

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

A.R.Appeal No. 5/2019/AAAR

Date: 07.08

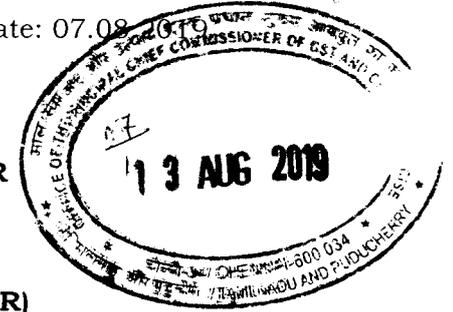
BEFORE THE BENCH OF

1. **Thiru.M. AJIT KUMAR, MEMBER**
2. **Dr.T.V. SOMANATHAN, MEMBER**

ORDER-in-Appeal No. AAAR/06/2019 (AR)

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

Preamble



1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant

Malli Ramalingam Mothilal

	No. 2/3-A, Saratha Illam, A.A. Road, CMR Road, Munichalai Road, Madurai
GSTIN or User ID	33AATPM2415J1ZL
Advance Ruling Order against which appeal is filed	Order No. 12/AAR/2019
Date of filing appeal	09.05.2019
Represented by	
Jurisdictional Authority-Centre	Madurai Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner(ST) Kamarajar Salai Assessment Circle, Madurai – 625 020
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challans No.IOBA19043300509747 dated 29.04.2019 & IOBA19053300141521 dated 15.05.2019

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal 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 Malli Ramalingam Mothilal, No. 2/3-A, Saratha Illam, A.A. Road, CMR Road, Munichalai Road, Madurai(hereinafter referred to as the Appellant). The appeal is filed against the Order No. 12/AAR/2019 dated 13.04.2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The Appellant is engaged in the manufacture of Kalava Raksha Sutra (Sacred Thread) in different colours and are selling the same in Kilograms/lengths to the Intra-State buyers as well as Inter-State buyers. They are registered under GST vide Registration No. 33AATPM2415J1ZL. They had sought advance ruling on the

“Classification of the Commodity 'Kalava Raksha Sutra (Sacred Thread)' manufactured and supplied by them”

3. The Original authority for Advance Ruling has ruled as follows:

“Braided textile yarns supplied by the applicant made of polypropylene yarn is classifiable under 56074900, made of other synthetic yarn is classifiable under 56075090, made of cotton is classifiable under 56079090.”

While arriving at the above classification, the original authority has held that the commodity manufactured are not by themselves Kalva raksha sutra sold directly to consumers but long lengths of thread of various composition sold in loose rolls to the appellant's buyers who need to further cut to individual sizes to make them Kalava sutra.

4. The present appeal is against the ruling in as much as the original authority has stated that the product manufactured by the appellant is not 'Kalava Raksha sutra' but skeins of braided yarn of various compositions.

5. On merits of the case, they have furnished the following as grounds of this appeal:

- The Advance Ruling Authority's finding that the appellant's product Kalava Raksha sutra which are sold in long lengths of thread of various compositions in loose rolls to their buyers will not fall under serial number 148 under item IX under the head Pooja samagiri in notification no.2/2017(Rate) and thereby exempt from levy of any GST on the ground that the appellant's buyers need to further cut into individual sizes to make them Kalava Raksha sutra is against the settled proposition of Law laid down by various Hon'ble High Courts and Hon'ble Supreme Court of India in similar and identical facts of cases.
- The Authority for Advance Ruling failed to appreciate the religious features of kalava raksha sutra and the intention of the GST Counsel in granting exemption on those products from levy of GST. The kalava raksha sutra is also called as Raksha Sutra consists of two colours and also called as mangal sutra which has the properties not only to stimulate the spiritual energy, but it is also protect the wearer from evil forces and tied for performing religious pooja and for all religious purpose.

- The Authority for Advance Ruling failed to note that the kalava raksha sutras are not only tied in wrist of the hands but also tied in hips and waist of the wearer and some of the devotees may wear in the neck like garland. Hence the Kalava raksha sutra made from various yarns after braiding have to be sold in specific lengths to suit the specific request of the buyers.
- The appellant is the manufacturer and wholesale seller in kalava raksha sutras and they are selling it in large quantities by weight or lengths to their buyers who in turn further merely cut into various sizes to suit their individual buyers. This does not mean and can be concluded that the kalava raksha sutra manufactured and sold by the Appellant in loose rolls in large quantity are not kalava raksha mentioned in, under serial number 148 under item IX under the head Pooja samagiri in notification no.2/2017.(Rate) and not eligible for exemption under the GST Act.
- The Authority for Advance Ruling failed to appreciate the relevant entry and wordings of the Kalava raksha sutra mentioned in the serial number 148 under item IX under the head Pooja samagiri in notification no.2/2017(rate). The Authority of Advance Ruling wrongly presumed that Kalava Raksha Sutra to be sold in sizes to be eligible for exemption and further failed to note the fact that the wearer of Kalava Raksha Sutra may use it in different parts of the human body and the same may require different lengths. The appellant's product Kalava Raksha Sutra is a product manufactured out of using dyed P.P. Yarn. or dyed cotton yarn or dyed polyester yarns which were braided together by using braiding machine. In Tamil Nadu it has been called as braided cords and the same were exempted both under the erstwhile sales tax and VAT regime.
- The Authority for Advance Ruling failed to appreciate the real nature and intent of the appellant's product, which is manufactured and sold by them for the past several years, which is not liable to any tax, even after the same was put forth by the appellant at the time of personal hearing. The Authority further failed to appreciate the intention of the government and Counsel to grant exemption on the Kalava Raksha Sutra based on the spiritual and religious value among the society. Hence this present appeal.
- By considering the above facts, statutory provisions and interpretation of entries the order passed by the Authority of Advance Ruling requires reconsideration and liable to be set aside. There are various judicial

precedents held that large piece of iron cut into small sizes remains iron and similarly timber in logs cut into small pieces remains timber in the same way cutting of big boulder crushed into small boulders does not alter the characteristics of boulders and both are one and the same.

- By considering the above principles the Kalava Raksha Sutra manufactured by the appellant and sold in wholesales by weights and lengths and later cut into various sizes by the appellant's buyers still remains as "Kalava Raksha Sutra". Just because the buyers cut the same into various sizes depending upon the specific request of the individuals will not and cannot alter the nature and intend of the product. The appellant's manufacturing details with photographs along with the copies of their purchase and sale bills were produced at the time of hearing. The appellant's main request was to clarify and mention the HSN code for Kalava Raksha Sutra falling under item number 148 of chapter IX under the head pooja samagiri in notification no.2/2017(Rate). In the said notification, the HSN code was not mentioned and even now it is not updated.
- It is submitted that Kalava Raksha Sutra is a braided yarn falling under chapter 56 and further the said product Kalava Raksha Sutra granted exemption by separate entry and fall under the exemption list without having HSN code.

PERSONAL HEARING:

6. The Appellant was granted personal hearing as required under law before this Appellate Authority on 30th May 2019. The appellant vide letter dated 25.05.2019 requested to re-fix the hearing due to personal reasons. Another opportunity was extended for hearing on 20.06.2019. The appellant vide their letter dated 12.06.2017 sought adjournment and requested to be heard during last week of July. Accordingly, the appellant was granted personal hearing on 26.07.2019. Shri. M.R.Mothilal, the appellant, S/Shri M.Arunkumar and A.Chandrasekaran, Advocates and authorized representatives of the appellant appeared. They produced samples of their product and Tax invoice copies relating to purchase of raw materials and 'Bill of Supply' raised by them. They stated that they do not dispute the classification of the product as decided by the Original Authority.; The dispute is on the eligibility of exemption as per Notification No.

2/2017-C.T.(Rate) dated 28.06.2017 as amended.; The said Notification at Sl.No. 148 exempt 'Pooja Samagiri -Kalava Sutra' falling under 'Any Chapter'. They further stated that they are not direct sellers. They sell 'Kalava' by Weight / Lengths. They claimed that mis-use/mis-interpretation cannot be a reason for not extending the exemption.

7. It was observed from the Samples produced before us that the products are of various composition and colour. The products are braided yarns of thickness varying maximum upto ½", of either cotton or polyester, viscose or rayon or polypropylene thread made into skeins.

8. Further to the Personal Hearing, the appellant furnished additional submission, which is verbatim as under:

- Though theirs is a proprietary concern their father Mr. M.S. Ramalingam and fore father Mr. M.L. Subbaiyar did the very same business of manufacturing Kalava sutra for the past 70 years. It is their traditional family business.
- Kalava sutra mainly used for the for the religious purpose only and the same has been colloquially called in tamil as follows:
 1. காசி கயிறு (Kashi Rope)
 2. திருப்பதி கயிறு (Tirupati Rope)
 3. தாயத்து கயிறு (Talisman Rope)
 4. காப்பு கயிறு (insulation Rope)
 5. அரைஞாண் கயிறு (Arainan Rope)
 6. இடுப்பு கயிறு (Hips Rope)
- All the above items are manufactured after braiding. Mostly all the Hindu temples situated in Varanasi, Tirupati, Haridwar, Anjaneyar temples, Ayyappan temple etc., were given by the priest and tied in the right hand wrist after performing pooja. Normally to get rid of fear and to protect from evil and to bring good luck, the people requested the priest to perform mantra and the **TALISMAN** placed before the god's feet and the said talisman attached to their product. And the priest put into the devotees neck like garland. The kalava sutra attached with talisman was normally worn by devotees either in their neck, hand wrist, foot ankles or also in the hip. These kalava sutra are also worn by the devotees during the fasting periods and to ensure them to follow

the spiritual guidance and they are stopped from wrong doing during the fast periods. Now a day's these kalava sutra are also used by Buddhist, Christian and Muslims religion followers.

DISCUSSION:

9. We have carefully considered the various submissions made by the Appellant. Prima Facie, we find that, the appeal is filed against the Order No. 12/AAR/2019 dated 13.04.2019 passed by the Tamilnadu State Authority for Advance Ruling on the application for advance ruling filed by the appellant. The appellant has received the Original Order on 13.04.2019 and have filed this appeal on 09.05.2019. The appeal has been filed alongwith appeal fees of Rs. 5000/- each under CGST and SGST whereas the fee payable is Rs. 10000/- each under CGST and SGST Acts. The appellant has paid the further amount of Rs. 5000/- each under CGST and SGST on 15.05.2019. Though the appeal in ARA-02 is filed by the Appellant within the Statutory period, the same has been filed incomplete, in as much as the application stands filed without the statutory fees prescribed in the Rules. As per proviso to Section 100(2), the Appellate Authority if satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the appeal period of thirty days can allow it to be presented within a further period not exceeding thirty days. In the case at hand, the appeal is filed within the statutory period though incomplete which has been made good within the further period of thirty days provided in the said proviso. Hence the lacuna is condoned and the appeal is taken up on merits.

10.0 On merits, it is seen that the appellant, in the application filed before the Lower Authority, has sought the classification (HSN Code) of their manufactured product which according to them is 'Kalava Raksha Sutra'. The Lower authority on examination of the submissions made by the appellant has in Para 4 of the Ruling stated that

'The items are not by themselves Kalva raksha sutra sold directly to consumers but long lengths of thread of various composition sold in loose rolls to the Applicant's buyers who need to be further cut to individual sizes to make them Kalava Sutra'

10.1 Further, the Lower authority has held that the commodity manufactured by the appellant is a braided yarn made using a braiding machine

and classified the Product under 'CTH 5607- Twine, cordage, Ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with Rubber or Plastics'. The Lower authority therefore has ruled as under:

'Braided textile yarns supplied by the Applicant made of Polypropylene Yarn is classifiable under 56074900, made of Other Synthetic Yarn is classifiable under 56075090, made of Cotton is classifiable under 56079090'.

The appellant while not disputing the Classification is aggrieved with the Observation in the Order of the Lower Authority that the product manufactured and supplied by them are not 'Kalava', which by implication mean that they are not eligible to be exempted vide Sl.No. 148 of Notification No. 2/2017-C.T.(Rate) dated 28.06.2017 as amended, which exempts 'Pooja Samagiri-Kalava Raksha Sutra' falling under any chapter. The appellant is before us seeking relief on the eligibility of the exemption based on the observation of the Lower Authority.

10.2 As per Section 100 (1) of the CGST/TNGST Act,

The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority

In the case at hand the appellant is not aggrieved with the ruling of the Lower authority but aggrieved with the remarks of the lower authority in Para 4 of the Ruling of the authority, which according to them affect their entitlement to the exemption under Notification No. 2/2017-C.t.(Rate) dated 28.06.2017 as amended. We find that the lower authority has not observed/ruled on the eligibility of exemption to their product in the Ruling under appeal. We also find that the Lower Authority has ruled on the classification of the product manufactured by the appellant, which is not under dispute, therefore as per the provisions of Section 100(1) of the CGST/TNGST Act, 2017 no appeal, per se lies before this Authority.

10.3 The grievance of the appellant is on the remarks of the Lower authority and the silent implication it makes. The remark of the lower authority is not in the context of the issue raised in the original application. The lower authority has not substantiated the remarks with any material evidence/findings or it has been brought out that the issue of whether the product is a 'Kalava' or 'not' was to be considered to arrive at the classification of the product sought for before them.

It is further clear that the issue dealt with was not 'whether the product manufactured by the appellant is 'Kalava' or 'not' or for that matter, the ruling do not delve on what makes a kalava and how the product is not a 'kalava'. In as much as the issue raised before the lower authority do not involve the above and factually the lower authority has not dealt with the above, we find justice best served by expunging of the above remarks of the lower authority in the ruling.

11. In view of the above discussions, we rule as under

Ruling

The remarks of the lower authority in Para 4 of its Order No 12/AAR/2019 dated: 22.03.2019 as given in Para10.0 above may be treated as expunged/deleted. The ruling of the Lower authority is maintained.



(T.V.SOMANATHAN)
Commissioner of Commercial Tax
Tamilnadu /Member AAAR



(M. AJIT KUMAR)
Pr.Chief Commissioner of GST & Excise
Chennai Zone/Member AAAR

To

Mr. Malli Ramalingam Mothilal, //By SPAD//
(Prop: M/s. M.R.Mothilal)
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Copy to

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2. The Principal Chief Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
3. The Advance ruling Authority
4. The Commissioner of GST & C.Ex.,
Madurai Commissionerate,
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