

2024 (85) G.S.T.L. 348 (App. A.A.R. - GST - T.N.)

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING UNDER GST, TAMIL NADU

Dr. Ram Niwas and Dr. D. Jagannathan, Members

IN RE : TAMILNADU MEDICAL COUNCIL

Order-in-Appeal No. AAAR/04/2023 (AR), dated 9-12-2023 in A.R. Appeal No. 01/2023/AAAR

Advance ruling - Procedure on application - Matter pending or decided - Violation of Natural Justice - Appellant State Medical Council collects various fees for issuing Provisional, Undergraduate, Post Graduate Certificates, No Objection Certificate, Certificate of Goods Standing, CME certificates etc. - Assessee's application for advance ruling for clarification of GST applicability on various fees is rejected by AAR based on fact that investigation was conducted by DGGI against appellant which would amount to proceedings pending against assessee on date of filing advance ruling application - *HELD* : Principles of natural justice was not followed in instant case since advance ruling authority had erred in not sharing documents and comments forwarded by DGGI with appellants - Advance ruling authority ought to have shared new findings of DGGI that was lying before them, and discussed same in detail, either during personal hearing or thereafter, before proceedings to finalize case - Therefore, order of AAR was to be set aside and matter was remanded back for consideration - Section 98 of Central Goods and Services Tax Act, 2017 - Section 98 of Tamil Nadu Goods and Services Tax Act, 2017. [paras 6.5 to 7]

Ruling in favour of assessee

CASE REVIEW

Tamil Nadu Medical Council — 2023 (79) G.S.T.L. 275 (A.A.R. - GST - T.N.) = (2023) 11 Centax 196 (A.A.R. - GST - T.N.) — **Reversed** [Paras 2.1, 2.4, 2.5, 3, 6.5, 8]

CASES CITED

A.M. Abdul Rahman Rowther & Co. — 2020 (32) G.S.T.L. 757 (App. A.A.R. - GST - T.N.) — *Referred* [Paras 4, 6.4]

CIT-I v. Authority of Advance Ruling — [2020] 119 taxmann.com 80 (Delhi HC) — *Referred* [Para 3]

Deputy Commissioner of Income-tax v. Sage Publications Ltd. — (2017) 246 Taxman 57 (SC) — *Referred* [Para 3]

G.K. Trading Company v. Union of India — 2021 (51) G.S.T.L. 288 (All.) — *Referred* [Para 3]

Liberty Union Mills v. Union of India — By Supreme Court — *Referred* [Para 3]

Masterminds — By Appellate Authority for Advance Ruling, Andhra Pradesh — *Referred* [Para 3]

Radha Krishan Industries v. State of Himachal Pradesh — 2021 (48) G.S.T.L. 113 (S.C.) — *Referred* [Para 3]

Sage Publication Ltd. v. Deputy Commissioner of Income-tax (International Taxation) — [2016] 387 ITR 437 (Delhi) — *Referred* [Para 3]

Shalby Ltd. — Appeal No. GUJ/GAAAR/APPEAL/2022/22 by Appellate Authority for Advance Ruling, Gujarat — *Referred* [Paras 2.3, 3]

Srico Projects Pvt. Ltd. — Writ Petition No. 26145 of 2022, decided on 17-8-2022 by Telangana High Court — *Referred* [Para 3]

Tamil Nadu Nurses & Midwives Council — 2024 (80) G.S.T.L. 204 (A.A.R. - GST - T.N.) — *Referred* [Paras 6.1, 6.2]

DEPARTMENTAL CLARIFICATION CITED

C.B.E. & C. Master Circular No. 1053/02/2017-CX, dated 10-3-2017..... [Para 3]

REPRESENTED BY : Shri V.S. Swaminathan, CA, for the Assessee.

[Order]. - At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2.1 The subject appeal was 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 Tamil Nadu Medical Council (hereinafter referred to as 'Appellant'). The Appellant is registered under the GST Act vide GSTIN 33AACAT1667P1Z2. The appeal was filed against the Order No. 18/ARA/2023 dated 19-6-2023 passed by the Tamilnadu State Authority for Advance Ruling [2023 (79) G.S.T.L. 275 (A.A.R. - GST - T.N.) = (2023) 11 Centax 196 (A.A.R. - GST - T.N.) = [2023] 155 taxmann.com 311 (AAAR - Tamilnadu)] on the Application for Advance ruling filed by the Appellant.

2.2 The Appellant has stated that the Tamil Nadu Medical Council was constituted under the Madras Medical Registration Act IV of 1914 by the Local Legislature and it caters to the registration of Registered Medical Practitioners practicing or completing their study in the State of Tamil Nadu, Pondicherry and Andaman & Nicobar Islands. Further they stated that they collect various fees such as fees for issuing Provisional, under-graduate, post graduate registration certificates, No Objection Certificate, certificate of Good standing, CME certificates etc.

2.2 The Appellant had approached Authority for Advance Ruling (AAR), Tamil Nadu, *vide* GST-ARA-01, dated 29-12-2022 for clarification of GST applicability on various fees collected by it and raised the following question :

"Whether GST is applicable on various fees collected by Tamil Nadu Medical Council, a Government Authority?"

At the time of filing the application, an investigation by the Senior Intelligence Officer, DGGI-South, Sub-National unit, Chennai was in progress. Summons dated 30-11-2022 and 20-12-2022 was issued under Section 70(1) of CGST Act, 2017 and a statement was recorded from Shri R. Shanmugam, Registrar of M/s. TNMC on 9-1-2023. The same was admitted by the Appellant during the virtual hearing held on 16-3-2023.

2.3 Moreover, in their GST ARA-01 in clause 17, they had stated as follows :

“17. I hereby declare that the question raised in the application is not (tick)

x	Already pending in any proceedings in the applicant's case under any of the provisions of the Act
x	Already decided in any proceedings in the applicant's case under any of the provisions of the Act

The above was raised during the virtual hearing. The Appellant, vide their submissions dated 16-3-2023, stated that non-disclosure of enquiry/summons under Section 70 of CGST Act as 'proceedings' in their application does not amount to suppression and they were eligible for a ruling by AAR. Further, vide their letter dated 3-7-2023, they submitted that they rely on AAAR-Gujarat ruling in the case of *Shalby Limited* wherein it was stated that either SCN or DRC-01 should be issued by the GST authorities to fall under the head 'proceedings'.

2.4 The AAR, Tamil Nadu, vide its Order 18/ARA/2023, dated 19-6-2023 rejected their application under proviso to Section 98(2) of the CGST Act, 2017, on the ground that summons issued u/s. 70 is a proceeding under the CGST Act. The Original Authority vide Order No. 18/ARA/2023, dated 19-6-2023, had ruled rejecting the advance ruling application.

2.5 The operating part of the said order is as follows :-

“7.10 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. The applicant is interpreting the term 'proceedings' without considering the first proviso to section 98(2) of the Act comprehensively. The said first proviso is reproduced below :

“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*”.

It is apparent that the first proviso covers any 'proceedings' in the case of an applicant under any of the provisions of the Act including Section 70 of the Act, under which investigation is being conducted by DGGI, Chennai Zonal Unit.

7.11 We take into cognizance of letter received from DGGI, Chennai Zonal Unit letter dated 3-4-2023, about the investigation being conducted against the applicant from which, it is apparent

that proceedings are pending against the applicant on the date of filing of advance ruling online application on 30-12-2022 and liable to be rejected under first proviso to Section 98(2) of the Act.”

3. Aggrieved of the decision of AAR in the Order No. 18/ARA/2023, dated 19-6-2023, Tamil Nadu Medical Council preferred the subject appeal. In the grounds of appeal, they stated, *inter alia*, as follows :

Ø AAR Tamil Nadu erred in concluding that summon u/s. 70 is a proceeding.

Ø Investigation by DGGI-South, Sub-National unit, Chennai, as stated in AAR order (Para 7.11), unless it is converted into Show Cause Notice shall not be construed as proceedings.

Ø AAR has erred in NOT considering the distinction between proceeding and investigation pronounced by various courts and AAR cited by us.

Ø AAR has erred in citing a ruling (Para 6) passed by AAAR-AP in the case of *Masterminds* wherein AAAR/AP High Court have only made a passing remark without going into question of the definition of “Proceeding” under GST Act whereas they had made submissions citing ruling distinguishing “Proceeding” and “Investigations”.

Ø The Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/ 2022/22 in the *Shalby Limited*, wherein the Appellate Authority ruled that :

(a) Section 98(2) will be attracted only when a show cause notice has been issued or order is passed which is not there in the present case and the investigation initiated by state tax is not within the ambit of the term proceedings. To this extent, appellant relied upon judgment of Delhi High Court in case of *CIT-I v. Authority of Advance Ruling* [2020] 119 taxmann.com 80 (Delhi HC) and the case of *Sage Publication Ltd. v. Deputy Commissioner of Income-tax (International Taxation)* reported at [2016] 387 ITR 437 (Delhi), which was later affirmed by the Supreme Court in (2017) 246 Taxman 57 (SC).

(b) The term ‘Proceedings’ only includes any proceedings that may result in a decision i.e. show cause notice or order and cannot include mere inquiry or investigation initiated by investigation agencies as Show Cause Notice is the point of commencement of any proceeding as per Master Circular No. 1053/0212017-CX, dated 10-3-2017 issued by CBIC.

Ø They rely on the following judgments of the Honourable Supreme Court which clearly defines the Term “Proceedings” and distinguishes it from enquiry/summons :

- The Supreme Court in *Liberty Union Mills v. Union of India* held that the term “investigation” means the process of collection of evidence or the gathering of material. It can be said that the term “Proceeding” has a larger scope than the term “investigation”. It is not merely a process of collection of evidence, it includes only those actions that may result in a decision i.e., in nature of show cause notice or order. All other interim steps leading to such event are merely inquiries, investigations, etc., and are therefore not covered under the ambit of the term ‘proceeding’.

- The Supreme Court in *Radha Krishna Industries v. State of Himachal Pradesh and Ors.* [2021 (48) G.S.T.L. 113 (S.C.)] clarified that the proceeding commences from the issuance of a Show Cause Notice (SCN) and concludes upon the passing of an adjudication order; Without

issuing a show cause notice proceeding cannot be deemed to be started and once an adjudication order is passed, the proceeding is deemed to be concluded.

- In *G.K. Trading Company v. Union of India* [2021 (51) G.S.T.L. 288 (All.)], the Allahabad High Court held that the term “proceeding” and “inquiry” are two different terms and they cannot be intermixed and thus, the “inquiry” launched under Section 70 of the CGST Act against the petitioner simultaneously with the “proceedings” launched under UP GST law is not barred by the limitations of Section 6(2)(b).

Ø The Section 70 also spells out only powers vested with the investigating officer as prescribed by Sections 193 and 228 of IPC in relation to summons/statement on oath and the term “Judicial Proceedings” used in this section pertains only to powers vested by IPC.

Ø In Para 12 of its order dated 17-8-2022 in Writ Petition No. 26145 of 2022, Telangana High Court in the case of *M/s. Srico Projects Pvt. Ltd.*, has ruled that though the word “proceedings” has neither been defined in Chapter XVII nor in the definition clause i.e., in Section 2 of the CGST Act, if the said word is understood in the context in which it is being applied, namely, any proceedings pending or decided in the case of an applicant under the provisions of the CGST Act, it would mean proceedings where the question raised in the application for advance ruling has already been decided or is pending decisions and therefore, inquiry or investigation would not come within the ambit of the word “proceedings”

Ø Crave leave for submission of additional grounds at the time of personal hearing.

Hence, the Appellant prayed that the Appellate Authority may pass orders to set aside impugned order under Appeal and pass such other orders, as deemed fit.

4. Further to this, the Appellant vide their letter dated 27-9-2023, filed additional grounds of Appeal, wherein they stated that :

Ø AAR in their ruling vide Para 6 stated as follows :

“DGGI Office has also quoted High Court of Andhra Pradesh order dated 23-11-2022 in W.P. No. 5571 of 2021, which states that issuance of summons under Section 70 of CGST Act, 2017, is the commencement of investigation/proceedings as per CGST Act, 2017.”

Ø The said additional material submitted to AAR by DGGI was not brought to the notice of the Appellant and thereby principal of natural justice was not followed in as much as they have not been extended an opportunity to comment on the submissions of DGGI w.r.t Andhra Pradesh High Court order dated 23-11-2022.

Ø Tamil Nadu State Appellate Authority for Advance Ruling vide Order No. AAAR/07/2019(AR), dated 21-10-2019 in the case of *A.M. Abdul Rahman Rowther & Co.* [2020 (32) G.S.T.L. 757 (App. A.A.R. - GST - T.N.) = [2019] 111 taxmann.com 513/77 GST 677 (AAAR - Tamil Nadu)], on the same facts had opined that justice will be met by recommending the case to the lower authority to extend an opportunity to the Appellant and then decide the case as per the provision of law.

They requested to consider the above ruling of TNAAAR, also as their grounds of appeal.

Personal hearing :

5. The Authorized Representative (AR), Shri V. Swaminathan, Chartered Accountant, appeared for the personal hearing and reiterated grounds of appeal. The AR also reiterated their additional grounds made vide letter dated 27-9-2023.

Discussion and findings

6.1 We have carefully considered the various submissions made by the appellant and the applicable statutory provisions. On perusal and analysis of the documents involved and the facts relating to the case, we observe that the instant case revolves exclusively around the admissibility of the application for advance ruling filed by the appellant. It is seen that the Ruling as pronounced by the Original Advance Ruling Authority vide Advance Ruling No. 17/ARA/2023, dated 19-6-2023 [2024 (80) G.S.T.L. 204 (A.A.R. - GST - T.N.)] reads as *“The advance ruling application is rejected for the reasons discussed in Para 8 supra”*.

6.2 We also notice from the said ruling that the proceedings initiated by the DGGI, Chennai Zonal Unit prior to the filing of application by the appellant, and its impact on the admissibility or otherwise of the application had formed the crux of the discussion. This discussion has led to the decision arrived at by the Advance Ruling Authority to reject the application, per se. Further, we notice from the grounds of appeal filed before us by the appellant, that the same revolves exclusively around the term ‘proceedings’ and whether the inquiry or investigation initiated by DGGI, would fall within the ambit of the word ‘proceedings’ impacting the admissibility of the original application for advance ruling filed by the appellant.

6.3 Apart from the Appeal filed in Form GST ARA-02, dated 12-9-2023, before the Appellate Authority for Advance Ruling (received on 13-9-2023), it is seen that the appellant had also filed another letter dated 27-9-2023, wherein the applicant had furnished additional grounds in respect of their appeal, which has been reproduced in Para 4 above.

6.4 The appellant brings to our attention that the additional material furnished by the DGGI Office to the Advance Ruling Authority was not brought to their notice. Accordingly, the appellant states that the principles of natural justice have not been followed in as much as they have not been extended an opportunity to comment on the submissions of DGGI with regard to the Hon’ble Andhra Pradesh High Court Order dated 23-11-2022. Further, we find that the appellant had enclosed a copy of the Order-in-Appeal No. AAAR/07/2019(AR), dated 21-10-2019 passed by the Tamilnadu State Appellate Authority for Advance Ruling in the case of *A.M. Abdul Rahman Rowther & Co.*, on the same facts, and opined that justice will be met by recommending the case to the lower authority to extend an opportunity to the appellant and then decide the case as per the provisions of law. Accordingly, the issue before us for determination is whether the rejection of application filed by the appellant for advance ruling, by the Lower Authority is as per the provisions of law and Principles of Natural Justice.

6.5 On perusal of the original order passed by the Advance Ruling Authority vide Advance Ruling No. 18/ARA/2023, dated 19-6-2023, we find that in Para 6 of the said Order, the contents of the letter dated 3-4-2023 of DGGI have been discussed. Further, we observe that in Para 7.11 of the said order, the Advance Ruling Authority draws the conclusion that the advance ruling application is liable to be rejected based on the fact that investigation being conducted against the applicant amounts to proceedings pending against the applicant on the date of filing of advance ruling application. We find that the appellant is aggrieved over the fact that the principles of natural justice have not been followed in as much as they have not been provided with the materials and facts furnished by DGGI, and that they have not been extended an opportunity to comment on the same.

6.6 We observe that the rejection of application for advance ruling in the instant case stems from the fact that an investigation initiated by DGGI against the appellant is pending on the same issue. This being the case, the advance ruling authority ought to have shared the new findings of DGGI that was lying before them, and discussed the same in detail, either during the personal hearing, or thereafter, before proceeding to finalise the case.

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 3-4-2023 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.

7. In view of the above, we order as under :

ORDER

8. The Advance Ruling No. 18/ARA/2023, dated 19-6-2023 passed by the Lower Authority in the case of the appellant is set aside. The matter is remanded to the Lower Authority for consideration and passing of appropriate orders, after following the principles of natural justice.