

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

A.R.Appeal No. 04/2021/AAAR

Date: 30.06.2021

BEFORE THE BENCH OF

1. Thiru.G.V.KRISHNA RAO, MEMBER

2. Thiru. M. A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/15/2021 (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 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	Tvl. Aravind Drillers, 1, Kurinji Street Annamalai Nagar, Salai Road, Tiruchirapalli, Tamilnadu-620018
GSTIN or User ID	33AAIPJ6250HIZV
Advance Ruling Order against which appeal is filed	Order No. 39 /ARA /2020 dated 18.12.2020
Date of filing appeal	25.03.2021
Represented by	Tvl.Muthu Venkataraman, Advocate
Jurisdictional Authority-Centre	Trichy Commissionerate
Jurisdictional Authority -State	Assistant Commissioner, Woraiyur 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 1. challan No.ICIC21033300458470 dated 24.03.2021,

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.

1. 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 Tvl. Aravind Drillers, (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AAIPJ6250HIZV. The appeal is filed against the Order No. 39 /ARA /2020 dated 18.12.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The Appellant has stated that they are engaged in the activity of drilling borewell service to agriculturist. Water is a prime source for the agriculture of crops. Likewise, compressors which are let out by them to agriculturists enable the motor to function and discharge water as required for cultivation and allied agricultural uses. They also obtain a confirmation letter from the agriculturist that the borewell drilled in their land is used only for the agricultural purpose.
3. The Appellant has sought Advance Ruling on the following questions:
- (i) Whether the following supply of service provided by the appellant are in relation to agricultural operations directly in connection with raising of agricultural produce:
 - a. Drilling of Borewells for supply of water for agricultural operations like cultivation including seeding, planting and ploughing.
 - b. Letting out compressors for pumping of water from the borewells to the agricultural fields.
 - (ii) If the answer to the above question is affirmative, whether the said service are covered by the entry Sl.No.54 of Notification 12/2017 CT (Rate) dated 28.06.2017
4. The AAR pronounced the following rulings:
- (i) Drilling of Borewells for supply of water in agricultural land is not 'Support Service for agriculture classifiable under 'SAC 9986' for the reasons stated in para 8.3
 - (ii) Letting out of compressors for pumping of water from the borewells to the agricultural field is not 'Support Service for agriculture classifiable under 'SAC 9986' for the reasons stated in para 8.4
 - (iii) The above two activities of the applicant are not 'Support service for agriculture' classifiable under SAC 9986 and therefore the exemption at

Sl.No.54 of Notification No.12/2017-C.T (Rate) is not applicable to the above activities of the applicant.

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

1. On perusal of the impugned notification Sl.No.54 refers to Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of- (a) agricultural operations directly related to the production of any agricultural produce **including** cultivation, harvesting, threshing, plant protection or testing. The list is not exhaustive but is inclusive in nature and similar activities as depicted in the impugned notification would also fall within the ambit of Sl.No.54 of the said notification. The relevant portion of the said Notification is reproduced hereunder:

54	Heading 9986	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of - (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of farm labour; (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;	NIL	NIL
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		(e) loading, unloading, packing, storage or warehousing of agricultural produce; (f) agricultural extension services; (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.		
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2. The Appellant submits that in the impugned order, it has been held that to be eligible for the exemption notification the Appellant activities should be classifiable under SAC 9986. The Explanatory Notes to the Scheme of Classification of Services is as follows:

This service code includes

- 1. services to improve the propagation quality of the seed, including treatment of genetically modified seeds; removal of non-seed materials, undersized, mechanically or insect-damaged and immature seeds; removal of seed moisture to a safe level for seed storage; drying, cleaning, grading and treating of seeds to be marketed;*
- 2. post-harvest crop services such as preparation of crops for primary markets, cotton ginning services;*
- 3. Other support services to crop production like tilling of fields preparatory to planting; planting, cultivation and fertilization of crops; spraying, including from the air;*
- 4. pest control for agriculture; trimming of fruit trees and vines; transplanting and thinning of crops; harvesting;*
- 5. provision of agricultural machinery with crew and operators; operation of irrigation systems for agricultural purposes;*
- 6. other services necessary for agricultural production; Crop production services on inputs owned by others like operation of a crop production unit on a fee or contract basis*

This service code does not include:

- 1. formation and clearance of agricultural land :- 995432*
- 2. services provided by agronomists and agricultural economists :- 998311*
- 3. other pest control services :- 998531*

4. *water distribution services through mains (on a fee or contract basis) :- 998633*

3. The Hon“ble Supreme Court in the case of CCEx, Jaipur v. Mewar Bartan Nirman Udyog, 2008 (231) ELT 27 (SC) has held that exemption notifications are to be interpreted strictly. In the present case since the exemption is given vide a notification in reference to the SAC, there can be no interpretation of Entry 54 in reference to the Explanatory Notes/Chapter Notes etc. Therefore reliance on the SAC for denial of the exemption is untenable.

4. In the case of CCEx v. Rajasthan State Chemical Works 1991 (55) ELT 444 (SC) the Hon“ble Supreme Court of India has held that “in or in relation” has a wide connotation and cannot be given a narrow interpretation.

5. The impugned Ruling is contrary to law in as much as there is a clear exemption for all activities relating to agriculture and the notification is an expression of the Government’s intention to exempt such activities and similar activities.

DRILLING BOREWELLS

6. The definition of Support Services under SAC 9986 is inclusive in nature and cannot be given a narrow interpretation.

7. This entry also covers services for agricultural production, crop production services on inputs owned by others like operation of a crop production unit on a fee or contract basis.

8. Drilling of borewells ensures un-interrupted supply of water for cultivation of agricultural produce.

9. Furthermore it is settled law that where the assessee is entitled to benefits under two notifications or two heads the assessee can claim more benefit and it is the *duty* of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. In this regard the Appellant places reliance on the case of H.C.L. Limited vs. Collector of Customs, New Delhi reported in 2001 (130) ELT 405 (S.C.) and the case of Share Medical Care vs. Union of India reported in 2007 (209) ELT 321 (S.C.).

10. Although here is a specific entry, classification ought to be done based on the actual usage. For instance, HDPE pipes are considered as part of Irrigation Equipment when used as a component of such an integrated equipment.

COMPRESSOR

11. The compressor is an essential ingredient for pumping out the water and the same in relation to cultivation of agriculture therefore giving a narrow interpretation would vitiate the intention of the legislature and the Government of India.

12. The SAC also Support Services to crop production is an inclusive definition and covers all support services other than those specifically excluded:

- Formation and clearance of agricultural land,
- Services provided by agronomists and agricultural economists,
- Other pest control services,
- Water distribution services through mains.

13. As the compressors are used in pumping water is used for flushing water from borewells the same is squarely covered in the inclusion clause explained above.

14. The Appellant further submits that the Hon'ble Finance Minister vide TRU letter No: F.NO354/35/2014-TRU dated 04/03/2014 has clarified that drilling of borewell for supply of water for production of any agricultural produce is excluded from service tax since it is covered by the scope of negative list entry in section 66D(d) (1) of the Finance Act. This although not having binding force, it goes to show the intent of the legislature. Section 66D(d)(1) is reproduced hereunder:

Services relating to agriculture or agricultural produce by way of:-

- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed-testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
(Note Process includes process as Such as shelling of paddy or cleaning of wheat)
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

15. Furthermore with the onset of GST vide Notification No.12/2017 dated 28.06.2017 the impugned services carried out by the Appellant have also been exempted. The Appellant submits that the exemption under the erstwhile taxation regime as well as under GST the said services are exempted and there is a clear indication of legislative intent in this regard.

6. The Appellant was granted personal hearing through Virtual Personal Hearing as required under law before this Appellate Authority on 22nd June 2021. The Authorized representatives of the Appellant Tvl. Muthu Venkataraman, Advocate of the appellant company appeared for hearing. They reiterated the written submissions and claimed that when there is a general and specific entry, without exclusion it is their right to choose the beneficial exemption.

DISCUSSION

7.1 We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions and the case laws etc.

7.2 Essentially, the moot point is whether the bore well drilling activity undertaken by the appellant on agricultural lands is qualified for the entry no. 54 of notfn. No. 12/2017-CGST(R). It is noted that the appellant while undertaking the borewell drilling activity for industries etc., (other than on agricultural lands), it is classified under SAC 995434 leviable to appropriate rate of GST. However, while undertaking the same activity on agricultural lands, the appellant seeks whether the same would fall under SAC 9986 so as to be eligible to fall within the ambit of sl.no.54 of notfn. No. 12/2017 and further buttresses his arguments with case laws and evidences to show that the activity is indeed done in agricultural lands and the practice in service tax era, etc.

7.3 Without going into the merits of the main argument of the appellant regarding the activity undertaken is by way of agricultural operations relating to production of any agricultural produce, etc., *prima facie*, in the scheme of things of GST, no two classifications can be adopted for a single activity based on end use or where it is rendered, etc. The appellant himself has already classified his supply of services of borewell drilling under 9954 for the purpose of paying the tax; it defies logic as well as law that the same activity if done on agricultural land will be classifiable under a different heading 9986.

7.4 Further since the same equipment is used for the drilling activities, whether on agricultural lands or for industries, etc., it would not be possible for the tax administration to identify whether the driller is exclusively undertaking agricultural drilling only thereby leading to evasion of tax only.

7.5 The letter of the then FM quoted and relied by the appellant was also discussed by the Fitment Committee and finds mention during the 28th GST council meeting vide Annexure IV to agenda item 7. After deliberations, the council approved the proposal of Fitment Committee of not acceding to the demand of exemption for drilling of bore wells for agriculture from GST but required to study further. In the same table in Annexure IV pertaining to issues relating to services, against sl.no.3 (page no.258 of Vol,I), the Fitment Committee while stating that the same issue was already raised in the service tax regime quoting the FM letter, further reasoned as “The services covered by the scope of Section 66D (d)(i) of the Finance Act, 1994 and sl.no.25 (a) of the mega exemption notification 25/2012-ST are exempted in GST vide Sl.No. 54, and 3 of notification 12/2017-CT(Rate). Thus, the status quo has been maintained in GST vis-à-vis Service Tax regime”. It is clear from the above that as such no exemption was intended by the Government for borewell drilling for agricultural purposes and continues to be under its examination.

7.6 We do not find any infirmity in the reasoning of the Advance Ruling Authority with regard to the impugned ruling, in the light of our additional

reasoning as above. With regard to compressor also, we do not differ from the AAR's ruling.

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

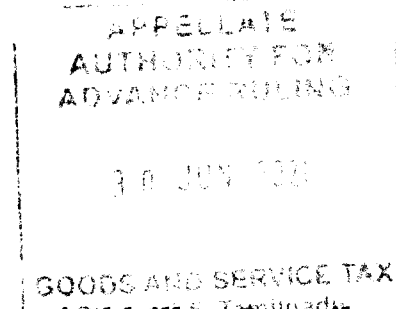
RULING

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 Taxes,
Tamil Nadu/Member, AAAR. TN

(G.V.KRISHNA RAO) 32/6/2021
Pr.Chief Commissioner of GST & Excise
Chennai Zone/Member, AAAR, TN

To
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