

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

A.R. Appeal No. 09/2021/AAAR - ROE

Date: **12**.01.2023

PRESENT

1. **Thiru. MANDALIKA SRINIVAS,**
Principal Chief Commissioner of GST & Central Excise/ MEMBER (CENTRE)
&
2. **Thiru. DHEERAJ KUMAR,**
Principal Secretary/ Commissioner of Commercial Taxes/MEMBER (STATE)

PROCEEDINGS UNDER SECTION 102 OF THE CGST ACT, 2017
& UNDER
SECTION 102 OF THE TNGST ACT, 2017

Name and address of the appellant	ERODE CITY MUNICIPAL CORPORATION, 246, Brough Road, Erode -638001
GSTIN or User ID	33AAALT1781B1ZB
Date of filing of rectification application	19.04.2022
AAAR Order against which ROM is filed	AAAR/20/2021(AR) dated 01.12.2021
Jurisdictional Authority-Centre	Salem Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Brough Road Assessment Circle

M/s. Erode City Municipal Corporation (hereinafter referred to as 'Appellant') 246, Brough Road, Erode holding GSTIN 33ABAI53460L1Z8 filed an application for Rectification of Error (ROE) of the Appeal Order No. 20/2021 dated 01.12.2021, under Section 102 of CGST/TNGST Act, 2017.

2. The Appellant filed the instant application requesting rectification of decisions in the order No: AAAR/20/2021(AR) dated: 01.12.2021, in respect of the following:

- i. Appeal was against the Ruling extended for Q. No. 2 which had 13 activities and ruling was extended only with respect of Activities at Sl.No.1 to 9 and 13. Ruling is sought with regard to the activities at Sl. No. 10, 11 and 12 of the Table under Para 2 of the said order dated: 01.12.2021 of the AAAR;
- ii. The activities at Sl.No. 5A-Charges for TV advertisement. in Bus Stand; 5C- Flower shop in bus stand in open space & Sl. No. 7-Bunk Stall' are classified as renting of immovable property service. As per Sl. No. 7 of Notification No. 12/2017 exemption was not applicable for renting of Immovable Property service but it was stated in the Order that it was applicable and hence it requires rectification;

- iii. For Renting of Immovable Property Service, payment under Reverse Charge under Sl.No. 5A of Notification. No. 13/2017 was applicable for any person registered under CGST Act,2017 but it was stated in the Order that Sl. No. 5 of Notification No. 13/2017 was applicable; and hence it require rectification; and
 - iv. The applicant had also stated that they were registered with Salem Commissionerate, Erode Division and was being administered by the Central Jurisdictional Authority, whereas the jurisdiction was incorrectly mentioned as Coimbatore Commissionerate in the said Order and sought rectification of the same.
3. The Section 102 of the CGST/TNGST Act, 2017 provides for Rectification of error (RoE) and it reads as follows:

“The Authority or the Appellate Authority [or the National Appellate Authority] may amend any order passed by it under section 98 or section 101 [or Section 101C, respectively] so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority [or the National Appellate Authority] on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant, appellant, the Authority or the Appellate Authority 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 applicant or the appellant has been given an opportunity of being heard”

4. In the subject case, the appellant had filed the application dated: 19.04.2022 seeking the rectification of the order dated: 01.12.2021, within a period of six months from the date of the Order of the AAAR. Therefore, the rectification application stands filed within the specified statutory period and the application is thus taken up for consideration of the error sought to be rectified.

5. The Authorised representative (AR) appeared for the hearing scheduled on 15.07.2022, on virtual platform; and reiterated the contents of ROE application as well as that of the additional submissions dated 15.07.2022 submitted by email.

5.1 Authorised Representative stated that in respect of the activity of ‘Avenue Receipts’; ‘Right to Fishing in pond’ and ‘Fish Market’ they had sought eligibility of Notification No.14/2017 CT(Rate) which was omitted in the Appellate order and urged to reconsider.

5.2 Authorised Representative stated further that in respect of Q.No.2 Sl. No. 5A- Charges for TV Advertisement in bus stand; 5C-flower shop in bus stand ; and Sl. No. 7 - bunk stall in the bus stand - of the said question it was held that under para 9.2 of the Appellate Order that the same would fall under “renting of immovable property services” & under para 11(d) (ruling portion), it was ruled that the same would be covered under Sl.No.7 of Notification 12/2017 CT(Rate) as well as charging of tax on RCM basis as per Sl. No. 5 of Notification No.13/2017-

C.T.(Rate). The Authorised Representative contended that extending “Right to renting of immovable property” is also covered under “renting of immovable property” and therefore the ruling requires rectification.

5.3 Further, the applicant is registered under the Central Jurisdictional Authority-Salem Commissionerate, Erode Division, Erode I range; and had requested rectification to that effect in the order.

6. We have considered all the material on record pertaining to the subject application for ROE, preferred in terms of the Section 102 of the CGST /TNGST Acts. We find that the appellant had filed an appeal against the ruling in respect of Q.No. 2 raised by them in their application before the AAR. The Question raised by the appellant in their application, the ruling extended by the Original Authority and the ruling of the Appellate Authority are reproduced hereunder for ready reference:

Q.No. 2: In respect of services rendered by them from Sl No 1 to 13 through tender Contractors, whether they are covered under Twelfth Schedule to Article 243W of the Constitution and/or exempted vide Notification No. mentioned against each Sl. No.

Ruling of the Original Authority (AAR):

The appellant supplies the ‘Right to collect the fees/right to certain amenities’ to the contractors and the supply undertaken by the contractors are as per the tender conditions, which is an independent supply. The applicability of the Notification to the supplies of the contractors was not answered as per S.95(a) read with S.103(1) of the GST Act.

Ruling of the Appellate Authority (AAAR):

- c. In respect of Q. No. 2, the transaction between the corporation and the contractor as listed in Sl. No. 1 to 9 and 13, except at Sl. No. 5A-Charges for TV advertisement in Bus Stand; 5C-Flower shop in bus stand in open space & Sl. No. 7-Bunk Stalls’ of the said question, in the factual matrix presented, it is held to be an activity/transaction in relation to the activity/transaction undertaken by the appellant engaged as Public authority and the same are covered under Notification No. 14/2017-C.T.(Rate) (as amended).
 - d. In respect of Q. No. 2, Sl. No. 5A-Charges for TV advertisement in Bus Stand; 5C-Flower Shop in bus stand in open space & Sl. No. 7 -Bunk Stall’ of the said question, the same is covered under Sl. No. 7 of Notification No. 12/2017-CT (Rate) as well as charging of tax on RCM basis under Sl. No. 5 of Notification No. 13/2017 – CT (Rate) subject to fulfillment of the conditions therein is available to appellant.
7. Prima facie, on perusing the ruling extended by the appellate authority, it is evident that no ruling was extended in respect of activities listed in Sl. No. 10, 11 and 12; and therefore, the ruling to this extent requires rectification. The appellant has sought clarification on the services rendered by them listed in Sl.No. 1 to 13, as to whether the services were covered under Twelfth

Schedule to Article 243W of the Constitution and /or exempted vide Notification No. mentioned against each Sl. No when provided through tender contractors. The relevant entries (Sl. No. 10,11 &12) as furnished by the appellant in their application before the original authority for Advance Ruling is extracted hereunder:

Sl. No	Descripti -on of the service	Direct service by the corporation	Service through contractors by tender process	Advance ruling is required on the following .whether the services mentioned in Column B are exempted vide Notfn No or Sl No entry of the table to Notfn as noted against each Sl No in Column E.
A	B	C	D	E
10	Avenue receipts		Three years lease	(i)Sl no 54 of Notfn. No 12/2017-C.T. (Rate), dated 28-6-2017. (ii)Press Release No. 162/2018, dated 28- 5-2018. (iii) Sl no 24 of the table to Notification No. 11/2017-C.T. (Rate), dated 28-6-2017.
11	Right to fishing in bond (pond)		Three years lease	(i)Sl No 5 of Notfn. No 12/2017-C.T. (Rate), dated 28-6-2017. (ii)Sl no 24 of the table to Notification No. 11/2017-C.T. (Rate), dated 28-6-2017
12	Running a fish market		Three years lease	Sl no 5 of Notfn. No 12/2017 or Sl no 24 of 11/2017 dated 28-06-2017.

7.1 The above mentioned three services at Sl. No: 10, 11 & 12 are entirely undertaken through contractors by tender process, which is also supported by the fact that the col. C (*Direct service by the corporation*) in the Table was left blank. It is noticed that the appellant has not sought applicability of Notification No. 14/2017-C.T.(Rate) specifically against these activities, but had claimed that the activities were covered under Article 243 G-(i) Agriculture, including agricultural extension; (v) Fisheries; (vi) Social forestry and farm forestry; (vii) Minor Forest produce. The appellant claimed that the clarification sought had two limbs- one whether the services rendered were covered under Eleventh/Twelfth Schedule of the Constitution which gives the functions entrusted to Panchayat/Municipalities; and the second limb was whether such services were exempted vide Notifications mentioned against each service. From the material on record, it is seen that the services rendered were not being provisioned /supplied by the Appellant; but was being allowed to be supplied by the successful bidder/contractor. In other words, the activity of the appellant was to extend the right to use the enjoyments of fruits of the trees in highways of particular area as per the prescribed conditions of tender; to extend the right to take fish in a particular pond; and to extend the right to sell fish in a particular shop, in a specified area.

8. We find that the submissions with regard to this question stand discussed in Para 9 of the Appellate Order dated: 01.12.2021. The Appellate authority in para 9.1 of the Order dated:

01.12.2021 had held that the transaction between the corporation and the contractor is an activity /transaction undertaken by the local authority, engaged as public authority. The requirement explicitly stated in section 7(2) (b) are met. Further, in as much as this transaction/activity undertaken by the corporation is an activity covered under the above notification, this transaction/activity under sl.no.1 to 9 and 13 ('except Sl.No.5A charges for TV advt. in Bus Stand; 5C-Flower shop in bus stand in open space & Sl.No.7-Bunk Stall') listed by the AAR as neither a supply of goods nor a supply of service are available to contractors also provided the same are rendered as back to back services to the appellant.

9. In respect of the activities at Sl. No. 10 & 11, it relates to extension of 'right to collect the fruits of Avenue trees' and 'right to undertake fishing in the Ponds'.

a) The appellant has provided the right to use by the successful bidder/ tenderer for

(i) the enjoyments of fruits of the trees in highways of particular area as per the prescribed conditions of tender and

(ii) extending of right to fish in a particular pond and thus conferred a right of enjoyment of the produce.

b) The appellant receives consideration from such successful tenderer for the right given to him for enjoying the beneficial rights from trees (Avenue receipts) and fishing ponds (Fishing right). Supply of services in relation to a function entrusted under Article 243G & 243W of the Constitution are covered by the Notification No.14/2017 Central Tax Rate, dated 28-6-2017. In respect of these two items, the activity is not "giving of services" but for "enjoyment of rights". The payment received by the appellant would be for enjoyment of rights and not for giving of services. Therefore, the said notification would not be applicable in these two cases.

c) Further, as the appellant local authority is receiving the consideration from the successful tenderer for having transferred its rights temporarily, it could not be said that in providing the said services, they are engaged as public authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or under article 243W of the Constitution. Hence, the benefit of treating the said supply of services as neither supply of goods nor supply of services vide Notification No.14/2017 Central Tax Rate, dated 28-06-2017 would not be extendable to the appellant.

d) As per the explanation to the notification "renting of immovable property means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property". This definition would cover these two activities.

e) For the said reasons, entry in Sl.No.54 of Notification No. 12/2017-CT(Rate) dated 28-6-2017 and entry in Sl.No.24 of Notification No. 11/2017-CT(Rate) dated 28-6-2017 as exempted supply would not be applicable as claimed by Appellant in respect of Avenue receipts.

f) Similarly, the entry in Sl.No.5 of Notification No. 12/2017-CT(Rate) dated 28-6-2017 and entry in Sl.No.24 of Notification No. 11/2017-CT(Rate) dated 28-6-2017 as exempted supply would not be applicable as claimed by Appellant in respect of Right to fishing in pond.

g) Hence, the supply of said services which is basically conferring enjoyment of rights, would be liable to reverse charge by the Tenderer who is registered under the CGST Act /TNGST Act vide Sl. No.5 A of Notification No. 13/2017-CT(Rate) dated 28-6-2017.

10. In respect of the activity- 'Running a fish market', i.e, extending the right to sell fish in a particular shop in a specified area, the activity is allowing/permitting to rent/renting a particular area to sell fish. The place being earmarked as awarded by the appellant, is in the nature of 'right to Renting of Immovable Property' by successful tenderer and therefore is not an activity in relation to functions entrusted to a Panchayat/Municipality. However, for such an activity, the exemption under sl.no. 7 of Notification No. 12/2017-CT (Rate) is available as well as charging of tax on RCM basis under sl. No. 5 of Notification No. 13/2017-CT(R) is available to the appellant subject to the fulfilment of the conditions envisaged therein.

11. The second issue raised in respect of Q.No.2, Sl. No. 5A- Charges for TV Advertisement in bus stand; 5C-flower shop in bus stand ; and Sl. No. 7 - bunk stall in the bus stand, the Authorised Representative stated that it was held that under para 9.2 of the Appellate Order that the same would fall under "renting of immovable property services" & under para 11(d), it was held that the same would be covered under Sl.No.7 of Notification 12/2017 CT(Rate) as well as charging of tax on RCM basis as per Sl. No. 5 of Notification No.13/2017-C.T.(Rate). The Authorised Representative has also stated that in respect of 'Renting of Immovable Property Service' for the purposes of Reverse charge of taxation, the applicable entry is as per Sl.No. 5A of Notification No. 13/2017-C.T.(Rate). The Authorised Representative contended that extending "Right to renting of immovable property" is also covered under "renting of immovable property" and therefore the ruling requires rectification. This has been examined and in para 9.2, the appellate authority held that the activity would be covered under Sl.No.7 of Notification 12/2017 CT(Rate) as well as charging of tax on RCM basis as per Sl. No. 5 of Notification No.13/2017-C.T.(Rate) for the reasons recorded therein. Hence, it cannot be considered as an error apparent on the face of record. Accordingly the request of the appellant to rectify the error is not allowable and the ruling does not require any rectification.

12. It is seen that in the Table in Page 2 of the appellate Order, the Jurisdictional Authority-Centre was stated as 'Coimbatore Commissionerate, Coimbatore-I. The appellant is under the Jurisdiction of Salem Commissionerate, Erode Division, Erode-I Range

12.1 Accordingly, the Jurisdiction mentioned in the Table at Page 2 of the Appellate Order AAAR/20/2021(AR) dated 01.12.2021 thus merits to be amended as:


Jurisdictional Authority -Centre :	Salem Commissionerate, Erode Division
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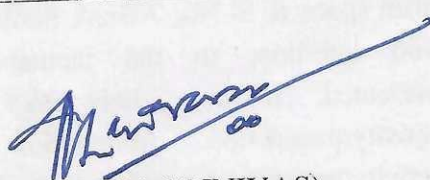
13. In view of the above, the ruling on rectification of the Appellate Order AAAR/20/2021(AR) dated 01.12.2021 is ordered as follows:

Ruling on Rectification of Error

<u>Ruling as per order No.</u> AAAR/20/2021(AR) dated 01.12.2021	<u>Rectified Ruling</u>
<p>11 c. In respect of Q.No. 2, the transaction between the corporation and the contractor as listed in Sl.No. 1 to 9 and 13, except at Sl.No. 5A-Charges for TV advt. in Bus Stand; 5C-Flower shop in bus stand in open space & Sl.No. 7-Bunk Stalls' of the said question, in the factual matrix presented, it is held to be an activity/transaction in relation to the activity/transaction undertaken by the appellant engaged as Public authority and the same are covered under Notification No. 14/2017-C.T.(Rate) as amended.</p>	<p>11 c. In respect of Q.No. 2, the transaction between the Corporation and the contractor as listed in Sl.No. 1 to 9 and 13, except at Sl.No. 5A-Charges for TV advt. in Bus Stand; 5C-Flower shop in bus stand in open space, Sl.No. 7-Bunk Stalls, of the said question, in the factual matrix presented, it is held to be an activity/transaction in relation to the activity/transaction undertaken by the appellant engaged as Public authority and the same are covered under Notification No. 14/2017-C.T.(Rate) as amended.</p> <p>In respect of Q.No. 2, the transaction between the Corporation and the contractor as listed in Sl.No.10 (Avenue receipts) and 11(right to fishing in pond), the supply of said services which is basically conferring enjoyment of rights, would be liable to reverse charge by the Tenderer who is registered under the CGST Act /TNGST Act vide Sl. No.5 A of Notification No. 13/2017-CT(Rate) dated 28-6-2017.</p> <p>In respect of Q.No. 2, the transaction between the Corporation and the contractor as listed in Sl.No.12 (Running a fish market), for such an activity, the exemption under sl.no. 7 of Notification No. 12/2017-CT (Rate) is available as well as charging of tax on RCM basis under sl. No. 5 of Notification No.. 13/2017-CT(R) is available to the appellant subject to the fulfillment of the conditions envisaged therein.</p>

11.d. In respect of Q.No. 2, Sl.No. 5A- Charges for TV advt. in Bus Stand; 5C- Flower Shop in bus stand in open space & Sl. No. 7 -Bunk Stall' of the said question, the same is covered under Sl.No. 7 of Notification No. 12/2017-CT (Rate) as well as charging of tax on RCM basis under Sl.No. 5 of Notfn No. 13/2017 – CT (Rate) subject to fulfillment of the conditions therein is available to appellant.	11.d No amendment is considered since the request for rectification of error is rejected.
Jurisdictional Authority- Centre: Coimbatore Commissionerate, Coimbatore-I.	Jurisdictional Authority-Centre : Salem Commissionerate, Erode Division


(DHEERAJ KUMAR) 12/1/2023
Principal Secretary/
Commissioner of State Tax
Tamil Nadu/ Member, AAAR.


(MANDALIKA SRINIVAS)
Principal Chief Commissioner
Central Tax & Central Excise,
Chennai Zone/ Member, AAAR.

To
ERODE CITY MUNICIPAL CORPORATION
246 Brough Road,
Erode (By RPAD)

APPELLATE
AUTHORITY FOR
ADVANCE RULING

12 JAN 2023

Copy to:

GOODS AND SERVICE TAX
Chennai-5, Tamilnadu

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2. The Principal Secretary/ Commissioner of Commercial
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3. The Commissioner of GST & Central Excise, Salem Commissionerate,
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4. The Assistant commissioner, Brough Assessment Circle,
Commercial Taxes Building, 1, Brough Road, Erode – 638 001.
5. Authority for Advance Ruling, Tamil Nadu,
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Master File / spare