No. 70 Heading 9985.

From their submissions before the Original authority and before us, it is seen that the appellant has required ruling as to whether they have to be registered under the GST Act. The question is raised by them in the context of the exemption extended to National Skill Development Corporation vide the entries at Sl.No. 69 and serial No. 70 of the Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 and the relevant SGST Notification dated 29.06.2017. It is their contention that the activities undertaken by them in the State of Tamil Nadu is similar to the activities of National Skill Development Corporation at the Centre. The LA has examined their claim with regard to these entries and has extended the ruling that the specific entries referred by the appellant is not applicable to them and the activities being supply under Section 7 of the GST Act, the appellant has to get himself registered for the purposes of GST.

7.2 The appellant in the present appeal has not contested the findings of the LA on the applicability of the entry Sl.No. 69 & Sl.No. 70 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 but have stated that they had required ruling only on 'whether they are required to be registered under the ACT' for which they had relied upon the above two entries in the exemption notification in support of their contention that their supplies are exempt, which have been examined by the LA. Their present claim before us is that the substantial question or the fundamental issue was only on 'registration' and not whether a particular entry of the notification is applicable or not and that currently they are not required to be registered under GST laws in as much as their supplies are exempt for which they draw support from entry 9C of the exemption Notification.

7.3 Entry 9C of the Notification is as under:

(1)	(2)	(3)	(4)	(5)
"9C	Chapter 99	Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.	Nil	Nil";

This entry is applicable to supply of service by a Government entity to State Government against consideration in the form of grants. The facts of whether the appellant is a 'Government entity', whether all the activities are extended only to the State Government and whether the consideration received is limited to the 'grants' are fresh facts to be verified/analysed with the respective documentary proof. Section 100(1) of the GST Act, which provides for the authority to act on receipt of the appeal application, as follows:

> *(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.*

Thus, it is clear that this authority can either confirm or modify the facts examined by the LA and ruling extended. It is evident that the appellant seeks ruling on a different set of facts which were not putforth before the LA. The appellant has not contested the basis of the ruling extended by LA and accepts that after receipt of the ruling by the LA, they have been now guided and rightly so that they are not to be

required on the application of Entry 9C, which is a new ground not examined by the LA and therefore this forum cannot adduce any ruling on the same. The appellant has not contested the applicability of the entries 69 & 70 of the Notification, on the support of which, they had claimed exemption for registration before the LA. Hence, we hold that there appears no reason to interfere with the ruling of the LA. However, we leave it open for the appellant to approach the LA separately with the new ground, if they choose to do so.

8. In view of the above, we rule as under:

RULING

For the discussions at Para 7 above, we find no reason to interfere with the Original Ruling. Appeal dismissed.

(K.PHANINDRA REDDY)
Additional Chief Secretary/
Commissioner of Commercial Taxes,
Tamil Nadu /Member AAAR

(M.V.S.CHOUDARY)
Chief Commissioner of GST &Central
Excise, Chennai Zone/Member AAAR

APPELLATE AUTHORITY FOR ADVANCE RULING
23 MAR 2022
GOODS AND SERVICE TAX
Chennai-5, Tamilnadu.

To
Tamilnadu Skill Development Corporation,
Alandur Road, Thiru Vi Ka Industrial Estate,
Guindy, Chennai -600032 **// By RPAD //** **E.Mail.Id. cao@tnsdc.in**

Copy to:

1. The Principal Chief Commissioner of GST & Central Excise, No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034.
2. The Additional Chief Secretary/ The Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. The Commissioner of GST & Central Excise, Chennai South Commissionerate, MHU Complex, No. 692, Anna Salai, Nandanam, Chennai 600 035.

4. Assistant commissioner(ST), Guindy Assessment Circle,
Integrated Bullding for commerclal Taxes and Registration Department,
2nd Floor, Room No 253, Nandanam. Chennai 600 035.

5. 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

6. Master File / spare