

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

A.R.Appeal No.11 /2020/AAAR

Date: 05.03.2021

BEFORE THE BENCH OF

1. Thiru G.V. KRISHNA RAO, MEMBER

2. Thiru M. A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/08/2021 (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 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	M/s. Sumeet Facilities Limited No.403,Jeeva Colony, Udumalai Road,Kondarasampalayam,Dharapuram, Tiruppur 638657.
GSTIN or User ID	33AACCS3411J1ZP
Advance Ruling Order against which appeal is filed	Order No. 36/ARA/2020 dated 03.11.2020
Date of filing appeal	21.12.2020
Represented by	M/s.Nithyaesh&Vaibhav, Nithyaesh Natraj,Vaibhav R Venkatesh,Anirudh A Sriram,Mayan H Jain, Legal Representatives and Prabhakar Salunke, Ajit Darandale
Jurisdictional Authority-Centre	Salem Commissionerate
Jurisdictional Authority -State	Assistant Commissioner(ST) Dharapuram 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 challan No.IDIB 20123300292435 dated 17.12.2020

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 by M/s. Sumeet Facilities Limited (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AACCS3411J1ZP. The appeal is filed against the Order No. 36/ARA/2020 dated 03.11.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The appellant has stated that they are engaged in supplying services of Waste Management, Mechanized Road Sweeping, Business Support Staffing and other services relating to Integrated Facility Management to private sector entities as well as public sector entities and Governmental organizations. They have multistate presence in India in various States such as Maharashtra, Tamil Nadu, Andhra Pradesh, Gujarat, Karnataka, Chhattisgarh, Rajasthan and New Delhi. On 10th March 2020, they have entered into two separate Service Agreements for supply of waste collection, segregation, treatment, transportation and disposal services for the Greater Chennai Corporation with following entities:

(i) Sumeet Urban Services (Chennai) II Private Limited, Chennai

(ii) Sumeet Urban Services (Chennai) V Private Limited, Chennai

The services referred above commences effective April 2020. The Appellant has sought Advance Ruling on the following questions

(i). What is the classification for supply of services by the Applicant relating to waste collection, segregation, treatment, transportation and disposal services under the service agreements entered with both concessionaries in terms of notification 11/2017- C.T.(Rate) dated 28th June 2017?

(ii). Whether the activity of waste collection, segregation, treatment, transportation and disposal services carried out by the Applicant under the Service Agreements entered with both concessionaries is exempted from Goods and Services Tax in terms of entry no.3 of the Notification 12/2017- Central Tax (rate) dated 28.06.2017?

3.1 The AAR pronounced a ruling that the supply of services by the applicant relating to waste collection, segregation, treatment, transportation and disposal services under the Service Agreements entered with both concessionaries are classified under SAC 9994 in terms of Notification No. 11/2017 C.T.-(Rate) dated 28.06.2017 and the activity undertaken by the applicant under the Service Agreements entered with both concessionaries are not exempted from Goods and Services Tax in terms of entry no.3 of the Notification 12/2017- Central Tax (rate) dated 28.06.2017.

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

- The appellant has entered into two separate Service Agreements for supply of waste collection, segregation, treatment, transportation and

disposal services for the Greater Chennai Corporation with following entities:

- (i) Sumeet Urban Services (Chennai) II Private Limited, Chennai
- (ii) Sumeet Urban Services (Chennai) V Private Limited, Chennai

- The Municipal authority accepted the request of the bidder to accept the two SPV's as the concessionaries to undertake and perform obligations and exercise rights of the bidder under the LOA for undertaking the project and entered into Concession Agreement with the SPV's Zone-Wise separately on 24.02.2020.
- The Concessionaires proposed to outsource the part of the work and the Appellant inter alia engaged and experienced in the field of Waste Management, Mechanized Road Sweeping and other services relating to Integrated Facility Management has been identified by the Concessionaries as service provider.
- The Concessionaires have entered into Service agreement with the Appellant on 10.03.2020 for providing back to back part of services of waste collection, treatment and disposal services which are required to be performed by the Concessionaires under the Concession Agreements.
- The Service charges/fess payable by the Concessionaires to the Appellant is on per-tonnage basis of the waste collected, segregated, transported and disposed of.
- The Appellant further stated that the Services provided by them under the Service agreements with the concessionaries are appropriately classifiable under SAC/Heading 9994 – Waste Collection, treatment and disposable services of the Annexure to Notification 11/2017 – CT(R) dated 28.06.2017.
- The exemption at Sl.No.3 to Notification No. 12/2017 – C.T. (Rate) dated 28.06.2017, which exempts 'Pure Services provided to the local authority, do not prescribe that the services have to be provided directly to the local authority and the entry is also silent on the aspect whether the services provided in capacity of sub-contractor are

not eligible for exemption. Hence, the appellant is of the view that their services are being provided to the Authority only and not to the Concessionaires and are exempted from payment of GST as per Sl.No.3 of Notification 12/2017, CT (R) dated 28.06.2017.

PERSONAL HEARING:

5.1 The Appellant was granted virtual personal hearing as required under law before this Appellate Authority on 5th February 2021. The Authorized representatives of the Appellant, M/s. Nithyaesh & Vaibhav, Nithyaesh Natraj, Vaibhav R Venkatesh, Anirudh A Sriram, Mayan H Jain, Legal Representatives and Prabhakar Salunke, Ajit Darandale of the appellant company appeared for hearing.

DISCUSSION & FINDINGS:

6.1 We have carefully considered the various submissions made by the Appellant along with case laws and the applicable statutory provisions. We find that the submissions made by the appellant have already been looked into by the AAR and there is nothing new which has been brought to persuade the AAAR. The case laws and arguments pertaining to Service Tax law are specific to that law as there were provisions catering specifically to subcontractors whereas in GST the provisions are very restricted. Exemption benefit are not available to sub-contractors *ex facie* since those entries under 12/2017 specific to subcontractors occur only at two sl. Nos. that too pertaining to works contract. They restrict the exemption to only three sub clauses of sl. No. 3, performed by the main contractor and NOT extended to all the activities performed as a part of works contract. This itself proves that the purpose of exemption notification unless specifically provided, cannot be extended to subcontractors automatically on par with service suppliers (main contractors).

6.2 The appellant are suppliers to their own JV partners and not to GCC; in other words, the recipient of their services is their own JV partners and not GCC, as per the wordings of service agreement and as per the definition of S.2(93) of the GST Act. The very wording of the exemption is 'provided to' something legally provided to a recipient and not as a beneficiary. Here GCC is only the beneficiary.

6.3 Agreement between concessionaires and the appellant is on principal to principal basis only and NOT agent to principal as per para 6.1 of the service

agreement. Therefore, arguments laid during the PH on this basis are factually incorrect.

6.4 A conjoint reading of the service agreement between the appellant and the concessionaires and of the concessionaire agreement between GCC and the concessionaires reveals that the appellant does not render back to back services of what GCC awarded to the concessionaire and only carries out a part of the activities awarded to the concessionaire by the GCC. The original concessionaire agreement between GCC and the concessionaires, itself being not in the nature of pure services but a supply of both goods and services, how the services of appellant rendered to the concessionaire, with or without being back to back contract, can be termed as a pure service?

6.5 When the bid for services to GCC is directly with the appellant and the services are to be done by the appellant to GCC, why appellant entered into agreement with concessionaire, who has been promoted by the appellant itself, though out of question here, appears somewhat strange. However, the answer lies in the fact that the very nature of concessionaire agreement / bid with GCC involves supply of bins, construction of sheds, vehicles, mechanical sweepers, etc., along with other goods and services (para 2.4 B(a)(ii) and 5.4 of the agreement between GCC and concessionaire); therefore, the appellant who only won the bid and should have performed the activities directly to the GCC, floated two concessionaires who will procure the goods and supply to the appellant, who in turn will provide the services, so as to be termed to be 'pure services' allegedly to enable them qualify themselves under the exemption notification. This artificial separation of activities to be performed wholly by the successful bidders and to be provided to the GCC, is a colourable device to avail the exemption under GST and legally and factually not tenable.

6.5 Appellant is a totally different entity than from concessionaires in as much as they are all separately incorporated and separately registered with GST and they are distinct persons as per GST Act. So, on the basis of holding equity, they cannot claim to be on par with the concessionaire, who otherwise too are ineligible for the exemption, being the provider of composite supply of goods and services to GCC anyway.

7. In light of the above, we rule as under:

RULING

For reasons discussed above, we do not find any reason to interfere with the order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.

(M.A.SIDDIQUE)
Principal Secretary/
Commissioner of Commercial Tax
Tamil Nadu/Member, AAAR.

(G.V.KRISHNA RAO)
Pr.Chief Commissioner of GST & Excise
Chennai Zone/Member, AAAR.

**APPELLATE
AUTHORITY FOR
ADVANCE RULING**

05 MAR 2021

To

M/s. Sumeet Facilities Limited
403, Jeeva Colony, Udumalai Road,
Kondarasampalayam Dharapuram,
Tiruppur-638657

**GOODS AND SERVICE TAX
Chennai-5, Tamilnadu.**

// By RPAD //

Copy to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/ Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. Joint Commissioner(ST)/Member,
Authority for Advance Ruling, Tamil Nadu,
Room No.503B, 5th Floor,
Integrated commercial taxes Office complex,
No. 32, Elephant Gate Bridge Road,
Chennai-600 003.
4. The Commissioner of GST & Central Excise,
Salem Commissionerate,
No.1, Foulkes Compound Anaimedu,
Salem, 636 001.
5. The Assistant Commissioner(ST)
Dharapuram Assessment Circle,
130/138, Javulikadai Veethi.
Dharapuram. 638 656.
6. Master File/ Spare.