

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

A.R.Appeal No.8/2019/AAAR

Date: 21.10.2019

BEFORE THE BENCH OF

1. Thiru M. AJIT KUMAR, MEMBER

2. Dr.T.V. SOMANATHAN, MEMBER

ORDER-in-Appeal No. AAAR/07/2019 (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	A.M. Abdul Rahman Rowther & Co No.4, Old Palace Building Pudukkottai
GSTIN or User ID	33AAHFA0811C1ZD
Advance Ruling Order against which appeal is filed	Order No. 37/AAR/2019
Date of filing appeal	17.09.2019
Represented by	
Jurisdictional Authority-Centre	Trichy Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner(ST) Pudukkottai-I 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 challans No.SBIN19093300106428 dated 12.09.2019 & SBIN19093300106470 dated 12.09.2019

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 has been 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 M/s. A.M. Abdul Rahman Rowther & Co., No.4, Old Palace Building, Pudukkottai (hereinafter referred to as 'Appellant'). The appeal is filed against the Order No.37/AAR/2019 dated 27.08.2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The appellant are manufacturing tobacco products without adding any flavouring, essence and chemical substances under the registered brand of "Nizam Lady" and trade name of A.R. Abdul Rahman Rowther & Co. The appellant is

registered under GST vide GSTIN 33AAHFA0811C1ZD. They had sought Advance Ruling on the following questions:

“Classification of the product “ Chewing Tobacco” manufactured by them and applicability of Notification No.01/2017-Compensation Cess-(Rate).”

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

The application is rejected under first proviso to Section 98(2) of the CGST/TNGST Act 2017, as the issue for which Advance Ruling is sought by the applicant is already pending before the appropriate authority.

The above decision has been arrived at by the lower authority as per the first proviso to Section 98(2) of CGST/TNGST Act 2017 which forbids the authority to admit the application when the question raised is already pending or decided in any proceedings in the case of the applicant under any provisions of the Act, based on the comments furnished by the Commissioner GST & Central Excise, Trichy, wherein, it is stated that the proceedings in respect of the applicant on the very issue raised by him before the authority has been initiated and an offence case booked vide O.R. No.17/2018-19(DPU-GST) dated 09.01.2019 while the application is filed on 06.02.2019 i.e after the proceedings initiated under the provisions of the GST Act.

4. The present appeal is against the ruling of the Lower Authority on the plea that in as much as their application was accepted and AAR satisfied that there is no pending issues in the subjected matter or matter already decided either in Department or court proceedings during PH on 22nd May 2019 before the lower authority, the said authority has rejected the application for the reason that proceedings are pending.

5. The appellant has furnished the Statement of Facts and Interpretation of Facts before this Authority as follows:

- Their application was accepted and AAR satisfied that there is no pending issues in the subjected matter or matter already decided either in Department or court proceedings.
- During Personal Hearing held on 22nd May 2019 before the Lower Authority, they displayed the relevant sample and elaborated in detail as regards how

their products are being classified with that of chemically flavoured tobacco products of dry varieties in the form of tobacco products(without lime tube) and tobacco products(with lime tube).

- Even after submission of all details in relation to passing on the appropriate ruling as regards the classification of product and applicable GST compensation cess, AAR have come out with qualification remarks after the gap of 6 months from the date of filing their application in entertaining their prayer and refused to provide the ruling causing remark on the facts that their matter is pending before the jurisdiction authority of CGST at the time of filing of application
- Their products' description and method of manufacturing have clearly been spelt out in their letter dated 30th June 2017 to the concerned CGST Authorities and they have not come for inspection in their unit so far but have obtained the statement from them as regards the description of the product and method of processing and manufacture of their product during the month of November 2018.
- After filing of application before AAR, they have issued SCN during the month of July 2019 stating the remark that there is shortfall in payment of GST under Section 73(1) of the CGST Act. Hence it is being categorically and vehemently denied on their part that there is no pending issue in relation to their product at the time of submission of application before AAR as regards subjected mater of classification of product.

They prayed the Appellate Authority to set aside/modify the impugned ruling by the Lower Authority, grant a Personal Hearing and Pass any such further or other Order(s) as may be deemed fit and proper in facts and circumstances of the case.

PERSONAL HEARING:

6. The Appellant was granted personal hearing as required under law before this Appellate Authority on 10.10.2019. S/Shri. A. Ibrahim Kalifullah, Chartered Accountant and R.Subramanian, Chartered Accountant and authorised representatives of the appellant appeared for the hearing. They contended that though they were heard by the authority for Advance Ruling, the issue regarding the pendency of the proceedings on which ground, the application is rejected was not

discussed and therefore the rejection without hearing them on the matter which led to the rejection of their application is contrary to section 98(2) of the Act. They furnished a written submission and requested the matter may be remanded. In the written submission, they have among other aversions, have stated that

- As per Section 98 of CGST Act, the application sought for advance ruling shall be rejected at the application stage itself if the subject in question is already pending before any authority or decided in any judicial proceedings in respect of the applicant
- At the time of filing their application before AAR on 4th Feb 2019, there is no issue pending before any authority in relation to the subjected matter.
- They have made representation before the CBIC TRU through their Tobacco Association in TamilNadu during the month of Sep' 2018 in relation to the levy of GST compensation cess for the product of unmanufactured tobacco. Meanwhile, they are following the practice of paying GST compensation cess for residual variety of tobacco products under self-assessment basis. At this juncture, there are certain other petitions made by their competitors engaging in manufacturing 'manufactured tobacco' to the same CBIC TRU against the manufacturers of 'unmanufactured tobacco' like them complaining about the short payment of GST resorted for the supply of goods. As the result of which GST Authorities in the State of Tamilnadu have started inquiring about the supply of goods made by all kind of manufacturers of tobacco products in the State of Tamil Nadu upon the direction of the TRU CBIC. Hence, their unit is not exemption to this and therefore the concerned Jurisdictional Authority had summoned them on 9th Jan'2019 calling for certain details in respect of details of supply made by them from the date of introduction of GST till Dec'2018.
- The Jurisdictional GST authorities again summoned them on 19th June 2019 for further clarifications in relation to short payment of GST against the supply of goods. The initiation of enquiry under Section 70 of the CGST Act by Jurisdictional Authority is no way connected with the application in question filed before GST AAR
- The concerned Jurisdiction Authority has not taken their product sample and enquiry is not relating to the description of the product manufactured by them rather it is relating to the short levy of tax for the supply of goods.

- Knowing the fact that they have filed the application before AAR in order to obtain the ruling for product manufactured and sold by them, the concerned Jurisdiction Authority is trying to correlate the issue with that of inquiry proceedings termed it as that of “issue already pending before the GST authorities” in order to prevent them from obtaining the appropriate ruling in question. Further to that Jurisdiction authority has issued Show Cause Notice during July 2019 for short levy of GST for the supply of product and nowhere in SCN, there is mentioning about the description of product in question.
- The concerned Jurisdiction Authority has not raised any objection before AAR at the time of Personal hearing posted on 22nd May 2019 though the copy of the personal hearing notice is duly sent to them for their reply.
- Besides this, Hon’ble GST AAR while pronouncing its ruling on the subjected matter, specified that it do not go into the merits of the case since the question in subject is already pending with the concerned Jurisdictional office. As per the common judicial parlances if any adverse decision is to be passed against the party, they must be given the opportunities of being heard in person and their comments has to be incorporated in the speaking order in pronouncing the judgment. Such judicial proceedings are not followed in the ruling of Hon’ble GST AAR in their case.
- As per Section 98(2) of the CGST Act, the application before AAR shall be rejected where the question raised is pending or raised in court proceedings. However, the term ‘Proceedings’ is vague and there is no clarity about the stage at which a particular matter is deemed to be pending proceedings. There are some of the rulings issued by GST AAR in various States for rejecting GST Advance Ruling Application at the stage of admission itself in respect of some assessee namely (a). Veeram Natural Products(Tamilnadu) (b). Sasan Power Ltd (Madhya Pradesh) (c). Crux Bio Tech India P. Ltd (Andhra Pradesh) and Sterlite Technologies Ltd (Maharashtra). In respect of these cases, the application is rejected at the time of admission and that too with the judicial proceedings of giving proper opportunities to the party for their view heard in person.
- No such proceedings as mentioned in Section 98 of CGST Act have been followed by Hon’ble AAR in providing the ruling

- The issue in question is already pending as ruling pronounced by the Hon'ble AAR cannot be accepted since question or enquiry about the description of the product manufactured by them is not at all considered when initiation of proceedings for short fall in payment of GST through summon dated 9th Jan 2019. Hence the question raised in the application under consideration cannot be termed as the same as in a matter already pending before the authority for rejection of their application by Hon'ble AAR.

Discussions:

7. We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. The issue before us for determination is whether, the rejection of the application filed by the Appellant seeking Advance Ruling by the Lower Authority is as per the provisions of Law and Principles of Natural Justice.

7.1 We find that the Lower authority on receipt of the application of the appellant has extended an opportunity to be heard in person as per the provisions prescribed under Section 98. The jurisdictional officers were also intimated on the application filed by the appellant. From the details available on record, it is seen that the revenue has not represented before the lower authority at the time of hearing. The lower authority has heard the case of the appellant. But subsequently, the CGST officers of Trichy commissionerate has responded to the information sought on the application of the appellant, wherein it is stated that a summon was issued on 8th Jan 2019 and Statement recorded on 9th Jan on the issue of short payment of compensation cess by misclassifying the product supplied by the appellant. On receipt of the said comments, the lower authority, without extending another opportunity to the appellant to hear their contentions on the comments of the jurisdictional authority has rejected the applicant stating that the application is filed when the proceedings are pending before the GST authorities.

7.2 The appellant is aggrieved of the said decision and considers that the principles of natural justice is not followed in as much as they have not been extended an opportunity to comment on the submissions of the CGST authorities that the

question raised in the application was already pending with the department. As per their contentions, the summons were issued in connection with possible short payment of GST and GST Compensation Cess and is not in relation to the questions seeking the Ruling. We therefore find, that ~~the~~ justice ^{will} be met by remanding the case to the lower authority, to extend an opportunity to the appellant and then decide the case as per the provisions of law. We further find that this authority is empowered vide section 101(1) to Pass such order as deemed fit.


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

RULING

The order No. 37/AAR/2019 dated 27.08.2019 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 on whether the issue raised in the application by the appellant was already pending before the department after extending opportunity to the appellant.


(T.V.SOMANATHAN)

h/te
- Commissioner of Commercial Tax
Tamilnadu /Member AAAR


(M. AJIT KUMAR)

Pr.Chief Commissioner of GST & Excise
Chennai Zone/Member AAAR

To

M/s. A.M. Abdul Rahman Rowther & Co

No.4, Old Palace Building, Pudukkottai. // By Speed Post with Ack due//

Copy to



1. Additional Chief Secretary/Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-5.
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.,
Trichy Commissionerate,
No.1, Williams Road, Cantonment, Trichy 620 001.
5. The Assistant Commissioner (ST),
Pudukkottai-1 Assessment Circle,
5893/3, Kattupudukkulam,
Pudukkottai- 622 001.
6. Master File/ Spare-2.

