

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU
No.207, 2nd FLOOR, PAPJM BUILDING, No.1, GREAMS ROAD,
CHENNAI 600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND
UNDER SECTION 98(4) OF THE TNGST ACT, 2017**

Members present:

Sri. Balakrishna S, I.R.S., Additional Commissioner/Member (CGST), Office of the Commissioner of GST and Central Excise, Audit II Commissionerate, Chennai - 600 034.	Smt. A.Valli, M.Sc., Joint Commissioner/Member (SGST), Authority for Advance Ruling, Tamil Nadu, Chennai - 600 006.
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Advance Ruling No. 23/AAR/2024, dated 28.10.2024

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the 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. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*

GSTIN Number, if any / User id		33ASPPS6590L1ZU
Legal Name of Applicant		M/s. Sreenivasa Engineering (Prop. Balakrishnan Suresh Kumar).
Registered Address / Address provided while obtaining user id		Old No. 83, New No. 112, III Floor Mount Road, Guindy, Chennai, Tamilnadu - 600 032.
Details of Application		GST ARA - 01 Application Sl. No. 87/2023/ARA, dated 29-05-2023.
Jurisdictional Officer		Center: Chennai South Commissionerate Division: Guindy, Range-I.
Concerned Officer		State: Guindy Assessment Circle. Chennai (South) Division.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provider.
B	Description (in brief)	M/s Sreenivasa Engineering is rendering the activity of transportation of municipal solid waste to cement factories or power plants as sub-contractor based on the agreement with M/s. BIEL Infrastructure limited, Coimbatore and raising/raised invoices to M/s. BIEL Infrastructure Limited towards the said activity. For the same activity based on the agreement M/s. BIEL Infrastructure Limited, Coimbatore are raising invoices to M/s. Coimbatore Integrated Waste Management Company Private Limited. Based on the agreement/s. Coimbatore Integrated Waste Management Company Private Limited are raising invoices to Coimbatore Municipal Corporation. As an agent, the applicant is performing the function of the municipality namely public health, sanitation conservancy and solid waste management, a function entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution through the above contractors/sub-contractors of Coimbatore Municipal Corporation.
Issue/s on which advance ruling required		1. Applicability of Notification issued under the provisions of this Act; 2. Determination of the liability to pay tax on goods or services or both.

Question(s) on which advance ruling is required	Query 1 – Whether the applicants are agents of Coimbatore City Municipal Corporation as per Section 2(5) of CGST/TNGST Act, 2017; Query 2 – Whether their activity of transportation of municipal solid waste done by them as a sub-contractor to the main contractor of Coimbatore municipal corporation is a function entrusted to a municipality under Article 243W of the Constitution and covered under (f) Public Health, sanitation conservancy and solid waste management and if it is not a service as per Notification No. 14/2017-CT dated 28-06-2017/TNGST GO(Ms.)No. 75 dated 28-06-2017 GST as amended and it will not attract any central tax/state tax and hence it is outside the scope of levy of GST.
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1.0 At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *parimateria* and have the same provisions in like matters and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2.0 M/s. Sreenivasa Engineering (hereinafter '**the Applicant**') submitted a copy of challan CPIN ICIC23053300000327 dated 01-05-2023 evidencing payment of application fees of Rs. 5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The online application form for advance ruling dated 04-05-2023 was physically received on 09-05-2023 as mandated under Rule 107A.

3.0 The applicant has narrated the Statement of relevant facts very briefly. However, as per the agreements and the contracts furnished by the applicant, the facts of the case is as follows:

- **The Commr. Coimbatore City Municipal Corporation** has entered into concession agreement with **M/s. UPL-BEIL(Consortium of M/s. Bharuch Enviro Infrastructure Limited(BEIL) and M/s. United Phosphorous Limited (UPL)**, the concessionaire, for a period of 20 years for 'Operations & Maintenance of Waste Processing facility'.
- A consortium of UPL-BEIL has been formed to implement and execute the above project.
- In turn, a 'Special purpose Vehicle' of M.s, BEIL-UPL namely, **M/s. Coimbatore Integrated Waste Management Co., Ltd**, was formed and by way of work order/agreement, the execution of 'Operation & Maintenance of Integrated Municipal Solid waste Management (MSWM)' project at Coimbatore is being carried out.

- Under the scope of the project M/s. Coimbatore Integrated Waste Management Co., Ltd has completed design, construction and commissioning of three transfer stations (MSW (Municipal Solid Waste) processing facility-Compost and RDF production facility), Sanitary landfill and closure of two dumpsites.
- M/s. Coimbatore Integrated Waste Management Co., Ltd has executed various components of the project and all the project facilities were in operation and maintenance phase since 2011-12. Invoices were/are being raised on a monthly basis to the Commissioner, Coimbatore City Corporation for (a) Transportation of daily fresh municipal waste, (b) Processing of Municipal Solid waste and (c) Sanitary Land filling of Municipal Solid waste.
- M/s. Coimbatore Integrated Waste Management Co., Ltd in turn raises invoice on Commissioner, Coimbatore City Municipal Corporation without charging GST.
- As significant money of M/s. Coimbatore Integrated Waste Management Co., Ltd is on hold and not paid by Coimbatore City Municipal Corporation, M/s. Coimbatore Integrated Waste Management Co., Ltd has requested M/s. BEIL to operate and maintain the project facilities with terms and conditions. It is nothing but a back-to-back contract for O&M of the project facilities as per the Concession agreement.
- As per the work order, the scope of work for 'Operation & Maintenance of Integrated Municipal Waste Management Project' was given to M/s. BEIL Infrastructure Limited with effect from 1st April, 2022. It was agreed between them that 78% of monthly billed to Coimbatore Municipal Corporation, total subsidy received for sale of compost shall be paid to M/s. BEIL.
- M/s. BEIL raises invoices on the various aspects of work done to M/s. Coimbatore Integrated Waste Management Co., Ltd, like transportation, processing of MSW, towards Sanitary Land filling, processing of compost MSW, processing of recycle MSW and processing of 4mm Reject. As per the sample invoice raised, GST @ 9% each of CGST & SGST is charged.
- Exclusively for 'transportation of above 100mm (RDF(Refuse Derived Fuel) /SCF(Segregated Combustible Fraction) Material) generated from Municipal Solid waste) to Cement Industries (Dalmiapuram and Ariyalur) or power plants and other cement industries in the nearby location, work order is given to M/s. Srinivasa Engineering by M/s. BEIL.
- M/s. Srinivas engineering raises invoices on M/s. BEIL for the Transportation of the above solid Wastes. As per the sample invoice raised on M/s. BEIL, no GST was charged and it was mentioned as "GST on reverse charge to be paid by M/s. BEIL Infrastructure Limited". It is not known whether the invoices are raised on weekly/monthly basis.

With the above facts of the case, the applicant has filed an application seeking for advance ruling on the following queries.

Query 1 – *Whether the applicants are agents of Coimbatore City Municipal Corporation as per Section 2(5) of CGST/TNGST Act, 2017;*

Query 2 – *Whether their activity of transportation of municipal solid waste done by them as a sub-contractor to the main contractor of Coimbatore municipal corporation*

is a function entrusted to a municipality under Article 243W of the Constitution and covered under **(f) Public Health, sanitation conservancy and solid waste management** and if it is not a service as per Notification No. 14/2017-CT dated 28-06-2017/TNGST GO(Ms.)No. 75 dated 28-06-2017 GST as amended and it will not attract any central tax/state tax and hence it is outside the scope of levy of GST.

PERSONAL HEARING

Shri. K. Sankaranarayanan, M.Sc, B.L., Advocate & Consultant appeared as Authorised Representatives (AR) for the Personal Hearing held on 21.08.2024.

The AR submitted a fresh reply during the personal hearing.

- He explained the process of transactions through a flow chart the entities involved in the process of 'Integrated Municipal Solid Waste Management Project for Coimbatore.
- He quotes clause (b) of Section 7(2) of the Act which states that activities or transactions undertaken by the Central or State government or any local authority engaged as a public authority as notified by the Government, on the recommendations of the council shall be treated neither as a supply of goods nor as a supply of services.
- He states that as per Notification No. 14/2017-CT(Rate) dated 28th Jun, 2017 "Services by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution (or to a Municipality under Article 243W of the Constitution) is not a service.
- The functions entrusted to a municipality under the twelfth schedule to Article 243W of the Constitution included 'Public health, sanitation conservancy and solid waste management'.
- As per Section 2(5), "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.
- As per Section 2(69) of the Act, "local authority" means-
 - (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
 - (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
 - (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
 - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
 - (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
 - (f) a Development Board constituted under article 371 [and article 371J] of the Constitution; or
 - (g) a Regional Council constituted under article 371A of the Constitution;

➤ Citing the above definitions, their contention is that,

- (i) Coimbatore Municipal Corporation (CMC) is a local authority.
- (ii) CMC is doing the function of Integrated Municipal Solid Waste Management Project, which is covered under the function **public health, sanitation conservancy and solid waste management** defined under Municipality under article 243W of the Constitution.
- (iii) It is not a service and hence covered under Notification No. 14/2017-Central Tax(Rate) dated 28th Jun, 2017.
- (iv) As a sub-contractor to main contractor they are covered under the definition of agent defined under Section 2(5) of the Act.
- (v) They are agents of Coimbatore Municipal Corporation as per Section 2(5) and their activity of transportation of 100mm(RDF/SCF) material generated from municipal solid waste to cement factories or power plants is a function entrusted to municipality under the twelfth schedule to Article 243W of the Constitution and hence it is outside the scope of service as per Notification No. 14/2017 of CBIC/GO(Ms.) No. 75 dated 29-06-2017-GST as amended of TN Govt as amended and hence their activity is not chargeable to any central/state tax.
- (vi) As their activity is not a service, there is no liability on them to pay any central/state tax under direct charge or under reverse charge by the service availer/recipient.
- (vii) In support of their claim, the applicant submitted the following decisions on the same/similar issue by Advance Ruling Authorities.
 - (a) **Erode City Municipal Corporation – AAR, Taminadu – Order No. 14/ARA/2021 dated 28-04-2021** – Various direct services rendered by Erode Municipal Corporation are not a supply as per Notification No. 14/2017 dated 28-06-2017.
 - (b) **Order-in-Appeal No. AAAR/20/2021(AR) dated 01-12-2021, AAAR, Taminadu**-activity rendered by the municipality through tender contractors are not a supply as per Notification No. 14/2017 dated 28-06-2017.
 - (c) **Tirupur City Municipal Corporation-AAR, Taminadu – Order No. 15/AAR/2021 dated 28-04-2021** – Direct services rendered by the Municipality are not supply as per Notification No. 14/2017 dated 28-06-2017.
 - (d) **Order-in-Appeal No. AAAR/21/2021(AR) dated 01-12-2021, AAAR, Taminadu**-activity rendered by the municipality through tender contractors are not a supply as per Notification No. 14/2017 dated 28-06-2017.

(viii) The following decisions by AAR Tamil Nadu decided the issue in favour of the applicant on the ground that the solid waste management are covered function entrusted to Municipality under Article 243W of the Constitution and the decisions are relevant to the present issue. Further, they have also relied on the following rulings.

- (a) **GOKULRAM SHANMUGAM KANTHARAJAN** – 2023(69) G.S.T-214(A.A.R-GST-T,N)-Order No. 30/AAR/2022 dated 29-07-2022
- (b) **ZIGMA GLOBAL ENVIRON SOLUTIONS PVT LTD** – 2020(43) G.S.T-96(A.A.R-GST-TN)-Order No.35/AAR/2020 dated 21-10-2020.
- (c) **TAMILANDU WATER INVESTMENT COMPANY LIMITED** – 2019(21) G.S.T-342(A.A.R-GST Order No. 21/AAR/2018 dated 28-11-2018).

(ix) Applying the above decisions, they claimed that they are eligible for such exemption under Sl. No. 3 of Notification No. 12/2017-CT(Rate) dated 28-06-2017 as amended which states that pure services(excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a municipality under article 243W of the Constitution is fully exempted.

(x) Moreover, as per Sl. No. 4 of Notification No. 12/2017-CT(Rate) dated 28-06-2017 as amended Services by Central Government, State Government, Union Territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution is fully exempted.

(xi) Finally, they prayed that their activity of transportation of 100mm(RDF/SCF) material generated from municipal solid waste to cement factories or power plants is covered under (f) Public health, sanitation conservancy and solid waste management functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution and hence it is not a service as per Notification No. 14/2017 of CBIC/GO(Ms.) No. 75 dated 29-06-2017 as amended of TN Govt. and hence, there is no liability to pay any central tax by them under forward charge or reverse charge. Even, if it is considered as a service, it is exempted as per Sl. No. 3 of Notification No. 12/2017-CT(Rate) dated 28-06-2017.

COMMENTS BY THE JURISDICTIONAL TAX OFFICER, CHENNAI SOUTH CGST COMMISSIONERATE

- For query No. 1, As per the definition of agent defined under Section 2(5) of the CGST Act, 2017,

“(5) ‘agent’ means a person including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent by whatever name called who carries on the business of supply of goods or services or both on behalf of another”.

From the above definition, for being an 'Agent', a person should carry on business of supply or receipt of goods or services or both on behalf of another. Here the applicant is a sub-contractor and work independently under a Contract/Agreement. It cannot be said that they are carrying business for principal contractor namely M/s. BIEL Infrastructure, Coimbatore. Hence, the applicant cannot be termed as an 'agent' as per Section 2(5) of the Act.

- In respect of query-2, quoting the definition of "local authority" defined under Section 2(69) of the Act, notification No. 14/2017-CT(Rate) dated 28-06-2017 is applicable only for Panchayat/Municipality defined under Section 2(69) of the Act. The applicant being an individual contractor will not fall under the definition of Panchayat/Municipality and hence they are not defined or included either in clause(d) or (e) of Article 243P/243W/243G of the Constitution of India.
- Further submitted that as per Section 7 of the Act, "Supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business".
- As per exemption Notification No. 12/2017 as amended, Supply of pure services or composite supply of goods & services (component of goods being not more than 25%) like supply of manpower, maintenance service (excluding works contract service) provided to Central Government, State Government or Union Territory or local authority in relation to any function entrusted to a Panchayat or Municipality under Article 243G or 243W respectively is exempt from GST.
- Hon'ble Apex Court, in the case of Hemraj Gordhandas Vs. H.H. Dave AIR 1970 SC 755 had held that 'exemption notification cannot be given an extended meaning in order to enlarge the scope of exemption granted by the notification.
- Hon'ble Apex Court in the case of CCE Vs. Ginni Filaments 2005 (181) ELT has held that exemption notification has to be read strictly so far as the eligibility is concerned and the conditions stipulated therein cannot be ignored. The dispute in the case whether supply of pure service **provided by sub-contractor to main contractor** which ultimately is being provided to the Government by the contractor is exempt or not in the hands of sub-contractor. It appears that it should be exempt as otherwise GST charged by the sub-contractor to main contractor will ultimately become cost for providing service to the government defeating the very purpose itself.
- Further, in Service Tax regime, also works contract service by the sub-contractor was also exempt where service by the main contractor is exempt but not the supply by sub-contractor to the main contractor. The same is also reiterated by the Telangana AAR recently in the case of M/s. Immense construction company.
- Hence, inferred that the services rendered by the applicant is within the scope of levy of GST.
- Further informed that the jurisdictional Assistant Commissioner of CGST & C.Ex., Guindy Division reported that there is no case pending or decided in any proceedings in respect of this applicant under any of the provisions of CGST on the instant issue as per the records.

It is seen that no comments were offered by the State authorities and hence it is construed that no proceedings are pending on the questions raised in the Advance Ruling application filed by the applicant and the Joint Commissioner(ST), Intelligence-II stated that there is no proceedings pending or decided on the issue raised in the application by the Applicant.

Meanwhile, the applicant vide letter dated 09-10-2024 has informed that they made the application with Authority for Advance Ruling on the hope that they get orders for the said service. As they are unable to fetch the contract and they are withdrawing their Advance Ruling application. Under the present circumstances, they are not in need of any ruling from the Authority for Advance Ruling and hence they are requested that their application may be disposed off accordingly.

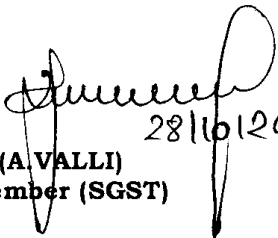
14. DISCUSSION AND FINDINGS:

After due consideration, the aforementioned letter of the applicant, wherein they have requested to drop the matter as they do not wish to pursue it any further, is taken on record. Hence, their request is considered and the application is allowed to be treated as withdrawn without going into the merits or detailed facts of the case.

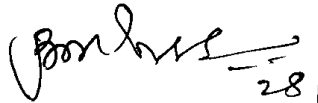
In view of the above, we rule as under:

RULING

The ARA Application received from the applicant on 29.05.2023 is disposed as withdrawn as per the request of the applicant.


28/10/2024
(A. VALLI)
Member (SGST)




28/10/2024
(BALAKRISHNA. S)
Member (CGST)

To

M/s. SRINIVASA ENGINEERING
(GSTIN: 33ASPPS6590L1ZU)
Old No. 83, New No. 112, III Floor,
Mount Road, Guindy,
Chennai, Tamil Nadu, 600032

//by RPAD//

Copy submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.
3. The Commissioner of GST & Central Excise,
Chennai South Commissionerate.

Copy to:

1. The Assistant Commissioner (ST),
Guindy Assessment Circle,
Integrated Building for Commercial Taxes and
Registration Department,
Government Farm Village, Saidapet, Chennai -35.
2. Master File/ Spare – 2.