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

A.R.Appeal No. 03/2020/AAAR

Date: 12/01/2021/ 25/01/2021

BEFORE THE BENCH OF

1. Thiru G.V.KRISHNA RAO, MEMBER

2. Thiru M.A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/01/2021 (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	Shapoorji Pallonji and Company Private Limited, KG 360 Degrees, IT Business Park, 7th Floor, Unit 7-A1, Door No. 232/1, Dr. MGR Salai, Kandachavadi, Perungudi, Chennai –96
GSTIN or User ID	33AAACS6994C1ZC
Advance Ruling Order against which appeal is filed	Order No. 03/ARA/2020 dated 04.03.2020
Date of filing appeal	16.06.2020
Represented by	Shri. Vinod Lalwani, G.M. Taxation
Jurisdictional Authority-Centre	Chennai – South Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Thiruvanmiyur Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 20063300146670 dated 16/06/2020

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 by M/s. Shapoorji Pallonji and Company Private Ltd (hereinafter referred to as 'Appellant' or SPCPL). The appellant is registered under GST vide GSTIN 33AAACS6994C1ZC. The appeal is filed against the Order No.03/AAR/2020 dated 31.01.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The Appellant are primarily engaged in the construction business dealing with various clients under composite Works Contracts involving supply of both materials (goods) and service. They had entered into an agreement, dated

November 21, 2016 with the Christian Medical College, Tamil Nadu, India (CMC) for construction of 'Service and Teaching Facility' at CMC. As per the Agreement CMC was required to pay 5 percent of the contract price in two tranches of 2.5 percent each totally amounting to Rs.15,83,72,000/- as 'Mobilization Advance' to the appellant. Both tranches of 'Mobilization Advance' were paid to them by CMC during the Pre-GST regime. On receipt of 'Mobilization Advance' the appellant had paid Service tax on 40% of the amount received(after availing the abatement), as Service Tax was leviable/payable under Sec.66B read with Sec.67 of the Finance Act, 1994 on receipt of the amount. However, no Value Added Tax was paid on Mobilization Advance as VAT would be payable subsequently only at the time of charging Running Bill (RA Bill) on the gross amount including the 'portion of the Mobilization Advance' being adjusted thereon. As per the agreement, the 'Mobilization Advance' had to be adjusted in fifteen equal installments on monthly basis against the Running Bill during the month or separately if no Bill is raised in that particular month. As on 30th June 2017 they had paid five installments of first tranche and three installments of second tranche of Mobilization Advance totally amounting to Rs.4,22,32,533/-. With the implementation of GST from 01.07.2017, the payment of remaining ten installments of first tranche and the remaining twelve installments of second tranche of the 'Mobilization Advance' totally amounting to Rs. 11, 61, 39,467/- transitioned into the GST regime. They had filed TRAN-1 Return in terms of the Section 142(11)(c), under Transitional Provisions (Chapter XX) of both CGST Act, 2017 and TNGST Act, 2017 for transferring the amount of Rs.1,44,85,057 being Service Tax paid on the 'Mobilization Advance' under Sec.66B read with Sec.67 of the Finance Act, 1994 during the Pre-GST regime. During September 2017, this amount has been transferred into GST common portal and credited into their Electronic Credit Register. It is the view of the appellant that the portion of 'Mobilisation advance' transited into GST regime would get covered under Section 142(11)(c) of CGST Act/TNGST Act 2017. Their client Christian Medical College, Tamil Nadu, India (herein after CMC) has disputed this and they are of the opinion that the portion of the Mobility Advance transited into GST regime would get covered under Section 142(11)(b) of the TNGST Act, 2017/CGST Act, 2017 as Service tax was leviable on 'Mobilization Advance' paid for Works Contract, under Chapter V of the Finance Act, 1994 and no VAT was paid and as such no GST shall be payable on this under

the TNGST Act, 2017/CGST Act, 2017. Therefore, they had sought Advance Ruling on the following questions:

1. Whether the Transitional Provision under Section 142(11)(c), (Chapter XX) of TNGST Act, 2017/CGST Act, 2017 is correctly applicable for the remaining installments of "Mobilization Advance', which transitioned into the GST regime and to be adjusted/deducted by them post the implementation of GST (i.e. Post July 1, 2017)

2. Whether, they would be liable to pay GST, under the provisions of the TNGST Act, 2017/CGST Act, 2017 and allied laws, on the installments of the 'Mobilization Advance', which has transitioned into the GST regime and adjusted / deducted by them post the implementation of GST (i.e. post July 1, 2017)

3 Whether, they would be eligible to avail Input tax Credit (ITC) on Service Tax paid which was transferred from Pre-GST period through TRAN-1 Return filed in terms of the section 142(11)(c), under Transitional Provisions (Chapter XX) of both TNGST Act, 2017/CGST Act, 2017.

3. The Original Authority has ruled as follows:

1. The Transitional Provisions under Section 142(11)(c) is not applicable to the case at hand.
2. The Mobilisation advance to the extent received prior to the implementation of GST towards supply of Works Contract Service is not to be subjected to GST as per the provisions of Section 142(11)(b) of the GST Act 2017.
3. The eligibility to credit based on the transitional provisions is not answered as the same is not covered under the questions on which advance Ruling can be sought under Section 97(2) of the Act.

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

- Section 142(11)(c) of CGST Act 2017, would be applicable in case of transitional transactions of composite supply falling under both VAT and Service Tax Laws, where VAT or Service Tax has been paid and the supply is provided under GST period. Under this provision, the taxpayer who has

paid either VAT or Service Tax under pre-GST regime would be allowed to take credit of such paid amount of VAT or Service Tax. However, TNAAR held that Section 142 (11)(c) is applicable only in those cases where both VAT and Service Tax has been paid by the taxpayer. Thus, the same is not applicable in their case, where only Service tax has been paid by them

- Under Pre-GST regime, the Time of Supply of Service varied as per the Service Tax Provisions, i.e. it could be either at the time of issuance of invoice or receipt of payment, whichever is earlier. Accordingly, the time of supply was not dependent only on the actual provision of service. However, the levy of VAT arose only when the sale was completed. Thus, in a case, where Service Tax and VAT were payable and both had been duly paid, the activity of provision of service and sale of goods was already completed. In such scenario, neither the point of taxation nor the time of supply falls within the GST regime. Accordingly, the question of availing the credit of either Service Tax or VAT do not arise and Section 142 (11)(c) will have no consequence
- Section 142 (11)(c) can only be involved if either the Point of Taxation or Time of Supply for the payment of Service Tax or VAT has not arisen in Pre-GST regime. Therefore, the reasoning given by TNAAR with respect to Section 142 (11)(c) does not hold good as it would mean that even if Service Tax and VAT had already been paid, still credit would be available under GST regime. It is to be deemed that once Service Tax and VAT both have been paid, the Works Contract service has already been provided and property in goods has already been passed to the customer. In other words, the supply has already been completed. This interpretation finds support from the provisions of Rule 118 of CGST Rules 2017, which provides that the taxpayer who is taking credit as per provisions of Section 142(11)(c) of the CGST Act 2017 shall submit the declaration in respect of proportion of supply on which VAT or Service Tax has been paid. Accordingly, in the instant case, where the construction services as provided by them is subject to levy of both Service Tax and VAT and only one tax(i.e. Service Tax) has been paid by them under Pre-GST regime, the provision of Section 142 (11) (c) of CGST Act 2017 shall be applicable and the ruling by TNAAR which held that the said provision is not applicable is erroneous

- Under GST law, transitional provisions were included to cover various transactions which were transitioned from erstwhile regime to GST regime. Section 142(11)(b) of CGST Act 2017, would be applicable only in case where transaction was subject to levy of only Service Tax. In the instant case, where the construction services provided by the Appellant was subject to levy of both Service Tax and VAT, Section 142(11)(b) of CGST Act 2017 cannot be made applicable. Therefore, the impugned advance ruling provided by TNAAR which placed reliance on the provisions of Section 142(11)(b) of CGST Act 2017 is erroneous in nature and thus, should be set aside. Without prejudice to above, if the afore-said ruling of TNAAR is correct, since by virtue of Notification No. 11/2012 ST dated 17.03.2012, SPCPL has paid Service Tax only on 40% of the mobilization advance, they wish to seek a clarification in respect of their liability to pay GST on the remaining 60% amount or whether SPCPL was not required to pay GST at all.

- The TNAAR has held that the service is deemed to have been completed on the date SPCPL issued the invoice for mobilization advance. Therefore, no GST is payable under the regime is flawed. Under the Service Tax provisions, the levy was on service "provided or to be provided and Point of Taxation was the issuance of invoice or receipt of payment whichever is earlier. Therefore, when the mobilization advance invoice was issued, the point of taxation had occurred. Accordingly, the liability to pay Service Tax was duly discharged. However, due to the introduction of GST, the service of Works Contract which were "to be provided" under Pre-GST regime, could not be provided by SPCPL to CMC as the levy on such service did not fructify. Since the service/ supply were completed under the GST regime, the same was subject to GST as per Section 13 of the CGST Act. Thereby, in order to provide charging provision to said supply which would be fructified under GST regime, the credit of tax paid in earlier regime was provided by Section 142 (11)(c) to avoid double taxation. Basis the afore mentioned, in the instant case, they were required to discharge the GST liability at the time of issuance of invoice or receipt of payment whichever is earlier. Further, no VAT was paid on unadjusted amount of advance in Pre-GST regime, thus, the same would be considered as "consideration" in respect of a supply to be made under GST regime. Thereby, the Appellant was required

to discharge GST on the amount of advance which remains unadjusted as on 01.07.2017 in the books of accounts. The decision of West Bengal Advance Ruling Authority("WBAAR") in the case of M/s Siemens Ltd. pertaining to a similar matter of Mobilization Advance vide Order No. 18/WBAAR/2019-20 dated 19.08.2019, wherein it is provided that as per Section 13 of CGST Act 2017, GST should be charged on the advance amount which stands unadjusted as on 01.07.2017 is relied upon by them. The said decision has been upheld by the West Bengal Appellate Authority. Accordingly, in the instant case where they had received the advance in the pre-GST regime, in respect of the services which would be provided under GST regime, and such advance amount is remaining unadjusted in the books of accounts of the Applicant as on 01.07.2017, the same would be treated as a consideration received in GST regime and thus, would be taxable under GST. However, TNAAR held that the mobilization advance to the extent received prior to the implementation of GST towards supply of Works Contract Service is not to be subjected to GST. Thus, the ruling provided by TNAAR without considering time of supply provisions is not in accordance with the law and therefore, the same should be set aside.

- They had sought ruling on "Whether SPCPL would be liable to pay GST, under the provisions of the TNGST Act,2017/CGST Act 2017 and allied laws, on the installments of the 'Mobilization Advance', which has transitioned into the GST regime and adjusted/deducted by SPCPL post the implementation of GST." However, TNAAR has ruled that " The Mobilization advance to the extent received prior to the implementation of GST towards supply of Works Contract Service is not to be subjected to GST as per the provisions of Section 142(11)(b) of the Act." They had sought ruling in respect of the installments of the Mobilization Advance which is transitioned into GST regime, i.e., including the amount of advance which is received under GST regime. However no ruling has been provided in this regard. Accordingly the ruling is incomplete
- The outcome of advance ruling will be of no consequence unless all the questions are answered together in a complete manner. Thus they seek for complete clarification in respect of the taxability of mobilization advance received by them in both pre-GST and GST regime and on the issue

whether SPCPL would be eligible to avail ITC which was transferred from Pre-GST period through TRAN-1 Return filed in terms of the Section 142 (11)(c) of the Act.

PERSONAL HEARING:

5.1 Due to the prevailing PANDEMIC situation, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital mode vide e-mail dated 17th July 2020. The appellant provided their consent to be heard through virtual mode. Accordingly, the hearing was held virtually on 21st August 2020. Ms. Kanupriya Bhargava, Ms. Divya Bhardwaj, Legal Counsel and Shri Vinod Lalwani, G.M. Taxation participated in the hearing before the authority. Their contention is the Works Contract service provided by them was leviable to VAT and Service Tax in the Pre- GST Regime. The works continue in the GST Regime and therefore the Transitional Provisions at Section 142(11)(c) of the GST Act is applicable to their case and not Section 142 (11) (b) as held by the lower authority. They also wanted ruling on their eligibility to the credit of Service Tax paid by them and transitioned to GST regime, which was not answered by the lower authority for the reason that the same is not in the purview of the Authority. They undertook to furnish the documents shared during the hearing and further written submissions through e-mail.

5.2 The appellant e-mailed the document illustrating the 'Computation of tax liability payable by them' which was shared during the hearing on which they requested clarification. The appellant vide their e-mail dated 28th September 2020 intimated that they have submitted their written submissions and Tax working sheet and do not intend to submit any additional submissions. They requested the final ruling.

DISCUSSIONS:

6. We have carefully considered the submissions of the Appellant and the applicable statutory provisions. We find that the issue before us for decision is whether in the facts of the case,

a. the transitional Provisions under Section 142(11)(c) is applicable as claimed by the appellant or Section 142(11) (b) is applicable as ruled by the

lower authority and accordingly the liability of the appellant to pay GST on the amount transitioned into GST regime;

b. whether the lower authority was correct in ruling that the eligibility to credit based on the transitional provisions is not answered as the same is not covered under the questions on which advance Ruling can be sought under Section 97(2) of the Act.

7.1 From the submissions, we find that, the appellant had entered into an agreement with the Christian Medical College, Tamilnadu (CMC) for construction of certain facilities under composite Works Contract in November 2016. They had received 'Mobilization Advance' in Pre-GST Era which is to be adjusted in installments while raising the monthly RA bill against the works done or separately if no bill is raised in that particular month as per the agreement. The installments transitioned into the GST regime. The appellant on receipt of the 'Mobilization Advance' had paid Service Tax on that portion of the advance equivalent to 40% of the amount applying Notification No. 11/2012-ST dated 17.03.2012 and had raised invoice on CMC for the advance received along with the Service Tax, thus have passed on the incidence of the Service Tax paid to the Service Receiver. On Transition, the appellant had availed credit of Service Tax paid on the Mobilization Advance (which had been passed on to CMC) in TRAN-1 in terms of the Section 142(11)(c) of the GST Act. The appellant had sought confirmation of applicability of transitional Provision under Section 142(11) (c) of the Act and their liability to pay GST on the transitioned 'Mobilization Advance'. The Lower Authority in Para 7.3 & 7.4 of the ruling has observed that:

".....Section 142(11)(c) is applicable in cases with respect to transactions in which both VAT and Service Tax are paid in the Pre-GST regime and on which GST would be leviable to the extent 'supply' is made after the appointed date for the recipient who has actually paid the tax. In the case at hand, the applicant has paid Service Tax on the advance received as per the said statute for which the applicant has raised invoice on their service receiver along with the component of service tax but no VAT has been paid/received from their customer on that part of the Mobilisation Advance pertaining to materials and therefore, this provision does not apply to the case at hand.

Accordingly, we hold that the transitional provisions under Section 142(11) (c) is not applicable to the case of the applicant.

7.4 Further 'Supply of Works Contract' is deemed to be a service under GST. Under the pre-GST regime, service tax was leviable on the service portion of the Works Contract, which in the case at hand being original work, was levied on 40% of the value. The applicant on receipt of advance has paid the service tax on the 40% of the value as required under the provisions of Service Tax. The like situations are more aptly covered under the transition provision at Section 142(11)(b) wherein it is stated that no tax is payable on services under the GST Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act.

7.2 It is the contention of the appellant that Section 142 (11) (c) can only be invoked if either the point of taxation or time of supply for the payment of Service Tax or VAT has not arisen in Pre-GST regime and the said provision would be applicable in those cases also, wherein only one tax(either Service Tax or VAT) has been paid as is in their case. It is also their contention that Section 142(11) (b) of the Act cannot be made applicable in their case where the construction services provided by them was subject to levy of both Service Tax and VAT. Further, they have stated that, since the service/supply was completed under the GST regime, the same was subjected to GST as per Section 13 of the CGST Act.

8. Before going further, Section 142(11) (b) and 142(11) (c) are examined as under:

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994(32 of 1994)

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, (32 of 1994) tax shall be leviable under this Act and the taxable person shall be entitled to take credit of Value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed."

The above provisions are clear and unambiguous. It has been held by the Hon'ble Apex Court in various decisions that we should read the statute as it is, without

distorting or twisting its language. Holding the said principle, the applicability of the above provisions on the Mobilization Advance transitioned into GST is examined.

9.1 On the applicability of GST on the 'Mobilization Advance' which is transitioned to GST, the lower authority has ruled that 'the transition provision applicable to the case at hand is as per Section 142(11)(b) of the act and Mobilisation advance to the extent received prior to the implementation of GST towards supply of Works Contract Service is not to be subjected to GST as per the provisions of Section 142(11)(b) of the GST Act 2017'. We find that the appellant seeks a clarification before us as to whether they are liable to pay GST on that portion of the 'transitioned Mobilization advance' on which Service Tax was not leviable/payable under the existing law or there is no GST liability on the entire 'Mobilization advance' received by them prior to the implementation of GST. Thus, we find that the issue to be decided is whether GST is payable on that portion of Mobilization advance transitioned into GST and on which no tax has been paid in the Pre-GST regime

9.2. Opinion of SGST Appellate Member:

Section 142(11)(b) reads as follows:

> *(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994(32 of 1994)*

The use of non-obstante clause cannot be taken to mean that section 13 does not apply for a given supply of service where service tax is also leviable. It would have to be taken to mean that for a given supply of service (including works contract), if GST is leviable under the Act by application of section 13, then the levy of tax so determined will have to be reduced by the Service Tax payable on the same supply of service. Therefore, to apply the above provision, section 13 must first be applied to determine the sufferance of GST by a given supply of service, and if it suffers GST, the levy so determined must be reduced by the extent stated in the above clause. Hence, for the above provision to apply or to have any effect, GST must be leviable on the supply in the first place by application of section 13. In the present case, GST is not leviable on the supply represented by the mobilisation advance in

the first place by application of Section 13. Mobilisation advance of 40% was paid prior to appointed date. As per section 13, the time of supply is the payment date. Also, as per explanation, 40% of work is deemed to have been supplied on that date. This supply, deemed to have been made prior to appointed date, will therefore not suffer any GST. It follows that section 142(11)(b) has no application or effect on the present case, where mobilisation advance has been prior to the appointed date.

Conclusion: GST is not leviable on mobilisation advance paid prior to the appointed date. It has suffered Service Tax. But not VAT. It is an inevitable outcome that the VAT portion of mobilisation advance escapes tax both under the old law and the new law. But this cannot be corrected by the interpretation of the law beyond the written statute.

9.3. Opinion of CGST Member:

I differ with the view expressed by the learned SGST Member in Para 9.2 above for the following reasons:

> Levy under GST Act is as Per Section 9 of the Act; The supply made in the GST regime is taxable under GST. Transition Provisions apply to cases where the supply/payment transits into the GST regime from the Pre-GST Regime. In the case at hand, the appellant provides 'Works Contract Service' which is defined as 'Service' under GST Law as per Schedule-II of the Act. The appellant has received Mobilisation Advance in the Pre-GST regime and the supplies against the said advance is made in the GST Regime and therefore the transition provision applicable to Services are to be applied to the case at hand, i.e, Section 142 (11) (b) of the Act is applicable in the case at hand.

While I agree with the view of the learned SGST Member that "The use of non obstante clause cannot be taken to mean that section 13 does not apply for a given supply of service where service tax is also leviable. It would have to be taken to mean that for a given supply of service (including works contract), if GST is leviable under the Act by application of section 13, then the levy of tax so determined will have to be reduced by the Service Tax payable on the same supply of service." I do not agree that Section 13 of the Act is to be applied first to determine the levy of GST in a supply of service. Levy of GST is as per Section 9 of

the Act and Section 13 provides the 'Time of Supply' in respect of such supply, i.e, the time of payment of the tax. Section 13 of the Act provides that the tax is payable on receipt of the consideration when the same precede the supply or issuance of Invoice in respect of Service. The conclusion of the SGST Member above, that the time of supply in respect of the entire Mobilization Advance falls in the Pre- GST Era and therefore, GST is not payable on that portion of the Advance, which has not suffered Service Tax or VAT is not agreeable. 'Mobilisation Advance' has been paid to the appellant by his service receiver against the 'bank guarantee' executed by the appellant for the entire amount. This shows that the amount received by the appellant is 'consideration' towards the supply to be made. It is also to be noted that the appellant holds the amount received as 'advance' and considers as payment towards supply only when he raises the RA bills against the supplies made by him to the receiver, i.e., his client. Further, the transition provision 142 (11) (b) considering such scenario provides for payment of GST on the consideration which has not suffered service tax under Chapter V of the Finance Act and the Non-obstante clause with regard to Section 13 in the said provision also points to the leviability/payment of GST on such consideration which has not suffered Service Tax in the Pre-GST regime.

Conclusion: In the case of the appellant, on 01.07.2017, the advance amount received is accounted and maintained as 'Advance' and applying the provisions of Section 142(11)(b) of the Act, GST is liable to be paid on the said amount reduced by the Service Tax paid under Chapter V of the Finance Act 1994 on 01.07.2017.

9.4 For the reasons set in para 9.2 and 9.3 above, we are unable to concur with each other on the Time of supply, the applicable transition provision and the applicability of GST thereon. We find that Section 101(3) of the GST Act provides as follows:

> *Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.*

Therefore, as per Section 101(3), there is no advance ruling issued on the 'Time of Supply' of the Mobilization advance transitioned into GST, which has not suffered any tax in the Pre-GST regime and the applicability of Sec.142(11)(b) to the facts of this case.

10. The next issue raised by the appellant is on their eligibility to credit based on the transitional provisions which has not been answered by the Lower Authority as not falling under the purview of this authority. They have claimed that the outcome of advance ruling will be of no consequence unless all the questions are answered together in complete manner and has sought clarification in respect of the taxability of mobilization advance received by them in both Pre-GST and GST regime and their eligibility to credit based on the transitional provisions. Advance Ruling is a mechanism to bring down unwanted litigations and a measure of ease of doing business but the scope of the mechanism is spelt under Section 97(2) of the Act. The Authority is to rule only on the issues spelt in Section 97(2) of the Act and only to those who are eligible to seek such ruling under Section 95 of the Act. The lower authority in Para 6 of the ruling, has considered all the three questions raised and found that the question relating to eligibility to credit under transitional provisions is not in the ambit of this authority, to which we do not see any reason to disagree. This authority can rule only on the questions within the scope of the authority. While we understand the appellant's grievance of not answering all the questions raised by them in complete manner, we re-iterate that Advance Ruling Authority has their limits defined and could act only within its authority.

11. To Summarize, We hold that

1. With regard to the Mobilization Advance transitioned into GST on which no Service Tax is paid as per Chapter V of Finance Act 1994, the issue is not answered and is deemed to be that no ruling is issued under Section 101(3) of the CGST/TNGST Act 2017 because of the divergence of opinion between both the Members.
2. On the issue of eligibility of Transitional Credit, we hold that the same is not under the purview of the Advance Ruling.

25/1/2021

(M.A.SIDDIQUE)
Commissioner of State Tax
Tamilnadu /Member AAAR

25/1/2021

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

APPELLATE AUTHORITY FOR ADVANCE RULING
25 JAN 2021
GOODS AND SERVICE TAX
Chennai-5, Tamilnadu.

To

SHAPOORJI PALLONJI and CO PVT LTD //By SPAD//
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Copy to

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

2. Principal Secretary/Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-600 005.

3. The Advance ruling Authority Joint Commissioner(ST)/Member, Authority for Advance Ruling, Tamil Nadu, Room No.503B, 5th Floor, Integrated commercial taxes Office complex, No. 32, Elephant Gate Bridge Road, Chennai-600 003.

4. The Commissioner of GST & Central Excise, MHU Complex, No. 692, Anna Salai, Nandanam, Chennai South Commissionerate,

5. The Assistant Commissioner (ST) Thiruvanmiyur Assessment Circle Plot No. 141, 1st Floor, Yazhini complex, 1st Main Road, Burma Colony Perungudi, Chennai -600 096.

6. Master File/ Spare-2.