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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 14th OF JUNE, 2022

WRIT PETITION No. 8363 of 2022

Between:-

**M/S SAISANKET ENTERPRISE THROUGH
PROPRIETOR MILIND MURUDKAR 21 ELECTRONICS
COMPLEX GROUND FLOOR PARDESIPURA, INDORE
(MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI AJAY BAGADIA SENIOR ADVOCATE ALONGWITH TARANG
CHELAWAT ,ADVOCATE)**

AND

**1. AUTHORITY FOR ADVANCE RULING THROUGH THE
COMMISSIONER COMMERCIAL TAX MOTI
BUNGLOW MAHATMA GANDHI MARG, INDORE
(MADHYA PRADESH)**

**2. APPELLANTTE AUTHORITY FOR ADVANCE RULING
THR. THE COMMISSIONER COMMERCIAL TAX,
COMMERCIAL TAX, MOTI BUNGLOW MAHATMA
GANDHI MARG, INDORE (MADHYA PRADESH)**

**3. DIRECTORATE GENERAL OF GOODS AND SERVICE
TAX INTELLIGENCE REGIONAL UNIT,
INTELLIGENCE, REGIONAL UNIT, GROUND FLOOR
FLOOR, A WING C.G.O COMPLEX INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

*This petition coming on for order this day, JUSTICE VIVEK
RUSIA passed the following:*

ORDER

The petitioner has filed the present petition against the

following order:-

[i] Order dated 10.12.2020 passed in case No.14/2020 by Authority for Advance Ruling, M.P.

[ii] Order dated 26.07.2021 passed in case No. MP/AAAR/05/2021 by M.P. Appellate Authority for Advance Ruling.

The Petitioner is a Works Contractor engaged in executing works related to the construction of the irrigation dam. The petitioner is duly registered under Central Goods and Services Tax Act, 2017 in various states. In the State of Madhya Pradesh, the petitioner is holding GSTN 23AFYPM0856K1ZW.

M/s Navayuga Engineering Company Ltd. had entered in to an agreement dated 19.08.2015 for the execution of certain work relating to the Narmada Valley Project. Some part of the work was sublet to the petitioner which was executed from the period 22.01.2017 to 25.01.2018.

Premises of the petitioner was searched by the authorities of the Director-General of Goods and Service Tax Intelligence and found evasion of GST. Vide notice dated 21.05.2020, the petitioner was called upon to discharge the remaining GST liability in Form DRC-03 at the applicable rate of 18% on works contract services supplied as a sub-contractor to the main contractor (M/s Navayuga Engineering Company Ltd) from July 2017 to January 2018 (as described in aforesaid paras).

After receipt of the aforesaid notice, the petitioner has approached the Authority for advance ruling in Madhya Pradesh

(Goods and Service Tax) under Section 98 of the Goods and Service Tax Act, 2017 contending that in view of the notification No.11/2017 (T (R) as amended on 22.08.2017, the rate of taxes applicable to the sub-contractor shall be 12%. The petitioner has proposed the following question for determination by the Advance Ruling Authority:

“ what is (rate of tax applicable to a sub contractor, where, he executes works contract pertaining to dam, wherein the principal contractor is liable for tax @12% for the period from 22.01.2017 to 25.01.2018?”

Learned Authority has obtained the comments from the Department, accorded the personal hearing to the parties and vide order dated 10.12.2020 declined to grant advance ruling by virtue of *First Proviso* of section 98 (2) of CGST /MPGST Act, 2017. Being aggrieved by the aforesaid order, the petitioner has approached Appellate Authority by way of filing an appeal under Section 101 of the CGST/MPGST Act, 2017. The Appellate Authority has dismissed the appeal by upholding the order dated 10.12.2020 passed by Advance Ruling Authority. Hence, present writ petition before this Court.

Learned Senior Counsel appearing on behalf of the petitioner submits that the learned Authority, as well as Appellate Authority, have failed to correctly interpretate the language 98(2) of the CGST Act,2017. The said only proviso bars the advance ruling if the question raised is pending or decided in any proceedings under any provision of the Act. In the present case no such proceedings are pending against the petitioner, therefore, Authority ought to have

decided the issue raised by the petitioner regarding the applicability of the rate of tax, hence, the matter is liable to be remanded back to the authorities for adjudication on merit.

Heard

CHAPTER XVII of the Central Goods and Services Tax Act, 2017 deals with ADVANCE RULING. Section 95 (a) defines the word " Advance Ruling" which is reproduced below:

95(a) " advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of section 100 [or of section 101 C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

It is clear from the aforesaid definition that advance ruling is a decision provided by the Authority or Appellate Authority to the applicant on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. It means any person can obtain ruling from the Authority or Appellate Authority in advance either during or proposed to be undertaken any supply of goods or services. The very purpose of taking advance ruling in advance is to avoid any controversy or conflict with the authorities in payment of GST/SGST in particular categories at the time of rendering service or sale of goods . Application is liable to be filed under section 97 for obtaining the advance ruling in advance not during the pendency of any issue before the authority.

That sub section 2 of Section 97 provides the questions on

which the advance ruling can be sought under this Act. Section 98 provides the procedure for receipt of the application. The first proviso to Sub-section 2 of section 98 is coming in the way of the petitioner and relying on such provision the Authority as well as Appellate Authority have declined to grant advance ruling to the petitioner. According to the proviso, the authority shall not admit the application where the question raised in the application is already pending or decided in proceedings under any of the provisions of this Act. The Petitioner approached the Authority for obtaining the advance ruling only after a search conducted on 20.03.2020 in which the evasion of SGST was found which has resulted in issuing a show-cause notice dated 21.05.2020. By the aforesaid impugned notice, the petitioner has been called upon to pay the remaining amount of GST/SGST liability and submit the reply. Since the petitioner has not paid GST @ 18% and appears to be contesting the aforesaid notice, therefore, the issue is treated to be pending before the Authority under the GST/SGST Act,2017 hence, Authorities have rightly declined to grant advance ruling to the petitioner as the petitioner did not approach in advance before the Authority for obtaining the ruling.

In view of the above, we do not find any ground to interfere with the impugned order, thus petition is dismissed accordingly in *limine*.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE