

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

AAAR/RC.26/2023/A1

Date: 22-01-2024

BEFORE THE BENCH OF

Sh. Ashish Varma, I.R.S., Pr. Chief Commissioner of GST & Central Excise, Member, Appellate Authority for Advance Ruling, Tamil Nadu	Dr.D. Jagannathan, I.A.S., Commissioner of Commercial Taxes, Member, Appellate Authority for Advance Ruling, Tamil Nadu
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Order. AAAR/2/2024 (AR)

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamil Nadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu 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 ARUN COOLING HOME, 50/1, Natham Main Road, Kadavur Village, Chatharapatti, Madurai 625014.
GSTIN or User ID	33ABBFA8029R1Z4
Advance Ruling Order against which appeal is filed	Order No.07/ARA/2020 Dated: 24.03.2021 received on 03.04.2021 by the Appellant

Date of filing appeal	07.11.2023
Represented by	Sh.D.Kabaleeswaran, Managing Partner Sh. K.Sivabalan, Advocate
Jurisdictional Authority-Centre	Madurai Commissionerate
Jurisdictional Authority -State	Madurai Division, Chokikulam Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Payment of Rs. 10000/- made towards SGST vide Form DRC -03, with debit entry No. DC3310230386132 dated 21.10.2023

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 in *pari materia* and have the same provisions in like matter 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 Service Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act, 2017.

2.1. The subject appeal was filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s ARUN COOLING HOME (hereinafter referred to as 'Appellant'). The Appellant was registered under the GST Act vide GSTIN 33ABBFA8029R1Z4. The appeal was filed against the Order No.07/ARA/2020 dated: 24.03.2021 passed by the Tamilnadu State Authority for Advance ruling on the Application for Advance ruling filed by the Appellant. While filing the appeal, the Appellant had paid Rs.10,000/- only towards SGST vide Form DRC-03, with debit entry No.DC3310230386132 dated 21.10.2023.

2.2. The Appellant has also filed petition for condonation of delay as they had filed the subject appeal on 07.11.2023, after a delay of 920 days, whereas as per Section 100(2) of the CGST Act, 2017, 30 days is the time limit for filing appeal from the date of receipt of the order. In their petition for condonation of delay, the Appellant (Sh. D.Kabaleeswaran, Managing Partner) stated that he suffered from covid during the period of pronouncing the verdict and he was advised by his doctor to be in rest for 2 years as he is a senior citizen and that he should not take any stress. The Appellant stated that it was because of the said reason they were unable to file the appeal within the stipulated time limit. In the Affidavit filed by them, the Appellant prayed that the delay of 954 days in filing the appeal may be condoned.

2.3. The Appellant is engaged in cold storage of agricultural produce like tamarind, apple, dates, potato, tomato and chillies. They had approached the Authority for Advance Ruling (AAR) with the following question, i.e.,

"Whether the service of cold storage of tamarind inner pulp without shell and seeds are exempted under the purview of the definition of Agricultural produce vide Notification No.11/2017 and 12/2017-CT(Rate) dated 28.06.2017?"

The AAR, vide their Order No.07/ARA/2020 dated 24.03.2021, passed the following ruling for the question raised by the Appellant,

'The tamarind inner pulp without shell and seeds is not an 'Agricultural produce' as defined under explanation 2(d) of the Notification No.12/2017-CT(Rate) dated 28.06.2017 and therefore the service of cold storage of such tamarind are not exempted under Sl.No.54(e) of Notification NO.12/2017-ST(Rate) dated 28.06.2017.'

2.4. The AAR, in their discussions, stated that the product, tamarind is processed by drying the same under the sun, by beating with wooden sticks to remove the pod, hammered to deseed and destring for extraction of endocarp/pulp and these processes are done as 'Cottage Industry'. Hence the product would not fall under the term 'Agricultural Produce' as defined under explanation 2(d) of the Notification No.12/2017-CT(Rate) dated 28.06.2017. For the same reason, the exemption at Sl.No.54 of the said Notification was not extended.

2.5. Aggrieved by the said order, the Appellant filed an appeal on 07.11.2023 against the order of AAR. In their grounds of appeal, the Appellant mainly contended that tamarind is a fruit, the outer cover of the tamarind pods are removed by the farmers themselves; then the seeds and strings are removed and no machineries were deployed; the removal of shell and seed is not a process as mentioned under explanation 2(d) of the Notification No.12/2017-CT(Rate) dated 28.06.2017. They further added that the supporting service making tamarind fit for primary market is exempted under the Act. They also relied on the decision of AAR, Andhra Pradesh and AAR, Madhya Pradesh in similar cases.

3.1. The Appellant, while filing the appeal, had paid Rs.10,000/- only towards SGST vide Form DRC-03, with debit entry No. DC3310230386132 dated 21.10.2023. As per sub-rule (1) of Rule 106 of CGST Rules, 2017, a fee of Rs.10,000/- under CGST is also required to be paid for filing an appeal against the AAR orders, which was not complied with by the Appellant. Further, the Appellant had filed the appeal after a delay of 920 days. Hence a defect memo dated 08.01.2024, pointing the two defects in the application was sent to the Appellant by email and in view of the same the Appellants were instructed to appear for a personal hearing on 12.01.2024.

PERSONAL HEARING

4.1. Sh. D. Kabaleeswaran, Managing Partner, M/s Arun Cooling Home and Sh.K Sivabalan, Advocate, who is the Authorised Representative (AR) of the Unit, appeared for the personal hearing held on 12.01.2024. The AR reiterated the submissions made by them in the petition for condonation of delay filed with the application. During PH, they submitted additional submissions, wherein they had attached copies of the following decisions of the Hon'ble Supreme Court and Hon'ble High Courts in similar cases, where the Courts have condoned the delay in filing the appeal and relied on the same:

- (i) The Larger Bench of the Hon'ble Supreme Court's order dated 10.01.2022 in Suo Moto Writ Petition (c) No.3 of 2020
- (ii) Calcutta High Court order dated 09.01.2023 in WPA 2809 of 2022
- (iii) Calcutta High Court order dated 10.02.2023 in WPA 304 of 2023
- (iv) Civil Appellate jurisdiction of the Hon'ble Supreme Court' order dated 24.07.2023 in Civil Appeal No.4628 of 2023

They also submitted a 'Discharge Summary' dated 31.05.2021 in respect of Sh.D Kabaleeswaran, as a proof of his medical condition.

4.2. During the personal hearing, the Members pointed out that a defect memo was sent to them, wherein it was stated that apart from the delay in filing the appeal application, the appellant has not paid the additional fee of Rs.10,000/- under sub-rule (1) of Rule 106 of the CGST Rules, 2017. The Members stated that only on payment of the additional fee of Rs.10,000/- under sub-rule (1) of Rule 106 of the CGST Rules, 2017, the petition for condonation of delay will be taken up. The AR stated that they would pay the same at the earliest and submit the relevant document.

4.3. Accordingly, the Appellant submitted a DRC-03 challan dated 18.01.2024, for having paid the fees under CGST of Rs.10,000/- vide debit entry No.DC3301240136185 dated 18.01.2024, as stipulated under sub-rule (1) of Rule 106 of the CGST Rules, 2017.

DISCUSSION AND FINDINGS

5.1. We have carefully gone through the records of the case and the submissions made by the Appellant in their application. Before getting into the discussion of the issue in the appeal, we find that there is a delay in filing the appeal and non-payment of fee towards filing of appeal. Hence the same will be examined first before moving forward to decide the issue raised in the Appeal.

5.2. We find that the Appellant, after the personal hearing, has paid the fees of Rs.10,000/- vide debit entry no. DC 3301240136185 dated 18.01.2024 under sub-rule (1) of Rule 106 of the CGST Rules, 2017, and submitted a copy of the DRC-03 challan dated 18.01.2024. Since the Appellant has paid the fees, the petition for condonation of delay is taken up for consideration.

5.3. We find that in terms of Section 100 of the CGST Act, 2017, an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. However, the Appellate Authority is empowered to allow the appeal to be presented within a further period not exceeding 30 days if it is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the initial period of 30 days. Along with the appeal in Form ARA-02, the Appellant had filed an Affidavit for condonation of delay, wherein it was stated that Sh. D. Kabaleeswaran, the Managing Partner of the unit suffered from covid during the period of pronouncing the verdict and he was advised to be in rest for 2

years and therefore he was unable to file the appeal within the stipulated time limit. In the Affidavit filed, the Appellant prayed that the delay of 954 days in filing the appeal may be condoned.

5.4. We find that the date of the Order No.07/ARA/2020 passed by the AAR is 24.03.2021. The order was received by the Appellant on 03.04.2021 as per the RPAD acknowledgment card received and placed in the office records. Hence the last date for filing the appeal under Section 100(2) of the CGST Act, 2017, would be 02.05.2021. The last date for filing the appeal with a delay of 30 days with condonation petition (as per first proviso to Section 100(2) of the CGST Act, 2017) would be 01.06.2021. Whereas it is seen that the actual date of filing the appeal by the Appellant was on 07.11.2023. Clearly, there has been a delay of 920 days from the last date of filing the appeal under Section 100(2) of the CGST Act, 2017.

5.5. Proviso to Section 100(2) of CGST Act, 2017, states that –

“Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.”

As per the statute, the Appellate Authority can condone a delay of 30 days beyond the normal period of thirty days given for filing the appeal provided, sufficient cause is shown by the Appellant. In the present case, there is a delay of 920 days which is way beyond the power of the Appellate authority to condone, let alone examining as to whether sufficient cause was shown by the Appellant.

5.6. The Appellant has placed reliance on the decision of the Larger Bench of the Hon’ble Supreme Court’s order dated 10.01.2022 in *Suo Moto Writ Petition (c) No.3 of 2020*, wherein the relevant portion states as follows:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. 21 of 2022 with the following directions:

I. -----

II. -----

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation of 90 days from 01.03.2022. In the event of actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

We find that, even if we apply the ratio of the above decision of Hon’ble Supreme Court to the present case, as per the Appellant’s claim that their last date for filing the appeal falls between the period 15.03.2020 to 28.02.2022, the limitation to file the appeal is only 90 days from 01.03.2022 i.e., the last date would be 29.05.2022, whereas the appeal in the present case was filed on 07.11.2023, i.e., after a lapse of 527 days from 29.05.2022. Therefore, we find that reliance placed by the Appellant on the said Hon’ble Supreme Court’s judgement is of no avail to them.

5.7. We find that the Appellant has also placed reliance on Hon'ble Calcutta High Court's Order in two cases. We find, in these cases, the delay in filing the appeal after the stipulated time limit was only 36 days in the case of Hon'ble Calcutta High Court Order dated 09.01.2023 in WPA 2809 of 2022, and 27 days in the case of Hon'ble Calcutta High Court order dated 10.02.2023 in WPA 304 of 2023. In respect of Hon'ble Supreme Court' Order dated 24.07.2023 in Civil Appeal No.4628 of 2023, which was again relied upon by the Appellant, the delay in filing the appeal was 52 days, whereas in the present case, the delay was 920 days. These orders were passed by the Honourable Courts in respect of those petitioner who filed the petition before those Courts after examining the individual case. We are of the opinion that these decisions cannot be applied to other cases in general. Further the two Orders passed by the Hon'ble Calcutta High Court are in respect of appeals filed under Section 107 of the West Bengal Goods and Services Tax Act, 2017 against Orders passed by an adjudicating authority and the Hon'ble Supreme Court' Order dated 24.07.2023, relates to an appeal where the litigation is with regard to the right over immovable properties. Whereas, in the instant case, the appeal relates to an Order passed by the Authority for Advance Ruling that is governed by specific legal provisions laying down strict time limits for filing of appeals and for condonation of delays. Accordingly, we are of the opinion that the cases relied upon by the appellant are clearly distinguishable from the instant case before us.

5.8. The law of limitation in India identifies the need for limiting litigation by striking a balance between the interests of the state and the litigant.

5.9 Therefore, we hold that the filing of the appeal falls beyond the powers conferred under proviso to Section 100(2) of the CGST Act, 2017.

5.10. In this regard, we refer to the decision dated 12.12.2007 of the Hon'ble Supreme Court in Singh Enterprises Vs CCE, Jamshedpur in Civil Appeal No.5949 of 2007 [2008 (221) ELT 163(SC)]. The Hon'ble Supreme held that

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of section 5 of the Indian Limitation Act, 1963 can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within the three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the

legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

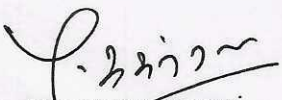
5.11. The aforesaid ruling of the Hon'ble Supreme Court is squarely applicable to the facts of the case. It is evident that this Appellate Authority being a creation of the statute is empowered to condone the delay of only a period of 30 days after the expiry of the initial period for filing appeal. As far as the language of section 100 of the CGST Act, 2017 is concerned, the crucial words are 'not exceeding thirty days' used in the proviso to sub-section (2). Further, we are of the opinion that to hold that this Appellate Authority could entertain this appeal beyond the extended period under the proviso would render the phrase 'not exceeding thirty days' wholly redundant. No principle of interpretation would justify such a result. Notwithstanding the above, the Appellate Authority is not a 'Court' and hence the power to condone beyond the prescribed period does not lie with it.

5.11. Since the appeal cannot be allowed to proceed on account of time limitation, the question of discussing the merits of the issue in this case in appeal does not arise.

5.12. In view of the above facts and circumstances of the case, and based on the discussions held above, we are of the considered view that we are not empowered to condone the delay in filing this appeal. In view of the above, we pass the following order:

ORDER

We dismiss the appeal filed by the Appellant, M/s Arun Cooling Home, 50/1, Natham Main Road, Kadavur Village, Chatharapatti, Madurai 625014, on the grounds of time limitation without going into the merits of the case.


(D. JAGANNATHAN)
Commissioner of Commercial Taxes
Tamil Nadu/Member AAAR


(ASHISH VARMA)
Pr.Chief Commissioner of GST
& Central Excise, Tamilnadu &
Pondicherry Zone/Member AAAR



To

M/s Arun Cooling Home,
50/1, Natham Main Road,
Kadavur Village, Chatharapatti,
Madurai 625014

//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,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Madurai Commissionerate.
4. The Assistant Commissioner (ST),
Chokikulam Assessment circle, Madurai Division
5. Master File/ Spare-2