



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. A. Syam Sundar, Additional Commissioner of Central Tax (Member)

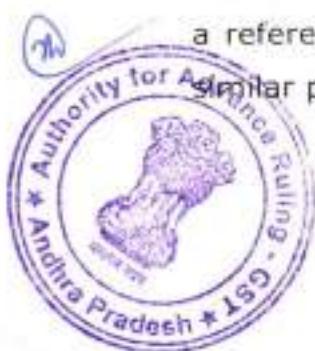
AAR No. 14 /AP/GST/2021 dated: 20.03.2021

1	Name and address of the applicant	M/s. Vijayavahini Charitable Foundation, D.No.3-56/1, Vasumathi Nilayam, Syndicate Bank Colony, Bellamvare Street, Ramavarappadu, Vijayawada-521148, Andhra Pradesh.
2	GSTIN	37AAFCV9493C1ZW
3	Date of filing of Form GST ARA-01	09.11.2020
4	Personal Hearing	05.02.2021
5	Represented by	CA B.Eswar Teja.
6	Jurisdictional Authority – Centre	Superintendent, Benz Circle Range CGST Vijayawada Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.



2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Vijayavahini Charitable Foundation (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

3.1 The applicant, M/s. Vijayavahini Charitable Foundation (VCF), bearing GST registration number 37AAFCV9493C1ZW, is a Sec. 8 Company registered under the Companies Act, 2013, which undertakes, encourages, supports and aids charitable activities in relation to poor in the areas of medical relief, education, health, vocation, livelihood etc. It is also exempted under section 12A of Income Tax Act, 1961. VCF has proposed to undertake the activity of providing pure and safe Drinking Water at an affordable cost for the under privileged people in villages in the state of Andhra Pradesh where clean and potable drinking water is not available.

3.2 The applicant proposes to draw water from the local water source (Open Well/Bore well/ground water) and treats the water through reverse osmosis (RO) process and provides this purified drinking water to the general public in the areas of Krishna District, Andhra Pradesh at affordable prices on pilot basis.

The **detailed process** is given below:

- VCF enters into an agreement with Local gram panchayat (set up by State Government) to set up the plant in its jurisdiction and obtains permission from ground water board to extract the ground water for purification.
- VCF establishes water plant at its own cost in the land allotted by the gram panchayat and extracts the ground water.
- The extracted water is purified through Reverse Osmosis (RO) Process in the plants and stored in Silos.
- The purified drinking water is supplied to the villagers either through the dispensing unit at the plant or through a mobile tanker to remote villages at an affordable price.
- VCF proposes to use smart card technology to dispense water to the villagers where the villagers can recharge the card and get the water from dispensary.
- The water is accessible to all villagers who come and collect the water in their own containers from the dispensary, which is at an open place.
- If needed, the container shall be provided by VCF at a reasonable price.



3.3. VCF, while treating the water through purification process, maintains high standards to provide safe drinking water to all the people in need in order to protect from water borne diseases. The services are available to general public, irrespective of area, region and village. The beneficiaries in this case are general public and not restricted to any particular group.

3.4. It is stated that the amount proposed to be collected from the Villagers (Beneficiaries) is Rs.7 for 20 Litres. The amount collected shall be used for Plant Operation plus Administration Cost. The excess expenditure over income shall be borne by VCF by using the existing grants available for conducting charitable activities. The applicant claims that the consideration received is meant to recover the operational cost and not to make any commercial profits.

3.5. It is submitted that VCF is investing the capital expenditure like installation of Water Treatment Plant, building etc., from the existing capital grants received by it.

3.6. The details of estimated capital expenditure, total revenue generated and total operational expenditure to be incurred for 10 water plants which are proposed to be established, are presented below:

Sl.No.	Particulars	Total Estimated expenditure /Revenues for 6 years Rs. (In Crores)
1	Estimated Capital cost (For 10 plants)	2.76 Crores
2	No. plants estimated to be set up	10 Nos
3	Estimated Operational costs	1.73 Crores
4	Estimated Revenue	0.72 Crores

With the above background, the applicant approached this Authority, seeking clarification on the taxability of the supplies made by them.

4. Question raised before the authority:

Whether supply of drinking water to general public in unpacked/unsealed manner through dispensers/mobile tankers by a charitable organisation at a concessional rate is covered under exemption of GST as per Sl.No 99 of Notification 02/2017 – central tax (Rate) dated 28/06/2017?

Sl.No.99. "*Intra state supplies of Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, demineralized and water sold in sealed container]*"



On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner (ST), Benz Circle, Vijayawada-II Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, no remarks were received from the jurisdictional officers concerned on the issue, for which the Advance Ruling was sought by the applicant.

5. Applicant's Interpretation of Law:

5.1 In the given case, the applicant seeks a clarification on whether supply of drinking water to general public in unpacked/ unsealed manner through dispensers/ mobile tankers by a charitable organisation at a concessional rate is covered under exemption of GST as per Sl. No. 99 of Notification 02/2017 – Central Tax (Rate) dated 28.06.2017 and as clarified in Circular No.52/26/2018-GST dated 09.08.2018.

5.2 The Entry No 99 of notification 12/2017 is applicable only if the water is sold in unsealed containers. In the instant case, water is sold in unsealed containers, which is an essential condition for the benefit of exemption. The villagers come and collect the water from the dispensing units/ Mobile Tankers. Moreover, the beneficiaries are general public.

5.3 This view is also supported by the CBIC clarification vide Circular No.52/26/2018-GST dated 09.08.2018 which is as follows:

"6.3 Accordingly, supply of water, other than those excluded from S. No. 99 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017, would attract GST at "NIL" rate.

Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from GST."

Therefore, supply of drinking water for public purposes in unsealed containers is exempt.

5.4 As referred above in the notification 12/2017 and clarification by CBIC in Circular No.52/26/2018-GST, the unpacked/unsealed drinking water supplied to general public is exempt by virtue of entry No 99 of the Notification, which is applicable to this case. Hence, exemption in notification 12/2017 supported by circular No.52/26/2018-GST, indicates that supply of water in unsealed container to general public shall be exempt.



5.5 Also in the instant case, VCF establishes the plant at its own cost and collects the revenue to recover the operating expenses from the beneficiaries. The activity is also not restricted to any person but to general public and there is no commercial element. Hence, shall be eligible for exemption.

5.6 The taxability of drinking water has been provided in the Notification-1/2017 (Central Tax) (Rate) dated 28.06.2017 further amended by Notification-6/2018 (Central Tax) (Rate) dated 25th January 2018. The schedule for GST rates is given as follows:

Schedule III – 9%

Sl.No.	Chapter / Heading / Subheading/ Tariff item	Description of Goods
24	2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured.

Schedule II – 6%

Sl.No.	Chapter / Heading / Subheading/ Tariff item	Description of Goods
46B	2201	Drinking water packed in 20 litre bottles

5.7 Thus, though "water" is mentioned at Sl. No 24 of Schedule III (9%+9%) and "Drinking water packed in 20 litre bottles" is mentioned at Sl. No 46B of Schedule II (6%+6%), the taxability of the supplies come into picture only when it is supplied in sealed containers to customers. The applicant in this case is supplying drinking water in unsealed container to general public and the consideration is just an amount to cover operational cost and is not meant to derive any profits. Hence it is opined that VCF is not required to pay GST as per Sl. No 99 of the Exemption Notification No. 2/2017 CGST (Rate) dated 28.06.2017.

5.8 Considering the above explanation, in view of the notification 02/2017 and clarification given by the Board vide its Circular No.52/26/2018-GST dated 09.08.2018, it is clear that supply of drinking water in unpacked / unsealed form through dispensers / tankers to general public is exempt.

6. Personal Hearing:

The authorized representative, CA B.Eswar Teja, attended the Personal Hearing on 05th February, 2021, and reiterated the submissions already made.



7. Discussion and Findings:

We have examined the issues raised in the application and the facts presented in the connected documents. The taxability of the goods and services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined to decide the question involved in the present Ruling.

The applicant, as a party to its contractual agreement with local Gram Panchayat, sets up plant for purification of drinking water through Reverse Osmosis (RO) and supplies the purified water to its registered beneficiaries in unpacked/unsealed manner through dispensers/mobile tankers at a price of Rs. 7 for 20 litres. The applicant seeks clarification whether the supply of purified drinking water in unsealed containers is covered under exemption of GST as per sl.no. 99 of Notification 02/2017 – Central Tax (Rate) dated 28.06.2017 and as clarified in Circular No.52/26/2018-GST dated 09.08.2018.

Now we examine the entry at sl.no.99 of Notification 02/2017 – Central Tax (Rate) dated 28.06.2017 and whether the supply in the instant case would fit in it.

Sl.No.99. "*Intra state supplies of Water (other than aerated, mineral, purified, distilled, medicinal, ionic, battery, demineralized and water sold in sealed container)*"

The exemption entry excludes the following categories of aerated, mineral, **purified**, distilled, medicinal, ionic, battery, demineralized, and water sold in sealed container.

The supply in the instant case is '**purified water**', which is purified through Reverse Osmosis (RO) process in the plants established by the applicant and thus it is covered under exclusion of the exemption entry and is liable to tax.

Now we scrutinize the other contention of the applicant that as per CBIC Circular No.52/26/2018-GST dated 09.08.2018, whether supply of drinking water in unpacked / unsealed form through dispensers / tankers, to general public is exempt. The relevant excerpts of the circular are reproduced as below:

"6.1 *Applicability of GST on supply of safe drinking water for public purpose:*

Representations have been received seeking clarification regarding applicability of GST on supply of safe drinking water for public purpose.

6.2 *Attention is drawn to the entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, by virtue of which water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under HS code 2201 attracts NIL rate of GST.*



6.3 Accordingly, supply of water, other than those excluded from S. No. 99 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017, would attract GST at "NIL" rate.

Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from GST."

The assumption of the applicant that the supply made by them attracts exemption as it is sold in unsealed containers and aimed at public purpose is erroneous. The above Circular reiterates the point that exemption is permissible only when the supply does not fall in the exclusion clause to serial no.99 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017.

But as admitted by the applicant in the description of the detailed procedure involved in the purification of water at the treatment plants, it leaves no further doubt that the supplies are nothing but of purified water. Consequently, we come to the conclusion that the purified water supplies made by the applicant are not eligible for exemption either as per Sl.No 99 of Notification No. 02/2017- Central Tax (Rate) dated 28.06.2017 or by the clarificatory circular No.52/26/2018-GST dated 09.08.2018, as mentioned above.

Now we examine the other part of the question that whether services extended to the public through mobile tankers would attract exemption under GST or not. Prima

(T2) ~~facie, there are two supplies involved in the instant case; wherein one is 'the supply of purified drinking water' and the other being 'the supply of the same through the mobile units to the public'. Furthermore we scrutinise whether these supplies would constitute composite supply.~~

Section 2 (30) of GST Act 2017, is reproduced hereunder:

"(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;"

In the present case, the principal supply is supply of purified water whereas the service component of distribution through mobile units is the ancillary service. The purified water is eligible to tax @ 18% as it is not fit for exemption under the serial no.99 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017.

The service component of distribution of water through mobile units is covered under Sl.No. 13 of Heading 9969 Electricity, gas, water and other distribution services vide Notification No. 11/2017-Central Tax (Rate), dated, 28th June, 2017



and taxable @ 18 %. It is invariably a composite supply and hence the rate of tax of purified water prevails, being the principal supply.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question: Whether supply of drinking water to general public in unpacked/unsealed manner through dispensers/mobile tankers by a charitable organisation at a concessional rate is covered under exemption of GST as per Sl.No 99 of Notification 02/2017 – Central Tax (Rate) dated 28.06.2017?

Answer: The said supply is not covered under exemption as explained supra and taxable @ 18% Vide Notification No.1/2017-Central Tax (Rate), dated, 28th June, 2017 as amended from time to time.

Sd/- D. Ramesh
Member

//t.c.f.b.o//

Sd/- A. Syam Sundar
Member


Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o, Chief Commissioner of State Tax,
Government of A.P., Vijayawada

To

1. M/s. Vijayavahini Charitable Foundation, D.No. 3-56/1, Vasumathi Nilayam, Syndicate Bank Colony Bellamvarī Street, Ramavarappadu, Vijayawada, Krishna-521148, Andhra Pradesh **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Benz Circle, Vijayawada II Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Benz Circle Range, Vijayawada Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam - 530035 A.P. **(By Registered Post)**


Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, within a period of 30 days from the date of service of this order.