

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamil Nadu Goods and Services Tax Act 2017)
A.R. Appeal No. 01/2025/AAAR Date :25.04.2025.

BEFORE THE BENCH OF

Dr. Ram Niwas, I.R.S., Principal Chief Commissioner of GST & Central Excise, Member, Appellate Authority for Advance Ruling, Tamil Nadu	Dr. D. Jagannathan, I.A.S., Commissioner of Commercial Taxes, Member, Appellate Authority for Advance Ruling, Tamil Nadu
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Order-in-Appeal No. AAAR/ 02 /2025 (AR)

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under
Section 101(1) of the Tamil Nadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu 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 ab-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	M/s High Energy Batteries (India) Limited No. 13, "Esvin House" Old Mahabalipuram Road, Perungudi, Chennai, Tamil Nadu- 600096.
GSTIN Number, if any / User id	33AAACH1479H1ZR
Advance Ruling Order against which appeal is filed	AAR Order No. 28/ARA/2024 dated 06-12-2024
Date of filing Appeal	04-02-2025
Represented by	Shri. M Ignatius, Director (Operations), Shri R. Swaminathan, Chief Financial Officer and Shri P.G. Srikanth, Consultant
Jurisdictional Authority – STATE	State: Palakarai Assessment Circle Trichy Zone, Trichy Division.
Jurisdictional Authority – CENTER	Centre: Tiruchirapalli Commissionerate, Tiruchirapalli I Division, City III-Range.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Payment of Rs.10,000/- each under CGST and SGST made in Form DRC-03 in challan identification number PUNB25023300012078 dated 03.02.2025

M/s High Energy Batteries S.F. No. 243/7, 243/8B, Pakkudi road, Mathur Industrial Estate, Mathur (hereinafter called as 'the Applicant') is engaged in manufacture of "Silver Oxide Zinc Torpedo Propulsion batteries" falling under Chapter sub-heading No. 850640 and Secondary Silver Oxide Zinc Rechargeable Batteries falling under Chapter sub-heading No. 8501780 and supply the same to various Naval Defence formations (Indian navy) on payment of applicable GST. They are registered under the GST Acts with GSTIN: 33AAACH1479H1ZR. They are under the administrative jurisdiction of CENTRE.

2. They sought Advance Ruling as to "Whether the value of the Silver supplied free of cost by the Naval Formations (in the form of old batteries) are to be included in the taxable value adopted by the applicant on the batteries manufactured by the applicant and supplied to the Naval Formations for the purpose of payment of GST or not."

3. Authority for Advance Ruling (AAR) vide order No. 28/ARA/2024 dated 06-12-2024 stated that the value of Silver supplied free of cost by the Naval formation (in the form of old batteries) is to be included in the taxable value adopted by the applicant on the batteries manufactured and supplied by the appellant to the Naval formation for the purpose of GST.

4. Aggrieved by the above ruling of the AAR, the appellant preferred this present appeal on the following grounds.

(a) The two types of batteries manufactured by them attracting GST @ 18 and 28% respectively is being supplied to various Naval/Defence formations on payment of applicable GST; that the Silver required for manufacturing batteries is supplied 'free of cost' by the Naval formation in the form of used batteries (non-serviceable); that after extracting Silver from the used batteries, the appellant manufactures the "Silver Zinc Batteries" as per the specification; that while fixing the price of the new batteries manufactured, the cost incurred for extracting the silver is included in the taxable value for the purpose of payment of GST and the cost of Silver supplied by the Naval formation, 'free of cost' in the form of used batteries are excluded.

(b) The Naval formation is insuring 'free of cost' used batteries supplied by them during transportation and for the period of retention by the appellant in their premises, as per the contract signed between them.

(c) Quoting clauses and sub-clauses of Section 15 and 15(2)(b), the appellant contended that the price is the sole consideration for the supply. To determine whether value of taxable supply is the 'sole consideration', the definition of 'consideration', as per Section 2(31) of the Act, indicates that the transaction value agreed between the parties is only relevant for valuation purposes under GST. The appellant claimed that it is matter of commercial arrangement between the supplier and the recipient and stated that once it is clear that supplier only has to supply final goods then there is no question of adding the value of the free materials for determining the transaction value.

(d) In terms of Section 15(2)(b), value of supply includes two elements namely, (i) supplier is liable to pay the amount (for free issue material) and (ii) the amount was incurred by the recipient. In this case, supplier is not liable to pay for the old batteries containing Silver, i.e 'free of cost' material supplied by the recipient. The appellant stated that the provision of Section 15(2) will apply in cases where the supplier orders inputs from a third party. There is no such arrangement here and contended that Section 15(2)(b) will not be applicable in the present case.

(e) The appellant quoted the CBIC's Circular No. 47/21/2018-GST dated 08-06-2018 issued with regard to Moulds, Jigs etc. and stated that the clarification given in the circular is analogous to the present appeal filed

by them. In support of their claim, they cited the advance ruling in the case of Lear Automotive India Private Limited (2018 (12) TMI 766).

- (f) Additionally, the appellant stated that the event of levy has changed from the 'manufacturing point' in Central Excise to 'supply point' in GST. Quoting Section 4 of erstwhile Central Excise Act, 1944, and erstwhile Rule 6 of the Valuation Rules, which speaks on the free supplied materials, they have stated that there is no such specific provision which mandates the inclusion of the FOC (Free of Cost) materials supplied by the receiver.
- (g) Appellant has further stated that even assuming that if the recipient has entered into job work agreement with the manufacturer as per Section 143 of the Act, the entire transaction would be covered under job work provisions and the activity of the appellant will qualify as 'manufacturing service' under SAC 9988 which attracts GST @ 18% rather than 28% if the application for ruling is rejected.

PERSONAL HEARING

5. The Applicant, was given an opportunity to be heard in person on 05-03-2025. Shri. M Ignatius, Director (Operations), Shri R. Swaminathan, Chief Financial Officer(CFO) and Shri P.G. Srikanth, Consultant, appeared for the personal hearing as the Authorised Representatives (AR) of the appellant. The Director reiterated the submissions made by the appellant in their appeal application and explained the facts and circumstances leading to the present appeal. The CFO stated that Silver is a major component which is supplied by Naval formation in the form of used batteries; that after extraction of Silver, the remaining is sent back to Naval formation. The cost of new battery as per contract is Rs.72,00,000/- and the cost of extraction of Silver is Rs. 2500/- per kg of the Silver. The said amount is inclusive of extraction cost, processing and fixing cost which is included in the cost of new battery. Approximately, 156 Kgs of Silver is obtained from one old & used battery. The members sought the following information and documents which they have submitted after a week's time.

- (i) Cost of recovery of Silver from the Old and life Expired batteries.
- (ii) Sample copy of contract/agreement entered into with customers other than Naval formation or Air Force where silver is procured by themselves and used in manufacture of batteries.
- (iii) The clause in contract agreement that after extraction of Silver, the remaining portion of the batteries are sent back to Naval formation.

DISCUSSION AND FINDINGS

6. The appellant is a manufacturer and supplier of customized batteries required for Naval formation as per the contract and specifications agreed

between them. Silver, used in the batteries are essential and forms integral part of the battery. This Silver, in the form of used batteries, is being supplied 'free of cost' by the Naval formation which is then extracted and used by the appellant in the manufacture of new batteries.

7. The Appellant filed Advance Ruling application under Section 97 of the CGST Act before Authority for Advance Ruling (AAR) and sought

(1) Whether the value of the silver supplied free of cost by the Naval formations (in the form of old batteries) are to be included in the taxable value adopted by the appellant on the batteries manufactured by the appellant and supplied to the Naval formations for the purpose of payment of GST or not?"

Authority for Advance Ruling vide its order No. 28/ARA/2024 dated 06-12-2024 held that the value of Silver supplied free of cost by the Naval formations (in the form of old batteries) is to be included in the taxable value adopted by the appellant on the batteries manufactured and supplied by them for the purpose of payment of GST.

8. Aggrieved, the Appellant filed an appeal before the Appellate Authority for Advance Ruling (AAAR) against the order of AAR and once again is seeking ruling on the same question asked by them before AAR. The submissions made by the appellant in the appeal application, submissions during the personal hearing, contents of the contract, documentary evidences submitted by the appellant are carefully considered.

The moot question to be answered as to whether the cost of Silver supplied by the recipient of goods need to be included in the taxable value of the new battery for the purpose of calculation of GST.

9. Section 7 of the CGST/TNGST Act defines the scope of supply. The 'scope of supply' purports all forms of 'supply of goods' made or agreed to be made for consideration 'in the course' or 'furtherance of business'. The word used in the statute would point out the supply of goods or services for a consideration.

Section 7. Scope of supply.-

(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

10. The contention of the appellant that the term 'consideration' is required to be confined as per the terms of the agreement cannot be given any wild interpretation. As per Section 2(31) of the CGST/TNGST Act, 'consideration is defined as follows.

"consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

'consideration' in relation to supply of goods or services mandates to include,

(i) Any payment made or to be made whether in money or otherwise,

(ii) Monetary value of any act or forbearance for the inducement of supply of goods or services.

11. A combined reading of Section 2(31) and Section 7(1)(a) of the CGST/TNGST Act has to be made to determine whether an activity is a 'supply' for a 'consideration'. The appellant has contracted to supply new batteries for the recipient. Consequently, the appellant 'in the course' of 'furtherance of business has agreed to supply the battery for a consideration. The primary activity of the appellant is manufacture and supply of 'Silver Oxide Zinc Torpedo Propulsion batteries' and the main component used in such manufacture is 'Silver'. Silver is being supplied as 'old and used batteries' by the Naval formation, from which Silver is extracted and used in the manufacture of new batteries. If 'silver' is not supplied (in the form of old and used batteries), the cost of the same would have been incurred by the

appellant and thus the price of the new battery would be arrived including the cost of consumption of silver.

12. The appellant has referred the Supreme Court's judgment in the case of **Bhayana Builders Private Limited** and submitted that, in the service tax regime, the gross amount charged by the service provider, which is actually received would be the part of the consideration to arrive at a gross amount charged by the service provider and that the tax is to be levied with reference to value of service actually rendered. A careful reading of the above case would show that the facts and nature of activity rendered in the above case is different from the present one. In the referred case, the service provider is engaged in the 'commercial construction service' who is availing the benefit of partial exemption specifically available for the said service. The government provided abatement to that particular industry alone, taking into consideration the value of goods and services which is impractical to vivisect in the course of business. Whereas, the present case is the manufacture and supply of goods. Hence, the nature of business is the decisive factor and just by entering into such agreement, the statutory tax liability cannot be evaded. As laid down in the case of *CLP India Private Limited Vs. Gujarat Urja Vikas Nigam* the agreement between the parties cannot override the statutory provisions.

13. Section 15 of the CGST/TNGST Act, 2017 states,

Section 15. Value of Taxable Supply:-

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

(a)

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c)

(d)

(e)

Explanation:- For the purpose of this Section,

(3) The value of the supply shall not include any discount which is given-

(a) before or at the time of the supply; and

(b) after the supply has been effected, if-

(i).....

(ii)

(4) where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

14. The section 15(2)(b) states that the value of supply shall include, any amount that the supplier is liable to pay in relation to such supply, but it has been incurred by recipient of supply and not included in the price actually paid. The section 15(2)(b) imposes statutory obligation on the supplier of goods or services. Hence, it would be the obligation of the manufacturer to manufacture the product as per the specifications agreed in the contract and using silver in the manufacture of batteries which is an essential component.

15. Entering into some contract/agreement by the appellant cannot exclude the operation of the provisions of Section 15(2)(b) of the Act. In other words, the expenses supposed to have been incurred by the appellant in furtherance of supply of goods if not supplied by the receiver, is his liability to fulfill such supply. In this case, the expenses of silver used in the batteries has been agreed to be supplied by the receiver by a contract. To include such nature of transactions, the statutory provision of Section 15(2)(b) of the Act comes into play when the expenses are incurred by the recipient. Therefore, even by entering into agreement, the statutory obligation cannot be avoided and hence the compliance and adherence to the statute is required. In the instant case, the value of supply depends on the nature and importance of raw materials being used in the manufacture and supplies. The appellant who manufactures and supplies the batteries cannot claim that the Silver supplied free of cost need not be included, as Silver is an integral component used in the manufacture and supply of batteries. Therefore, value of the Silver, being the integral part in the battery cannot be excluded to overcome the tax liability.

16. A plain reading of the contract reveals that the contention put forth by the appellant that he is not a related person with Naval formation and that there is no consideration flowing from Naval formation to the appellant other than the contract price agreed between them, is true. However, what is pivotal herein is that the significant component namely, Silver consumed for the manufacture of batteries, is supplied as free of cost Material to the appellant. Section 15(2)(b), reproduced supra, states that value shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both. However, in this case, the appellant relying on paras 2 & 3 in Part-II of the contract entered with Naval formation, contends that since 'Silver' is supplied free owing to

contractual obligation, the value of Silver will not form part of the taxable value of supply. This contention of the appellant is not acceptable in view of statutory provisions as discussed above. Also, we find that the issue of valuation of free supplies under GST has been decided by the Hon'ble Chhattisgarh High Court in the case of *M/s. Shree Jeet Transport* [Writ Petition (T) No. 117/2022], on 17-10-2023.

17. In the instant case, the free supply material supplied by the recipient of goods to the supplier is an additional consideration (non-monetary) for the supply. This non-monetary consideration i.e supply of used batteries free of cost has a direct nexus with the underlying supply. The appellant stands to gain substantial economic benefit out of the free issue material provided by the receiver of goods. Here the appellant is not paid wholly in money. The contract is for the supply of Silver Oxide - Zinc Torpedo propulsion Battery Type A- 187M3- Complete with Hardware. The main input/raw material namely Silver is supplied free of cost against Bank Guarantee in the form of old and used batteries by the recipient, in addition to the consideration in money value for the supply of said Silver Oxide - Zinc Torpedo propulsion Battery. Hence, the provision of Section 15(1) of the CGST Act, 2017 alone is not sufficient to adopt the transaction value as the value of supply of goods or services or both is not applicable for determining the value of supply in the appellant's case when a substantial part of raw material viz, Silver is supplied free of cost by the receiver of supply. The argument put forth by the appellant that the "consideration" is required to be confined as per the terms of agreement cannot be interpreted literally, as the definition of the term "consideration" vide Section 2(31) of the CGST/TNGST Act, 2017 mandates that "consideration" in relation to supply of goods or services includes - any payment whether **in money or otherwise** made or to be made. Hence, the consideration for the supply of new Silver Oxide Zinc Torpedo propulsion Battery manufactured by the appellant is paid both in terms of 'money' and 'used Batteries'.

18. As per Section 15(4) of the Act, where the value of the supply of goods or services or both cannot be determined under sub-section (1) of Section 15, the same shall be determined in such manner as may be prescribed. Accordingly, corresponding rules for valuation under various circumstances are prescribed for ascertaining the taxable value in such cases. Rule 27 of the Act, relevant for ascertaining the taxable value is extracted as below for ease of reference:

19. Rule 27 of CGST/TNGST Rules, 2017 enumerates that

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, -

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

20. In view of the above discussions, we are of the view that the value of taxable supply on this issue on hand is to be determined from the Rule 27(b) of CGST/TNGST Rules 2017, mentioned above.

21. To sum up, the value of Silver supplied free of cost by the Naval formation in the form of old batteries is required to be included in the taxable value in terms of provisions of Section 7 read with Section 2(31), Section 15(2)(b) as also Section 15(4) of the CGST/TNGST Act read with Rule 27(b) of the CGST/TNGST Rules, 2017.

22. The appellant has also relied on the Circular No.47/21/2018-GST dated 8th Jun, 2018 which was confined to that specific subject material of moulds and dies (Capital Goods) which are being supplied by the Original Equipment Manufacturer (OEM) to a Component Manufacturer free of cost. The context which lead to issuance of this circular need to be examined. In the erstwhile Central Excise era, the dutiability of the product is on the activity of manufacture and hence the concept of 'amortization' of value of tools and dies were in existence and the same was clearly clarified by the CBEC on the supply and amortization of tools and dies either owned by OEMs or by the component manufacturers. In the GST era, when the taxability is on supply, to alleviate the confusion CBIC categorically has issued a clarificatory circular for Moulds and dies. As per the clarification, if moulds and dies owned by OEMs and provided to component manufacturer (both non related) on FOC basis, there is no requirement of reversal of ITC by the OEMs and the value of moulds and dies also shall not be added to the value of such supply. In contrast, if the OEM supplies moulds and dies belonging to component manufacturer, amortised cost of such moulds shall be added to the value of the components with the OEMs required to reverse the credit availed on such moulds and dies. The circular was relied in decision of the AAR, Maharashtra

in the case of *M/s Lear Automotive India Private Limited*, as the clarification issued in the circular is same with that of the issue dealt by the AAR in the said case.

23. In the instant case, Silver is used in the process of manufacture of batteries and it becomes integral part of the battery. Therefore, the analogy put forth by the applicant shall not be applicable in the instant case. The facts of the case on hand is different from the clarification given by the Board vide the above circular. Here the Silver is extracted from the used batteries supplied by the recipient, which is the main raw material for the manufacture of the Silver Oxide-Zinc battery and hence the above said Circular as well as the AAR, Maharashtra's decision have no relevance on this issue.

24. For the purpose of their own convenience, the appellant and the receiver of the goods had entered into contract and agreed between them on the exclusion (cost of free supply of Silver as used batteries) and inclusion (the cost of extracting silver by the appellant) leaving behind the statutory requirements stipulated in the GST laws as discussed above. Mere contract or agreement between the parties shall not be considered as final in determining the taxability of a transaction. The contract/agreement entered should also take into account the provisions of statute.

25. The appellant has stated that, even if it is assumed that the recipient has entered into a job work agreement with them, as per Section 143, the entire transaction would be covered under job work provisions and the activity of the appellant would be classified as 'manufacturing service' attracting GST @ 18% rather than 28% as per the decision of AAR. We would like to reproduce the definition of 'job work' provided under Section 2(68) for better understanding.

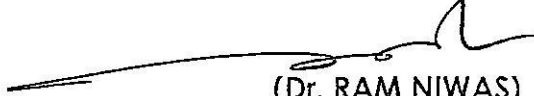
(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;

26. As per the above definition, it is 'any treatment or processes done on the goods belonging to another person'. As per the facts presented to this forum, the appellant is not doing any treatment or process on the goods supplied by the recipient, but is extracting 'Silver', an important component for use in the further manufacture and supply of brand new batteries to the Naval formation. Hence, the argument of job work put forth by the appellant is not acceptable.

27. In view of the facts and circumstances of the case, and based on the discussions, we pass the following order.

ORDER

We uphold the ruling given by the Authority of Advance Ruling in Order No. 28/ARA/2024 dated 06-12-2024 and dismiss the appeal filed by the appellant.



(Dr. RAM NIWAS)

Principal Chief Commissioner of GST
& Central Excise, Tami Nadu & Puducherry
Zone/Member AAAR



(Dr. D. JAGANNATHAN)

Commissioner of Commercial Taxes
Tamil Nadu/Member AAAR

To

M/s. High Energy Batteries (India) Limited.

GSTIN: 33AAACH1479H1ZR

S.F. No. 243/7, 243/8B, Pakkudi road,
Mathur Industrial estate, Mathur-622515

//by RPAD//

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6. Stock File / Spare – 2.