

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2024/04
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/50)

Date: -03.02.2024

Name and address of the applicant	:	M/s. I-tech Plast India Pvt.Ltd., Survey No.108-109, Bhavnagar-Rajkot Highway, Shampara, Bhavnagar.
GSTIN of the applicant	:	24AABCI1401P1ZT
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-76, Division-9, Bhavnagar.
Date of application	:	30.11.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	Invocation of section 104, CGST Act.
Date of Personal Hearing	:	08.05.2023 and 9.11.2023.
Present for the applicant	:	Shri Nishant C. Shukla (Advocate)

Vide letter no. V/2-1/Advance Ruling/ I-Tech/2021-22 dated 29.7.2021, Joint Commissioner, CGST Bhavnagar enclosed letter no. DGGI/Int/Intl/76/2020-Gr. B dated 20.7.2021 from DGGI, Pune Zonal Unit informing that Ruling No. GUJ/GAAR/R/10/2021 dated 20/01/2021 on the issue of classification of toys was obtained by suppressing material facts and that the said ruling be declared as 'void ab initio'.

2. Briefly, the facts are as follows:

3. M/s. I Tech Plast India P Ltd [the applicant] received a letter dated 15.09.2020 from Sr. Intelligence Officer[SIO], DGGI, Pune Zonal Unit, Pune which was an enquiry in relation to classification of "Plastic Toys". On further inquiring, it was orally informed by the SIO that search operations were carried out at the business premises of one assessee (name undisclosed) and it was a cross inquiry of the applicant.

4. The applicant supplied the required details to DGGI. He further filed an application for Advance Ruling, before the Authority for Advance Ruling, Gujarat State (AAR) on 30.11.2020.



5. The applicant raised the following two questions vide the above application viz

“[a]What is the appropriate classification & rate of GST applicable on supply of plastic toys under CGST & SGST?

[b] Can the applicant claim ITC in relation to CGST-IGST separately in debit notes issued by the supplier in the current financial year i.e. 2020-21, towards the transactions for the period 2018-19”

6. On 23.12.2020, GAAR conducted hearing in relation to admission and admitted the application vide its order dated 30.12.2020 holding that no proceedings are pending on the question raised in said application for Advance Ruling.

7. The GAAR thereafter vide its Order No. GUJ/GAAR/R/10/2021 dated 20.01.2021 gave the following ruling in respect of the aforementioned two questions viz

Answer to [a]: The classification of the product ‘Plastic toys’ manufactured and supplied by the applicant M/s. I-tech Plast India Pvt. Ltd., Survey No.108-109, Bhavnagar-Rajkot Highway, Shampara, Bhavnagar (as per the First Schedule to the Customs Tariff Act, 1975(51 of 1975) as well as the corresponding rate of GST (as per Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time) is as detailed in the table below:

Sr. No.	Name of the product	Classification as per the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)	Rate of tax(GST)
01.	Plastic toys	95030030	12%(6% SGST + 6% CGST)

Answer to [b]: The applicant cannot claim Input Tax Credit in relation to CGSTSGST separately in debit notes issued by the supplier in current financial year i.e. 2020-21, towards the transactions for the period 2018-19 for the reasons discussed hereinabove.

8. The applicant further states that till December 2022 or February 2023, DGGI remained silent and on 08/02/2023 submitted a communication to GAAR that during pendency of such proceedings the applicant filed application for Advance Ruling.

9. In this regard, Joint Commissioner, CGST, Bhavnagar vide letter dated 29.7.2021, stated as follows:

“3. The enclosed letter dated 20.7.2021 received from DGGI, Pune 22.7.2021 ie after date of issue of Advance Ruling order. In the said letter, the Joint Director, DGGI Pune Zonal Unit informed that a case has been booked by DGGI, Pune zonal Unit on M/s. I Tech Plast India P Ltd for misclassification the product Plastic Toys being manufactured and supplied by them. The details of case are narrated at para 3 to 10 of the letter. As per this letter dated 20.7.2021 the inquiry was initiated in the letter mode vide office letter dated 15.9.2020 & subsequent emails dated 23.9.2020,



9.10.2020, 12.10.2020 & 26.10.2020 & 26.10.2020. M/s. I Tech vide their letter dated 14.10.2020 submitted their reply and have made payment of tax of Rs. 219.50 lacs along with interest of Rs. 40.88 lacs for clearance made in the FY 2019-20. Hence it can be seen that the investigations were initiated much prior to the date of application (30.11.2020) for advance ruling filed by M/s. I Tech Plast India P Ltd. Further, the reply to DGGI letter dated 15.9.2020 was also submitted by the party on 14.10.2020 ie prior to the date of their application for advance ruling.

4. Further as per para 11 of the letter dated 20.7.2021, M/s. I Tech had not revealed the facts of investigations being commenced by the DGGI, Pune Zonal Unit while filing the subject Advance Ruling Application dated 30.11.2020. Hence, they have suppressed the material facts of an investigation pending against them by DGGI, Pune Zonal unit on the issue of classification of plastic toys (one of the question raised) at the time of seeking advance ruling on the same. It is further mentioned at para 11 that an appeal may be filed under section 100 with the Gujarat Appellate Authority for declaring the advance ruling order dated 20.1.2021 as void ab initio."

10. Registry vide letter dated 17.3.2023 granted personal hearing on 23.3.2023, to decide whether the order of GAAR dated 20.1.2021 is required to be declared as void ab initio in terms of the provision of section 98 of the CGST Act, 2017 read with section 104 of the CGST Act, 2017. The applicant vide his letter dated 21.3.2023 sought adjournment. Further hearings were held on 8.5.2023 and 9.11.2023, wherein he reiterated his submissions stressing the fact that proceedings as mentioned in section 98(2) and inquiry were different.

11. In a detailed submission before GAAR dated 4.5.2023, the applicant raised the following averments viz

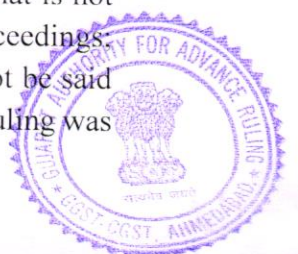
[a] When the application for Advance Ruling was filed, admitted and finally disposed of, no **proceedings** on the issues involved were either pending or ongoing.

[b] The communication dated 15.09.2020, was a mere enquiry and that too a cross enquiry, wherein the proceedings, if any, were against some other assessee (name undisclosed) and not the applicant.

[c] That the said communication merely states preliminary stage of enquiry in relation to a classification and details and documents were called for further verification. There is no mention about any of the sections-provisions of the Acts. Further, "Inquiry" initiated by the DGGI is not within the ambit of the term "proceedings" for the purpose of proviso to Section 98(2) of the Acts

[d] The locution "Enquiry" is a wide and capacious connotation signifying and inherently carrying with it the burden to enquire, delve, escalate and to congregate such vital and salient information as might be required to entrust and endow the charm of stepping into the shoes of proceedings carried in due reference to the stipulations provided for by the Acts; that by no means "Inquiry" itself can be equated with or considered as synonym to "proceedings".

[e] It is a settled proposition of law that what is stated is to be read and what is not stated is not intended; that an enquiry may or may not culminate into proceedings; that when no proceedings were ever initiated against the applicant, it cannot be said that any proceedings were pending at the time an application for Advance Ruling was preferred;



[f] That they would like to rely on the decision of Hon'ble Allahabad High Court in the case of M/s. G. K. Trading Company [2021 (51) GSTL 288 (All.)] wherein the Court has drawn distinction between "Inquiry" and "Proceedings" under the GST Law; that after analyzing the provisions of sections 70 & 6(2)(b) of the CGST Act, the Court held as under -

"8.1 The word "Inquiry", "Proceedings" and "Subject-matter" is not defined under either of the statutes. Therefore, these words have to be interpreted in the context of the aforesaid Acts.

8.2 The word "inquiry" in Section 70 has a specific purpose to summon any person whose can give evidence or produce a document or any other thing. It cannot be intermixed with some statutory steps which may precede or may ensure upon the making of the inquiry or conclusion of inquiry.

8.3 Therefore, the word Inquiry in section 70 is not synonymous with the word Proceedings in section 6(2)(b) of the U.P GST Act/ CGST Act.

8.4 Provisions of Section 70 has been enacted for collecting evidence in matters involving tax evasion which may also lead to demands and recovery under Section 73 or Section 74, as the case may be. When action for assessment, demand and penalty etc.is taken, that shall amount to proceedings referable to Section 6(2)(b) of the Act but the inquiry under Section 70 is not a proceeding referable to Section 6(2)(b) of the Act.

8.5 Further, phrase "subject-matter", or the phrase "on the same subject-matter", used in Section 6(2)(b) of the Act with reference to any proceedings, means the same cause of action for the same dispute involved in a proceeding before proper officer under the both acts.

8.6 Therefore, in the given case, no proceeding has been initiated by a proper officer against the petitioner on the same subject-matter referable to Section 6(2)(b) of the U.P.G.S.T. Act. It is merely an inquiry by a proper officer under Section 70 of the C.G.S.T. Act. "

[g] That in the case of M/s. Liberty Oil Mills [AIR 1984 SC 1271] the Hon'ble SC held that "*Investigation means no more than process of collection of evidence or the gathering of material.*"

[h] That in the case of Kuppan Gounder P. G. Natarajan[MANU/TN/6134/2021], the Hon'ble Madras High Court held that the scope of section 6(2)(b) & 70, *ibid* is different and distinct, as the former deals with any "proceedings on a subject matter/same subject matter" whereas, Section 70 deals with power to summon in an inquiry.

[i] That they would like to rely on the case of M/s. Srico Projects Pvt. Ltd. [MANU/TL/1525/2022], wherein the Hon'ble Telangana High Court observed that the word "proceedings" has neither been defined in Chapter XVII nor in the definition clause.

[j] That in the case of M/s. Somnath Flour Mills Pvt. Ltd. [Order No. 25/WBAAR/2022-23 dated 09.02.2023] the Authority for Advance Ruling of West Bengal decided to admit the application for Advance Ruling and observed that an "inquiry" by DGGI cannot be equated with "proceedings" under the Acts.

[k] That a communication by a GST authority to an assessee cannot be considered as pending proceeding unless it refers to any of the provisions of the Acts; that DGGI has not mentioned any provision of the Acts under which the inquiry is initiated; that no summons has been issued u/s. 70 of the Acts during such inquiry; that no show cause notice u/s. 73 or 74 of the Acts has been issued pursuant to such inquiry.

[l] that the applicant would like to rely on the case of *Anandbhavan Properties* [2022] 141 taxmann.com 277 (Karnataka),



[m] That they would like to rely on the judgement in the case of Piyush Shamjibhai Vasoya [R/SCA No. 16437/2020] and Bhavesh Kirtibhai Kalani [2021] 127 taxmann.com 199 (Gujarat)].

[n] Reliance is also placed on the Customs Advance Ruling in the case of M/s HQ Lamps Manufacturing Co. Pvt Ltd [Ruling No. CAAR/Del/HQ Lamps/09/2022 dated 08.08.2022] wherein Customs Advance Ruling Authority while rejecting the contentions of DRI has categorically opined that an application may be considered "pending" before any officer only if it is pending before an officer in formal manner before an officer who is competent to answer the said question in terms of specific powers vested with the officer under the Customs Act.

[o] That they wish to rely on the judgement of Hon'ble Delhi High Court in the case of Spraytec India Ltd. [MANU/DE/1203/2023], wherein the Hon'ble Delhi Court while rejecting the appeal of DRI has categorically held that since no pre-consultation notice or show cause notice had been issued by DRI or any other Authority, it would be erroneous to hold that the question of classification was pending before any Custom officer, Appellate Tribunal or any Court.

[p] That the term 'proceedings' as per the proviso, does not cover any and all steps/actions that the Department may take under the Acts; that it includes within its ambit any proceedings that may result in the nature of show cause notice or order etc. which can be decided by the competent authority and cannot include proceedings initiated by Investigating agencies, such as DGCI, who are merely empowered to investigate and issue a show cause notice pursuant to such investigations; that in the present case, there was no pending proceedings to invoke the proviso to section 98 (2).

[q] It is a well settled law that issuance of show cause notice is a starting point of any legal proceedings against an assessee and that they would like to rely on Master Circular on Show Cause Notice, Adjudication and Recovery (Circular No. 1053/02/2017-CX) dated 10.3.2017 of the Central Board of Excise and Customs; that in the present case, no show cause notice has been issued to the applicant.

[r] That DGCI, Pune lacks jurisdiction. No Power is vested in DGCI for Enquiry or Initiation of Proceedings prior to 01.01.22. Section 151 as on today provides the power to call for any information from the taxpayer. This Section is amended w.e.f. 01.01.2022 prospectively.

12. Before dwelling into the various contentions raised by the applicant, it would be prudent to reproduce relevant extracts of section 6, 70, 98 and 104 of the CGST Act, 2017, viz

Section 6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances. —

(2) Subject to the conditions specified in the notification issued under sub-section (1), —

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.



Section 70. Power to summon persons to give evidence and produce documents.

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

Section 98. Procedure on receipt of application. —

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records :

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

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 :

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant :

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

Section 104. Advance ruling to be void in certain circumstances. —

(1) Where the Authority or the Appellate Authority [or the National Appellate Authority] finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 [or under section 101C] has been obtained by the applicant or 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 applicant or the appellant as if such advance ruling had never been made :

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation. — The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

13. The only point to be examined now post ruling dated 20.1.2021 is whether the said ruling, was obtained by fraud or suppression of material facts or misrepresentation of facts, so as to be hit by section 104 of the CGST Act, 2017.



14. DGGI, Pune vide letter no. DGGI/Int/Intl/76/2020- dated 20.7.2021 in para 9 stated as follows:

"9. Further correspondence was also made by M/s. I Tech vide emails dated 23.9.2020, 9.10.2020, 12.10.2020 & 26.10.2020. Hence, it can be seen that the investigations were initiated much prior to the application filed by M/s. I Tech for advance ruling on 30.11.2020 & the reply's filed by them are also prior to the date of their application for advance ruling. The copies of this office letter dated 15.9.2020 and the letters of M/s. I Tech dated 23.9.2020 & 14.10.2020 & emails dated 23.9.2020, 9.10.2020, 12.10.2020 & 26.10.2020 are enclosed for reference. The incident report issued in the case IR No. 72/GST/2020-21 dated 29.10.2020 is also enclosed for reference."

15. The Incident Report No. 72/GST/2020-21 dated 29.10.2020 referred to supra, issued by Pr. ADG, DGGI, Pune, is in respect of the applicant. Paras 3 and 4 are reproduced below for ease of reference viz

3. As per Notification 01/2017-Central Tax (Rate) dated 28.06.2017, plastic toys being supplied should rightly be classified at S.No. 453 of Schedule III of the Notification 01/2017-Central Tax (Rate) as 'any chapter- Goods which are not specified in Schedule-I, II, IV, V or V' attracting CGST @ 9% and similarly SGST @ 9% and IGST @ 18%. Accordingly, investigations were initiated on the vendors supplying Plastic toys and paying GST @ 12%.

4. Acting on the afore-cited information, investigations were initiated under letter mode by the DGGI, Pune Zonal Unit. One such vendor who is paying IGST @ 12% is M/s I Tech to whom letter was written on 15.09.2020 calling for all the relevant documents/records for the period 01.07.2017 to 31.03.2020. Preliminary scrutiny of the records/documents inter-alia confirmed that M/s I Tech have supplied Plastic toys by charging and paying IGST @ 12% instead of 18% as detailed above. During the course of preliminary investigations M/s I Tech accepted the short payment vide their letter dated 14.10.2020 and initially paid differential GST by issuing debit note for the supplies made during the period F.Y. 2019-20. They paid the differential IGST of Rs. 2,19,50,311/- alongwith interest of Rs. 40,87,542/- for the supplies made in the F.Y. 2019-20 by filing GSTR 3B for the month of September, 2020.

5. Further investigations are in progress.

16. I Tech vide its letter dated 14.10.2020 addressed to DGGI in paras 10 to 12 stated as follows:

10. Additionally, I-Tech has been a dutiful tax payer since the inception of its operations in 2011 under the Central Excise regime and there has been no lapse in compliance of the relevant provisions of the law.

11. However, to avoid any future litigation, we have decided to discharge differential liability i.e. 6% on our products to be classified in the residuary entry and chargeable to GST at 18% from 1st April 2019 onwards, as per discussion with DGGI Authorities. Since the differential payment of tax for the FY 2019-20 would be available as credit to our buyers and is not a cost to us, we are herewith making the said payment. In this regard, we have made a payment of tax amounting to INR



2,19,50,311.04/- along with the applicable interest of INR 40,87,542/-. The calculation of the differential amount was submitted on 12/10/2020.

12. Additionally, we have also started charging GST as per the residuary entry at 18% with immediate effect on new productions to ensure that there is no dispute in the future. We humbly submit that this decision is also based on the fact that charging a higher rate of tax on our products is not a cost to either us or our buyers. Being a dutiful taxpayer, we wish to discharge our liabilities correctly and in compliance with the law.

17. On comments being sought, CGST Bhavnagar vide their letter dated on 30.11.2023 stated that M/s. I-Tech Plast India Pvt. Ltd. is under administrative control of Unit-Ghatak 76 (Bhavnagar), Range- 19, Division-9, Gujarat. Further it was informed that since it was Directorate General of GST Intelligence, Pune Zonal Unit, Pune who had initiated proceeding against M/s. I-Tech Plast India Pvt. Ltd. CGST Bhavnagar was not in a position to offer views/comments on the submission made by M/s. I-Tech Plast India Pvt. Ltd..

18. Further on comments being sought, Assistant Commissioner of State Tax, Unit 76, Division 9, SGST, Bhavnagar vide letter dated on 20.01.2021, informed that proviso to section 98(2) of C GST Act, 2017, will be attracted only when a SCN has been issued or when an order is already passed on the question on which a ruling is sought; that the provisions of the proviso to section 98(2), ibid will not be attracted in the facts & circumstances of the present dispute.

19. Sequence of events show that the first letter was sent by DGGI to the applicant on 15.9.2020, which was followed by further letters. Thereafter, an incident report No. 72/GST/2020-21 dated 29.10.2020, was issued according to which the applicant consequent to accepting short payment of tax paid the differential amount of IGST of Rs. 2.19 crores along with interest of Rs. 40.87 lacs for FY 2019-20 by filing GSTR 3B in the month of September 2020. The application as is already mentioned was filed on 30.11.2020 post the aforementioned events/happenings. This is not being factually disputed.

20. Now, the question that arises before us is whether a person who is chargeable with tax and who opts to pay the differential duty along with interest for whatever reasons, can the applicant post such payment claim that no **proceedings** under the Act were initiated/pending against him.



21. After taking into consideration the submissions of the applicant, CGST Bhavnagar, SGST Bhavnagar, DGGI, Pune, we are of the view that proceedings were initiated against the applicant were never disclosed to the authority. In-fact, in the personal hearing dated 8.5.2023, the applicant on being asked informed that the said fact was not informed to the authority. In view thereof, the aforementioned GAAR order dated 20.1.2021 is **void** in terms of section 104 of the CGST Act 2017 on non-disclosure of fact of pendency of proceedings. Our view is also substantiated by the below mentioned findings.

22.1 Proviso to section 98(2), *ibid* reproduced *supra*, clearly states that the AAR 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; that the rejection of the application will be only after providing a reasonable opportunity and that the reasons for such rejection shall be specified in the order.

22.2 Pending proceedings is not defined under the CGST Act, 2017. However, the issue is no longer *res integra* having already been decided by various fora.

22.3 The Hon'ble High Court of Andhra Pradesh in the case of Master Minds [reported at [2023 (70) G.S.T.L. 45 (A.P.) / (2022) 1 Centax 288 (A.P.)], held as follows : [relevant extracts]

2. *The petitioner's case briefly is thus :-*

(i) *The petitioner is a proprietary concern and a leading educational institution providing coaching to students for obtaining educational qualifications viz., Chartered Accountancy Certificate ('CA'), Cost and Works Accountancy Certificate ('ICWA') and their ilk. While so, the petitioner filed application for advance ruling vide Form GST ARA-01 [as per Rule 104(1)] of CGST Act seeking ruling inter alia on the point whether the coaching/training provided by the applicant for students for the above courses conducted by it fall within the wider meaning of the term 'education' and in relation to education and other related aspects. The Advance Ruling Authority (hereinafter, 'ARA') after elaborate hearing passed its ruling vide Order AAR No. 08/AP/GST/2020, dated 5-3-2020 [2020 (39) G.S.T.L. 310 (A.A.R. - GST - A.P.) = (2020) 117 taxmann.com 824 (AAR - Andhra Pradesh) - (2020) 82 GST 167 (AAR - Andhra Pradesh)], wherein the ARA held that the applicant was not eligible for the exemption under Entry No. 66(a) of Notification No. 12/2017-C.T. (Rate), dated 28-6-2017, as amended. It also gave rulings on the other related issues raised by the petitioner before it.*



(ii) Aggrieved by the above rulings, the petitioner filed appeal before the appellate authority for advance ruling and after hearing, the appellate authority dismissed the appeal on 28-9-2020 by confirming the rulings made by the ARA. Aggrieved, the present writ petition is filed by the petitioner.

.....

11. Thus, the above jurisprudence tells us that any proceedings referred to in Section 98(2) proviso encompasses within it the investigation against the applicant as per the provisions of CGST/APGST Act and if by the date of filing of the application before the ARA, already such proceedings were commenced, the ARA shall not admit the application inviting advance ruling. Learned Senior Counsel for respondent has not placed any contra citations before us to hold any other view.

12. Coming to the instant case, summons were issued to the petitioner on 1-7-2019 by Senior Intelligence Officer, DGGSTI and the panchanama was recorded on 1-7-2019. Copy of panchnama proceedings filed along with the writ petition contains a detailed examination of the petitioner by the Senior Intelligence Officer. The question Numbers 9 to 16 relate to the courses conducted by the petitioner, the registration of the petitioner institution under GST Act and its payment of tax etc. particulars, which can be said to be concerning to the provisions of the CGST/APGST Act. Therefore, it can be said that the investigation was commenced even prior to the filing of the application by the petitioner before ARA.

13. Having regard to the legal position that when investigation has already commenced prior to the filing of application, the ARA shall not admit the application as per proviso to sub-section (2) of Section 98, we are of the view that the ARA should not have admitted the application in the instant case and issued its ruling. Therefore, the said order dated 5-3-2020 is vitiated by law. This fact was brought to the notice of the appellate authority in the grounds of appeal. Though the said ground is mentioned, unfortunately, the appellate authority has not given its finding on the said ground raised by the petitioner. Therefore, the order of the appellate authority is also vitiated by law. Hence, we find force in the submission of Learned Counsel for petitioner that both the orders are liable to be set aside.

14. Accordingly, this writ petition is allowed and the order dated 5-3-2020 of ARA and order dated 28-9-2020 of the appellate authority are set aside and the petitioner is given liberty to appear before the appropriate authority and submit his explanation and to take all factual and legal pleas that are permissible under law and the said authority shall consider and proceed in accordance with law without being influenced by the orders passed by the ARA and appellate authority. No costs.

15. As a sequel, interlocutory applications pending, if any, shall stand closed.

22.4 Para 3 of the incident report supra clearly lists the dispute. The applicant's first question before the GAAR is precisely the same i.e. the classification and rate of toys under CGST and SGST.




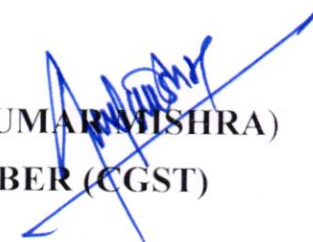
22.5 On the basis of the foregoing, we hold that [a] the proceedings were pending against the applicant and [b] that these facts were not disclosed to the GAAR.

22.6 Section 104, *ibid*, spells out the circumstances which would render the advance ruling to be void. The situations stipulated are when a ruling under 98(4) has been obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, section 104, *ibid*, states that the authority 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 applicant as if such Advance Ruling had never been made.

22.7 As is mentioned *supra*, the Hon'ble Andhra Pradesh High Court has already held that when investigation has already commenced prior to the filing of application, the Advance Ruling Authority shall not admit the application as per proviso to sub-section (2) of Section 98. In this case, the facts reveal that the applicant was aware of the fact DGGI Pune was conducting an investigation and in agreement where to the applicant had without protest paid the differential duty. Post this, the applicant cannot feign ignorance more so since they had deposited a huge sum as differential duty, which is mentioned in the Incident Report issued by DGGI.

23. In view of the foregoing, we rule that the GAAR Order No. GUJ/GAAR/R/10/2021 dated 20/01/2021 was obtained by the applicant by suppression of material facts and misrepresentation of facts and is therefore clearly hit by section 104 of the CGST Act, 2017. We therefore term the said order to be void in terms of section 104 of the CGST Act, 2017.


(RIDDHESH RAVAL)
MEMBER (SGST)


(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 03.02.2024

