

Advance ruling application can be admitted during inquiry or investigation as it is not a 'proceedings'

The Hon'ble High Court of Telangana in the given case *M/S Srico Projects Private Limited vs. Telangana State Authority for Advance Ruling., [W.P. No. 26145 of 2022 dated August 17, 2022]*, observed that advance ruling application cannot be admitted on the issue which is pending or decided in any proceeding. However, inquiry or investigation does not come within the ambit of the word 'proceeding'. Moreover, as per the facts of the present case, inquiry/ investigation started after filing of the advance ruling application hence cannot be rejected.

Facts:

M/s. Srico Projects Private Limited ("**the Petitioner**"), is a private limited company that is engaged in the business of undertaking contracts mostly with the Central and State Governments. There was a clash between the Petitioner and the Central Government Employees Welfare Housing Organization regarding the rate of Goods and Services Tax ("**GST**"). The former says that the rate of GST will be 18% and the latter says that the rate will be 12%. For this matter, the Petitioner submitted an application for advance ruling dated May 11, 2019 ("**the Advance ruling application**"). The order dated June 3, 2022 ("**the Impugned order**") was passed rejecting the advance ruling application.

Being aggrieved by the Impugned order the Petitioner filled the writ petition to which the advance ruling authority ("**the Respondent**") contended that the Directorate General of GST Intelligence ("**DGGI**") had initiated an inquiry into the business activities of the Petitioner and had issued notice dated December 15, 2021 but this fact was not disclosed by the Petitioner.

The Petitioner contended that an advance ruling application was filed way before the starting of inquiry proceedings.

Issue:

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Whether the advance ruling application is maintainable or not.

Held:

The Hon'ble High Court of Telangana in ***W.P. No. 26145 of 2022 dated August 17, 2022*** held as under:

- Quashed and set aside the Impugned order holding that the Respondent was not justified in rejecting the Advance ruling application of the Petitioner and directed the Respondent to admit the Advance ruling application filed by the Petitioner and pass the appropriate order under Section 98(4) of the Central Goods and Services Tax Act, 2017 (**“the CGST Act”**) after giving due opportunity of hearing to the Petitioner within a period of two months from the date of receipt of a copy of this order.
- It was also observed that the Petitioner cannot be barred to file the Advance ruling application under the first proviso to Section 98(2) of the CGST Act and the question of Petitioner informing the Authority that it was being enquired into did not arise because the Advance ruling application was filed much prior in point of time.
- Further, stated that the inquiry or investigation would not come within the ambit of the word “proceedings” because it has neither been defined in Chapter XVII (i.e., Advance ruling) nor in the definition clause i.e., in Section 2 of the CGST Act, if the said word is understood in the context in which it is being applied, namely, any proceedings pending or decided in the case of the Petitioner under the provisions of the CGST Act, it would mean proceedings where the question raised in the Advance ruling application has already been decided or is pending decision.

Relevant Provision:

Section 98(2) and (4) of the CGST Act:

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“98. Procedure on receipt of application.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

..

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.”

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