

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, IstFloor, No.1, Greams Road, Chennai-600 006.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, IRS Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai.
And
- 2.Thiru. Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (ST) / Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

ORDER No.49 /ARA/2019 Dated 22.10.2019

GSTIN Number, if any / User id		33AAAAT0361J1ZR
Legal Name of Applicant		TAMIL NADU COOP. SILK PRODUCERS FEDERATION LTD., IND 944
Trade Name of the Applicant		TAMIL NADU COOP. SILK PRODUCERS FEDERATION LTD., IND 944
Registered Address / Address provided while obtaining user id		522, Gandhi Road, Kancheepuram – 631 501.
Details of Application		GST ARA – 001 Application SI.No. 10 dated: 04.03.2019.
Concerned Officer		State :The Assistant Commissioner (ST), Kancheepuram Assessment Circle Centre : Chennai Outer ;Division: Tambaram
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Wholesale business
B	Description (in brief)	Supply of Silk to Silk Handloom Weavers Cooperative Societies
Issue/s on which advance ruling required		Applicability of a Notification issued under the provisions of the Act. 33/2017-C.T. dated 15.09.2017 as amended by 50/2018 C.T. dated. 12.09.2018.
Question(s) on which advance ruling is required		Whether TDS provision under GST Act is applicable to the Co-operative Society since it is Registered under Tamil Nadu Cooperative Society Act of 1975 and not under society registration act 1860 (21 of 1860)

Note : Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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.

M/s. Tamil Nadu Cooperative Silk Products Federation Ltd, No. 522, Gandhi Road, Kancheepuram – 631 501 (hereinafter known as TANSILK or Applicant) is registered under the GST Act 2017 Vide GST No.33AAAAT0361J1ZR. The Applicant has sought Advance Ruling on the following question:

Whether TDS provision under GST Act is applicable to the Co-operative Society since it is Registered under Tamil Nadu Cooperative Society Act of 1975 and not under society registration act 1860 (21 of 1860)

They have submitted the copy of application in Form GST ARA – 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and TNSGST Rules 2017.

2. The applicant stated that they are a Co-operative society registered under Tamil Nadu Cooperative Societies Registration Act 1983 and they are also filing Income Tax returns claiming deduction under Section 80P of IT Act. They stated that it is not a statutory corporation and not state government undertaking. The Director of Sericulture is the Functional Register.

2.1 The applicant has stated that the objective of their Society is to support the development of Sericulture activities in Tami Nadu by supplying good quality silk in sufficient quantity at reasonable price to the Silk Handloom Weavers Cooperative Societies, Khadi and village Industries Board, Sarvodaya Sanghs etc. Raw silk is purchased from silk reelers through Government Anna Silk Exchange, Kancheepuram and the same is sold to twister members of TANSILK for twisting the silk yarn. Then the twisted silk yarn, purchased from the twisters is sold to Silk Handloom Weavers Cooperative Societies as per their requirement. Here, the

transaction of twisted silk yarn attracts 5% GST. Sufficient stock of raw silk and ready silk is kept in the TANSILK godowns to fulfill the needs of consumers.

2.2 The applicant has stated that as per the notification No. 50/2018 Central Tax dated 13.09.2018 the provisions relating to TDS under section 51 of GST Act takes effect from 1st October 2018. The notifications specifies the persons who have to deduct TDS at the rate of 2% from the payment made to the supplier of taxable goods or services, where the total value of each supply exceeds two lakh and fifty thousand rupees;

Under the societies Registration Act 1860, a society can be registered for grant of Charitable Assistance, creation of military orphan funds, promotion of science, literature, fine arts, diffusion of useful knowledge etc., But TANSILK is a cooperative apex body controlled by Tamil Nadu Cooperative societies Acts 1983 with its bylaw and the Director of Sericulture, Salem is the Functional Registrar of this Co-operative organization. Therefore the base acts for the TANSILK are different. Moreover, TANSILK has only 30% of equity share from the Government and hence it does not come under public sector undertaking. TANSILK is also exempted under 80P2(c)(d) (e) while filing Income Tax Returns, Since it's main income is from the godown rent. In view of the above the applicant requested to exempt them from recovery of TDS under GST.

3. The applicant was given an opportunity to be personally heard on 18.06.2019. They appeared and stated that they are a Co-operative Society registered under TN Co-operative Society 1961 with 39% Central Government & 3% State Government. They were informed that process of TDS were not covered under Advance Ruling and were informed to approach their Jurisdictional authority for clarification. They accepted the submission and agreed to reject the same.

4. However, the applicant vide their letter Rc. No. 1769/G/2019 dated 21.06.2019 stated that the their shareholding pater is 'A Class members – Cooperative Societies' -69.77%, Government of Tamil Nadu – 0.43% and 'Government of India' 29.8%. They are trading in raw silk (exempted from GST) and Ready silk yarn (taxable at 5% GST). They also stated that their question is not about the validity of the TDS provisions of the CGST Act and they had filed the application only with reference to the Notification No. 50/2018 dated 13.09.2018

seeking the applicability of the same since the notification do not cover Cooperative Societies for TDS purpose and requested a ruling.

5.1 The applicant was again heard on 23.07.2019. They gave a written submission and stated that they are seeking to modify the question to ask about applicability of Notification no.33/2017 (C.T) dated 15/09/2017 as amended by Notification No. 50/2018 dated 13.09.2018. They stated that they are Co-operative Society registered by registrar of industrial cooperative societies. They have members who are around 240 Co-operative societies of various silk owners. The equity of State Government is 0.43% and Government of India is 29.8% apart from Co-operative Society 69.77%. They stated that they will submit Registration Certificate RC No. mentioned in their Bye laws. They also stated that they will give details of the management of the applicant, appointment of the same, details of the GO's for formation, details of Board meeting of the same.

5.2 In the written submission furnished by the applicant during the PH held on 23.07.2019, they have stated that the application has been made seeking clarification in respect of applicability of TDS in respect of Cooperative Societies effective from 01.10.2018. They have approached the authority for advance ruling to seek clarification on whether the Notification 33/2017 CT dated 15.09.2017 is applicable to them since, they are not registered under the Societies Registration Act 1860. They also stated that they come under the category Cooperative Societies under the Tamil Nadu Cooperative Societies Act 1961.

6. The applicant submitted additional particulars vide their letters dated 5.8.2019, 26.08.2019 and 03.09.2019. The submissions included

- copy of G.O (Ms) No.832 dated 31.03.1979 vide which the federation was duly constituted
- financial statement with reference to Share Capital for the respective years 31.03.1979, 31.03.1980 and 31.03.2019.
- Copies of the resolutions passed on 06.03.2019 and 21.08.2019 as sample resolutions which were extracted from the Resolution Book maintained at the office of the Applicant to prove that the resolutions are passed by the said 21 A class members who are alone eligible to vote. They claimed that the Government does not have any authority to pass the resolutions.

➤ copy of the G.O.(Ms) No.10, dated 31.01.2013 Cooperative, Food and Consumer Protection (CJ1) Department which stipulates that the Board shall have-

- (1) Twenty-one elected members
- (2) One Co-opted member having experience in the field of reeling and twisting industry.
- (3) Five Functional Directors

They also stated that they are having share capital of A class members as Silk Weavers Cooperative societies and B class member as Associate members. Only A class members have the rights to vote for cooperative elections. The Board of Directors are duly elected by the A class members, which has the absolute power in case of policy and administration. Altogether, the Board of Directors comprises of 27 members, and out of which only the 21 members are elected by the Class A members have the absolute power in case of policy and administration and as such it is not governed by the State and Central Governments. They have also submitted the list of 229 'A' Class Members who are having voting right and another list of 70 Federation Associate members who do not have the voting right.

7.1 We have carefully examined the Oral and written submissions made by the applicant. We find that the applicant is an Apex society registered under Tamil Nadu Co operative societies Act 1961 with head quarters at Kancheepuram. Director of Industries and Commerce has registered the same with a view to hold the weavers, Reelers and members in Sericulture Industry as provided in G.O.Ms. No 832 dated 31st May 1979. The capital structures of the applicant is to be raised from (1) members share capital contribution (2) Government Share Particulars and (3) loan from National Corporation of Development of Co-operative and the Governments' Share Contribution will constitute 51% of the total share capital of the Federation. The applicant has sought advance ruling on the applicability of Notification No.33/2017(CT) dated 15.09.2017 relating to the Provisions of Tax Deduction at Source (TDS).

7.2 From the various submissions of the applicant, the following are observed:

- The applicant is a Co-operative Apex Body controlled by the Tamilnadu Cooperatives Societies Act 1983(herein after referred as Societies Act)

- The administrator is the Joint Director of Sericulture and The director of Sericulture, Salem is the Functional Registrar of this Co-Operative Organisation
- The applicant By-Laws Registered by the Director of Industries and Commerce and the Registrar of Industrial Co-operatives effective from 17.04.1978 and is in Operation from 09.09.1978
- It was constituted by Government of Tamil Nadu through Industries department vide G.O. Ms. No. 832 of the Government of Tamilnadu dated 31st May 1979, stipulates the Capital Structure of the applicant. It is stated that the Governments' Share Contribution will constitute 51% of the total share capital of the applicant and sanction of Rs. 1, 70,000 towards the state participation is accorded. Subsequently, the Ministry of TExitilies, Government of India, infused capital of Rs 1, 17, 49,000 under national Silk Yarn Bank Scheme during 995-96.
- The share holding pattern of the applicant is as given below:

SI. NO	Name of the Authority	Amt. in Rs. (31.03.1979)	%	Amt. in Rs. (31.03.1980)	%	Amt. in Rs. (31.03.2019)	%
1.	A Class members – Cooperative Societies	63000	29.79	81000	18.51	2,75,06,850	69.77
	B-class Members	147000	69.50	185000	42.29	0	0
2	Government of Tamil Nadu	0	0	170000	38.86	1,70,000.00	0.43
3	Government of India	0	0	0	0	1,17,49,000	29.80
4	Individual (Private)	1500	0.71	1500	0.34	0	0
	Total	211500	100.00	437500	100.00	3,94,25,850	100.00

- It is governed by a board of Directors consisting of 27 persons, of which 21 directors are elected by the A Class members who are members of boards of affiliated co-operative societies affiliated to the Applicant, One Co-opted Member having experience in the field of reeling and twisting industry and Five Functional Directors of whom one representative of the Kancheepuram Central Co-operative Bank, Kancheepuram; One representative of the

Director of Handlooms and Textiles, Chennai; One representative of the Tamilnadu Khadi and Village Industries Board, Chennai; the Joint Director of Sericulture, Office of the Director of Sericulture, Salem; and the Managing Director of the Federation, appointed by the Government.

- The elected members have voting rights while the functional directors and the Co-Opted member do not have any voting right.
- AS per Section 33 of Tamil Nadu Co-operative Societies Act 1983, the management of the registered society vests with the board, The functional director is a paid officer of the society or an officer of the Government or representative of apex society or RBI or NABARD .there are three varieties of societies of which apex society like the applicant should not have more than 29 members. The co-opted members and functional directors shall have the right to participate at the meetings of the board but shall not be entitled to vote at or contest for any election in the registered society in their capacity as such members. The Government shall appoint a managing director to the apex society
- As per Section 80(9) of the societies Act, the Audit Report of the Apex Society is to be laid before the Legislative Assembly in the prescribed manner.
- As per its bye-laws, its member societies are Silk producer Cooperative Societies engaged in Silk Industry. Its objectives is to procure raw silk from silk reelers through Government Anna Silk Exchange, and supply to silk twister members of the applicant. The same is purchased after twisting sold to Silk handloom weavers Cooperative Societies. They also advance money to silk reelers.

7.3 Section 51 of CGST Act 2017, stipulates the Class of Persons liable to deduct TDS. For ease of Reference the same is reproduced as under:

51. (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—

(a) a Department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

7.4 The persons or category of persons under Section 51(d), liable to abide by the provisions of TDS is provided by Notification 33/2017 (CT) dated 15.09.2017 as amended and Notification No. II(2)/CTR/783(c-3)/2017 vide G.O. (Ms) No. 107 dated 15.09.2017 as amended specifies who are covered under clause (d) of sub-section (1) of section 51 of the said Act, namely:-

(a) an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with fifty-one percent or more participation by way of equity or control, to carry out any function;

(b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) public sector undertakings:

Provided that the said persons shall be liable to deduct tax from the payment made or credited to the supplier of taxable goods or services or both with effect from a date to be notified subsequently, on the recommendations of the Council, by the Central Government.

Notification 50/2018(CT) dated 13.09.2018 was issued in supersession to Notification 33/2017(CT), and appointed 1st of October 2018, as the date which the provisions of section 51 of the said Act shall come into force.

7.5 By the Notification, the following persons or category of persons are made liable to deduct TDS:

1. an authority /board/any body set up by an Act of Parliament/State Legislature with fifty-one percent or more participation by way of equity or control to carry out any function;
2. an authority /board/any body established by any Government with fifty-one percent or more participation by way of equity or control to carry out any function;
3. Society under the Societies Registration Act, 1860 established by the Central/State Government or a Local Authority;
4. Public sector Undertakings.

7.6 In the case at hand, the applicant is an Apex co-operative society, applicant registered as Apex Society under the Tamil Nadu Co-operative Societies Act 1983.

It is not a Society under the Societies Registration Act 1860. It was established by the Industries Department of Government of Tamil Nadu based on the G.O. of State Government of Tamilnadu to develop Co-operative silk twistors, reelers, etc. The G.O. specifies that the Government's share contribution will constitute 51% of the total share capital of the Federation. However, the submissions of the applicant states that the equity share holding of the Government at the maximum had been at 38.86% in 1980 and currently at 30%. Therefore, it deduces that the applicant is not a body with 51% or more participation of the Government by way of equity.

It is seen from Section 33 of Tamil Nadu Co-operative Societies Act 1983, the management of the registered society vests with the board of Directors. In this case, It is governed by a board of Directors consisting of 27 persons, of which 21 directors are elected by the A Class members who are members of boards of affiliated co-operative societies affiliated to the Applicant, One Co-opted Member having experience in the field of reeling and twisting industry and Five Functional Directors of whom one representative of the Kancheepuram Central Co-operative Bank, Kancheepuram; One representative of the Director of Handlooms and Textiles, Chennai; One representative of the Tamilnadu Khadi and Village Industries Board, Chennai; the Joint Director of Sericulture, Office of the Director of Sericulture, Salem; and the Managing Director of the Federation, appointed by the Government. Section 33 of Tamil Nadu Co-operative Societies Act 1983 stipulates that the elected members have voting rights while the functional directors and the Co-Opted member do not have any voting right though they may participate in meetings. Therefore, it is seen that though the Managing Director is appointed by Government of Tamil Nadu and a few of the other Functional Directors are also employees of Government of Tamil Nadu, the control of the Board or management vests with elected members who are elected by the member silk cooperative societies. Hence, the Government of Tamil Nadu does not control the applicant.

In view of the above circumstances and facts of the case, it is seen that the applicant was established by the Government of Tamil Nadu as a Cooperative Society registered as Apex Society under the Tamil Nadu Co-operative Societies Act 1983 but the equity ownership at present or in the past never beyond 51%, nor is it under the control of the Government as the management do not have any voting rights as stipulated in it's bye laws and by the Tamil Nadu Co-operative Societies Act 1983. Therefore, the applicant is not a person or category of person stipulated under Notification No. 33/2017-C.T. dated 15.09.2017 as amended and

Notification No. II(2)/CTR/783(c-3)/2017 vide G.O. (Ms) No. 107 dated 15.09.2017 as amended.

8. In view of the above we rule as under.

RULING

Central Tax Notification No. 33/2017-C.T. dated 15.09.2017 as amended and State Tax Notification No. II(2)/CTR/783(c-3)/2017 vide G.O. (Ms) No. 107 dated 15.09.2017 as amended is not applicable to the applicant.

P. Ganan
24/10/19

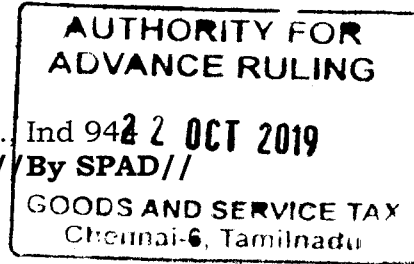
Ms. Manasa Gangotri Kata,
Member, CGST

Thiru Kurinji Selvaan V.S.
22.10.2019

Thiru Kurinji Selvaan V.S.
Member, TNGST

To

Tamil Nadu Coop, Silk Producers Federation Ltd.
522, Gandhi Road, Kancheepuram - 631 501.



Copy submitted to :-

1. The Additional Chief Secretary / Commissioner of Commercial Taxes, 2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.
2. The Principal Chief Commissioner of CGST & Central Excise, No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034.

Copy to:

3. The Commissioner of GST & C.Ex., Chennai Outer Commissionerate.
4. The Assistant Commissioner (ST), Kancheepuram Assessment Circle, Collectorate campus, Kancheepuram - 631 501.
5. Master File / spare - 1.