424060/2021/(DES) CCT

E2 249366501

66 **SPEED POST**

भारत सरकार GOVERNMENT OF INDIA
वित्त मंत्रालय MINISTRY OF FINANCE
राजस्व विभागDEPARTMENT OF REVENUE
केन्द्रीय अप्रत्यक्ष कर और सीमाशुल्क बोर्ड
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
मुख्य आयुक्त का कार्यालय
OFFICE OF THE CHIEF COMMISSIONER
केन्द्रीय कर, केन्द्रीय उत्पादशुल्क और सीमाशुल्क
CENTRAL TAX, CENTRAL EXCISE & CUSTOMS
तिरुवनंतपुरमक्षेत्र,THIRUVANANTHAPURAM ZONE
सी. आर. भवन, आई. एस. प्रेसरोड, कोच्चि, C.R. BUILDING, I.S. PRESS ROAD, KOCHI-682 018
E-mail: cccochin@nic.in Fax: 0484-2397614 Phone: 0484-2394100/0404

C.No.IV/16/02/2020/CC (TZ)/AAAR **Date: 27.05.2021**

To

The Registrar,
Office of the Commissioner,
State Goods & Service Tax Department,
Tax Tower, Karamana,
Thiruvananthapuram-02.

Madam,

Sub:- KSGST Act, 2003 – Appeal against Advance ruling u/s 97 – Hearing of appellant – Orders issued – Authentication of order – reg.

Please refer your letter No.CT/7706/2020-C3 dated 05.05.2021 enclosing the final order bearing No.AAR/13/21 dated 05.05.2021 signed by the Commissioner of State G.S.T. in r/o the appellant M/s Logic Management Training Institutes Pvt. Ltd, Palarivattom, Kochi.

2. In this regard, the above final order duly signed by the Chief Commissioner of Central Tax, Central Excise & Customs, Thiruvananthapuram Zone is returned herewith for further necessary action.

Yours faithfully,

(P.S.to Chief Commissioner)

Encl: Duly signed Order No. AAR/13/21 dated 05/05/2021
(04 copies)

1

APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA

PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE RULING

(U/s.101 OF THE KERALA/ CENTRAL GOODS AND SERVICES TAX ACT, 2017).

Members present:

Shyam Raj Prasad IRS
Chief Commissioner,
Central Tax, Central Excise and Customs
Thiruvananthapuram Zone, Cochin

Anand Singh , IAS.
Commissioner
State Taxes, Kerala

Name and Address of the Appellant	M/s Logic Management Training Institutes Pvt Ltd, 7th Providence , Mahakavi Vylopilly lane, Pallarivattom, Kochi
GSTIN	32AABCL8151B1Z1
Advance ruling against which appeal is filed	KER/76/2019 DATED 20/5/2020
Date of filing Appeal	15-7-2020
Date of Personal Hearing	31-03-2021
Authorized Representative	Adv. Sherry Oommen

ORDER No. AAAR/ 13 /21 DATED 05/05/2021

The instant appeal stands filed under section 100(1) of the GST Act, 2017, by M/s Logic Management Training Institutes Pvt Ltd, Kochi holding GSTIN 32AABCL8151B1Z1 (hereinafter also referred as the appellant or M/s Logic Management) against the Advance Ruling Order No. KER/76/2019 dated 20/5/2020. The appellant is an institute imparting coaching to the students to facilitate them to obtain qualification such as Chartered Accountant, Cost Accountant, Company Secretary, certified Management Accountant, certified Public accountant, Association of Chartered certified Accountant etc.

Brief facts of the Case

1. The Appellant challenges the legality, correctness and propriety of the impugned order dated 20/05/2020 passed by the Advance Ruling Authority, Kerala on the following grounds and contentions, which are in the alternative and without prejudice to one another.

2. The Authority for Advance Ruling has not considered with a legal perspective the various facts, law and circumstances and even the ruling of the prevailing law on the subject submitted by the appellant. Therefore all the details submitted by the appellant so far, may be read as one of the points of this appeal memorandum. The following are the queries raised by the appellant in the original application and except query number 7, the Authority for Advance Ruling, ruled that the service rendered by the appellant is taxable services and is composite supply. 7th query has been answered as exempted.

2.1. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Govt. recognized Institutes, on the basis of the specific syllabus (curriculum) published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

2.2. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

2.3. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized Institutions like ACCA, IMA USA, etc.

and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

2.4. What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

2.5. Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized institutes or universities on behalf of students studying at the appellant institute.

2.6. The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee.

2.7. Whether there is any tax liability on hostel fees collected from outside students staying at the hostel for study purpose at a rate of Rs.250/- per day per person including food.

2.8. Whether there is any tax liability on the appellant for selling text books to its students.

3. The Rulings provided by the Authority are given below:

3.1. Questions Nos. 1, 2 and 3 -The appellant is not covered under the definition of "educational institution" in Para 2 (y) of the Notification 10. 12/2017 Central Tax (rate) dated 28-06-2017 and hence the services provided by the appellant is not exempted from GST.

3.2. Question No.4 - As per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017, the education services provided by the appellant come under SAC - 9992- 999293 - Commercial training and coaching services. As per Explanatory Notes to the Scheme of Classification of Services the service code - 999293 includes any training or coaching provided by any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

3.3. Question No.5 - As per Section 15 of the CGST Act, 2017 the entire consideration received by the appellant from the recipient of services is liable to GST. However, if in respect of the amount collected as examination fees / other fees the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied then such amount can be excluded from the value of taxable supply as expenditure incurred by the appellant as a-pure-agent of the recipient of services.

3.4. Question No.6 - The provision of coaching / training provided by the appellant to their students along with hostel facility qualifies as a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and the tax liability on the composite supply has to be determined as per provisions of Section 8 (a) of the CGST Act, 2017. Therefore the entire supply is to be treated as falling under SAC - 9992- 999293 - Commercial training and coaching services: being the principal supply and will be liable to GST at the rate applicable for the principal supply.

3.5. Question No.7 – As the value of supply of a unit of accommodation in the hostel facility provided by the appellant to outside students is below one thousand rupees per day, the appellant is eligible for the exemption under Sl. No. 14 of the Notification No.12/2017 Central Tax (Rate) dtd.28-06-2017 in respect of the supply.

3.6. Question No.8 – The sale of text books to the students will attract GST as per the schedule of rates notified under Notification No.01/2017-Central Tax (Rate) dtd.28-06-2017.

Grounds of Appeal

4. The appellant submits the following points against the ruling made by the Authority:

4.1 Regarding Questions 1 to 3 in the impugned order, the Authority ought to have found that the exemption Notification No. 12/2017 Central Tax (Rate) never intended that the benefit exemption should be limited to a class of professional students. On the other hand, the exemption facilities provided through the notification are for imparting education and thereby interpreting

that the exemption is only to limited institutions is against law. The appellant believes that the intention of Government as per the notification is to all students studying the subject and taking part in the Recognized courses, whether directly or indirectly. As long as there is no special condition specified in the notification the benefit is also to be given to Private players in Education. The Authority has passed the order without considering the law of equality and thus failed to render justice to the appellant. By restricting the exemption to a part of the society, or class of institutions, the settled principles of equality granted by the Constitution under Article 14 is violated.

4.2. With regard to Question No. 4 in the impugned order, the Authority wrongly classified the nature of services of the appellant under the SAC9992-999293 - Commercial training and coaching services. As the service of the appellant providing education as per the curriculum recognized by law is covered in the exemption category, the Authority misconstrued the classification 'as commercial training and coaching institutes'. Thus the appellant who is falling under the exempted category as per Notification No. 12/2017 Central Tax (rate) becomes liable to pay tax.

4.3. With regard to Question No. 5 in the impugned order, the learned Authority for Advance Ruling, ought to have found that the collection of fees to Government/university or Institute working on the basis of Act passed in the Parliament is only the work of an agent and treating the same as taxable supply is incorrect. The Authority for Advance Ruling under Karnataka Goods and Services Act wherein a similar activity of a similar institution, wherein the institution was collecting exam fees and paying it on behalf of the students was considered. In Advance Ruling No.KAR ADRG 116/2019 dated 30-09-2019, it was observed by the Authority under therein that "The activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the appellant as per Rule 33 of the Central GST Rules." It is the appellant's submission that appellant's activity also is eligible for exclusion by virtue of Rule 33 of Central GST Rules. Thus, by following the above provisions the service rendered by the appellant would fall under the exempted category.

4.4. With regard to Question No.6 in the impugned order, the Authority failed to consider the exemption given to hostel students as per Entry 14 of Notification No. 12/2017. A student of the appellant institute, who stays with the appellant's students' hostel is liable to pay tax on his hostel fee whereas the same student stay in another hostel is exempted. It is pertinent to note that in Entry 12 of Notification No. 12/2017 the Hostel expenses below Rs.1000 per day is blanketly given exemption. No need to club it with other Services since it is no way related to the main services provided. As per the decision in the case of re Sarj Educational Centre (GST AAR West Bangal), the hostel facilities and educational services provided by the appellant does not fall under the composite supply.

4.5. With regard to Question No.8, by issuing impugned order fixing tax on exempted goods like books, the Authority ought to have found that if a student purchases the same book from a book shop, the same is exempted as books, and it is taxable at 18% when students purchases the very same book from the appellant. By issuing such an incorrect order, the authority has failed to note the fact that the appellant will be singled out from the main stream of institutions.

4.6. It is pertinent to note that in the period of the Service Tax, which is the pre-GST regime, and still in GST, the supply of reading books in open Market is exempted. The authority for Advance Ruling failed to find that in the Ruling, it never considered the fact that the composite supply should be taxable supply. Here the books are not taxable supply so it never come under GST. Also, the books are priced in Open Market. The peculiar circumstances here will adversely affect the interest of imparting education. As per the impugned Ruling, those, students who are purchasing the books from the appellant institute is taxable as composite supplier, where as if the same students purchase the same book from a book shop or other institute, it is exempted. This position is also unfair and against the "right to practice any profession, or to carryon any occupation, trade or business under Article 19(1)(g)of the Constitution of India.

5. The detailed submissions of the Appellant on above grounds are as follows, which are without prejudice to each other:

5.1. The appellant is following the same curriculum as specified or recognized by the bodies constituted under Acts of Parliament so providing education in a format recognized by law. After getting proper guidelines, lectures and other educational support as prescribed by the above institutions, the students appear for examinations conducted by the above Government recognized institutions. The concerned Government-recognized institutions are conducting the exams by collecting fees for examinations books, etc. as per their rules of conduct, and the appellant is providing the very same service such as classes for the students of the appellant institute to comply with the regulations and all requirements of such institutions working under the Acts of legislature and Parliament. The regular colleges, whether aided or self-financed affiliated to Universities are also rendering the same service to students and though they are not awarding any degrees or diplomas, they are not subjected to levy of GST on service tax by the Department of GST and so much so, if such colleges are not liable for payment of GST on their service, then there is no reason why the appellant who are rendering the very same service should be treated differently and subjected to tax.

5.2. The Authority for Advance Rulings (AAR), Karnataka in the application filed by M/s Emerge Vocational Skills Private Ltd. AAR No. KAR ADRG 20/2018 has held that the service of providing Degree courses under related curriculum's by educational institutions to students exempt from the liability to pay Goods and Services Tax (GST). The question on which advance ruling is sought in the above case is as follows: "Whether the services provided by the appellant in affiliation to specified universities and providing degree courses to students under related curriculum's are exempt from Goods and Services Tax vide entry no. 66 of the Notification No. 12/2017 - Central Tax dated 28.06.2017?" The Authority for Advance Ruling held that "The services provided by the appellant in affiliation to specified universities and providing degree courses to students under related curriculum's to its students exempt from Central Goods and Services Tax vide entry no. 66 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28.06.2017 subject to the condition that such education services provided must be as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force".

5.3. The appellant is following the same curriculum as specified or recognized by the bodies constituted under Acts of Parliament so providing

education in a format recognized by law. The appellant herein is also providing B.com and M.com degree courses which is a recognized course under Indian law. The appellant offers University-recognized B.Com and M.Com education simultaneously with training for the professional qualifications, as that helps students to obtain graduation simultaneously with professional studies, and also because the study materials for both are fundamentally similar. The appellant provides:

1) education by following a legally recognized Curriculum
2) for obtaining a legally recognized qualification.

5.4. In the case of ITM International Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi [2017 (7) GSTL 448 (Tri. Del)], the Hon'ble CESTAT Principal Bench had passed an order holding that educational qualifications issued by foreign Institutes which are recognized by Government of India, are also to be treated as certificate recognized by law for taxation purposes. By virtue of this interpretation, the appellant's activities of providing services to qualify for courses offered by Indian Government recognized foreign institutions also fall within the purview of courses recognized by law. The order had also re-emphasized that an institution offering degree courses recognized by law was exempted from tax. The decisions of the Hon'ble High Court of Kerala in The Malappuram District Parallel College v. The Union of India [W.P.(C)No. 728 of 2005] and Union of India and others v. The Kasaragod District Parallel College and another [2013 (3) KHC 509] are also relevant here wherein levy of Service Tax on services offered by parallel colleges in Kerala was held to be invalid. In the latter case, the Hon'ble Court had held that:

".... 35. Therefore, what is important to consider is that if the institution is one wherein students are being prepared for acquiring qualification, certificate or diploma or degree which is recognized by law in force, then the same will come within the second limb of the exclusion clause under Section 65(27)..."

5.5. The Appellant is preparing students to obtain qualifications and degrees as spelt out by the Hon'ble Court so was eligible for exemption under the Service Tax regime. When the same exemption has been carried forward to GST regime by virtue of Notification No.12/2017-Central Tax (Rate), appellant's eligibility for exemption would automatically get carried

over into the GST period as well. The Impugned AAR Ruling has been passed by the Respondent No.1 based on a misapplication of law.'

5.6. The term "educational institution" has been defined in 2(y) of Notification No.12/2017-Central Tax (Rate) and the same reads as under:

2(y) "educational institution" means an institution providing services by way of

- *(i) pre-school education and education up to higher secondary school or equivalent;*
- *(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- *(iii) education as a part of an approved vocational education course;*

The appellant's services are eligible for exemption from GST by virtue of Entry 66 of Notification No. 12/2017- Central Tax (Rate) dated 28-062017 Issued by the Government of India whereby intra-State supply of educational services are exempted. In the earlier Service Tax regime as well, educational services facilitating qualifications recognized by law were exempted from tax and the Government carried forward this exemption through Notification No. 12/20 17-Central Tax (Rate). The word 'education' is derived from the Latin word 'educa' which means bringing out latent faculties. 'Education' means the act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment and generally of preparing onself or others intellectually or mature life; the act or process of imparting or acquiring particular knowledge or skills. It is the result produced by instruction, training or study. Thus, the word has very wide import. [Padmanav Dhury v. State of Orissa, AIR 1999 Ori 97,99]. In case of Sole Trustee, Loka Shikshana Trust v. CIT, [1975 (8) TMI 1 - SUPREME Court], Honble Supreme Court observed that education connotes the process of training and developing knowledge, skill and character of students by normal schooling.

The expression 'education' occurring in various articles of the Constitution of India means and includes education at all levels, from the primary school level up to the postgraduate level and professional' education. [TMA Pai Foundation v. State of Karnataka (2002) 8 SCC 481 (sc),

para 450]. In Soorya Educational Trust v. ITO 2012 (6) TMI 602 it was held that "Memorandum of Understanding entered by the assessee with Annamalai University and objects of the Trust it is clear that ex-facie the objects are nothing but educational and assessee was imparting a type of oral education and students studying in assessee's institutions were being awarded formal Diploma/degree. There is no case for the Revenue that Annamalai University was existing for any commercial purposes. In our opinion, if Annamalai University was an educational institution, then assessee, which was conducting classes for the said University under its authority, was also an educational institution. Hence fees like admission fees, tuition fees, examination fees, computer fees, sports fees, annual subscription of journal fees of schools, universities shall be construed as covered within the ambit of 'education' and shall be covered by negative list - thus no service tax".

5.7. The conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognized by law would be covered by the Notification No.12/2017. Thus the appellant falls within the exempted category and not liable to pay any tax. The Authority misconstrued the appellant's services as one which falls under the SAC-9992-999293-commercial training and coaching institutes. Thus by classifying the educational services provided by the appellant -under the above SAC, the appellant has been denied the availment of exemption. The exam fees collected by the appellant and paid to respective exams bodies in India and Abroad Universities and Education Bodies without any profit mind as a facility to students are also exempted from tax liability. The appellant is only acting as a facility provider for students to pay their exam fees on time without any technical difficulties. Normally Students can pay the examination fees directly to CA, CS, CMA, IMA USA, ACCA UK, IFRS, CPA USA, etc. using their debit or Credit Card. Lot students especially those coming from disadvantaged backgrounds, face difficulty in making such online payments since they would not be having credit or debit cards or enough technical knowledge to make such payments. So the appellant helps them to pay it through the appellant's banking facility and so that they can concentrate on their studies and no need to panic about the technicalities related to examination. There is no profit element in this as we are just collecting the exam fees from students and paying it to the respective institutions. The activity of collecting and transferring examination fees and

other fees of the recognized Institutes or Universities on behalf of students studying at the appellant Institute is carried out by the appellant acting as a mere agent of students without any value addition or profit generation, but with the only underlying objective to lend a helping hand to students to get past the technicalities of online fee payment. Therefore, the said activity would not qualify as a supply under GST laws and hence would not be eligible to attract GST.

5.8. The Authority for Advance Ruling under Karnataka Goods and Services Act considered a similar activity of a similar institution, wherein the institution was collecting exam fees and paying it on behalf of the students. In Advance Ruling No. KAR-ADRG 116/2019 dated 30-09-2019, it was observed by the Authority that "The activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the appellant as per Rule 33 of the Central GST Rules". It is the appellant's submission that appellant's activity also is eligible for exclusion by virtue of Rule 33 of Central GST Rules. Thus by following the above provisions, the service rendered by the appellant would fall under the exempted category.

5.9. The appellant sells text books and notes pertaining to the courses with very slight margin to ensure that the students of the appellant get them hassle-free and at reduced prices than that offered by outside sources like book shops or shopping websites. The appellant sells these books at an open market price. Printed books were exempted from GST under the VAT regime and the exemption is continued into GST regime as well. As per the official list of commodities and tax rates published in the official website of Central Goods and Services Tax Department, namely www.cbic-gst.gov.in printed books fall within the category of exempted goods. It is the appellant's submission that since printed books are exempted from GST, appellant's activity of supplying to its students books of courses offered by the appellant, shall be eligible for exemption as well. In the case of re M/s.Shri Ashok Chaturvedi (GST AAR Chhattisgarh), the court held that supply of specified printed educational books by CHHATTISGARH TEXT BOOK CORPORATION as per the instructions of School Education Department CG [Lokslkshan Sanchnalay] or as per instruction of various agencies of school Education Department CG such as Rajiv Gandhi Siksha Mission / SCERT /

office of District Education officer etc. consequent to printing of the Syllabus as decided by the SCERT, merits consideration as supply of printed books attracting zero rate, under Notification No. 2/2017-State Tax(Rate) No. F-10-43/2017-CT/V/70, Dated 28-06-2017, under HSN Code 4901.

6. The Appellant craves leave to add, amend and alter any of the submissions mentioned here in above and produce such documentary evidence as may be necessary for the case. The Appellant further craves leave to rely on such judicial precedents as may be required in their defense.

7. On the facts and circumstances, the Appellant prays for modification in the impugned rulings as under:

7.1. With respect to Question No. 1, 2 and 3 raised in the Original Application for Advance Ruling, that the educational services provided by the Appellant is exempted and does not attract any tax under the GST laws.

7.2. With respect to Question No.4 raised in the Application, that the SAC of the services of the appellant, may be modified in the light of the non-taxability of the services rendered by the appellant.

7.3. With respect to Question No.5, 6 & 8 raised in the Application, that the ruling of the Authority for Advance Ruling may be modified by considering the facts, law and the circumstances of the activities of the appellant.

7.4. In short, according to the appellant, except question number 7, the appellant has not received a clear and legally sustainable ruling and therefore all the queries except query number 7 may be reviewed and justice may be rendered to the appellant.

Personal hearing

8. The appellant was afforded an opportunity of personal hearing via virtual media on 31/3/2021. The authorized representative of the appellant Adv. Sherry Oommen appeared before the authority and reiterated the contentions raised in the appeal memorandum. He also submitted additional brief dated 29.03.2021 in their favour for consideration, which was also taken on record.

Discussion and Findings

9. We have carefully gone through the facts of the case, the Advance Ruling Authority order dated 20/05/2020, the appeal memorandum filed by the appellant and other submissions made by them during the course of personal hearing and other evidences on record. The seven disputed issues to be decided in this appeal proceeding are listed as follows:-

Issue No. 1, 2 & 3: Whether all the following Education program and trainings being offered by the appellant are exempted from GST as imparting of education?

1. The appellant is giving lecture classes and notes including printed books published by Govt. recognized Institutes, on the basis of the specific syllabus (curriculum) published by the very same Institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

2. The appellant is giving lecture classes and notes including printed books published by Government-recognized Institutions like Universities and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

3. The appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc. and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

Issue No. 4: What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

Issue No. 5: Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized

institutes or universities on behalf of students studying at the appellant institute?

Issue No. 6: The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee?

Issue No. 7: Whether there is any tax liability on the appellant for selling text books to its students?

10. Before going into the merit of the issues involved, it is noticed that the appellant in their additional submissions has raised some preliminary objections against the advance ruling stating therein that the ruling has been pronounced in absence of issue of a notice or seeking explanation from them or by attributing any reasons/grounds for the findings and therefore the ruling has been issued in violation of principles of natural justice. They have relied upon the case law of CB Gautam (1993) 1 SCC 78. We observe that the procedure prescribed for dealing with the application filed by the appellant before Advance ruling authority has been followed by the lower authority, in accordance with law. It is further observed that there is no provision for either issue of notice or seeking explanation from the appellant before giving verdict on the application, prescribed in the GST Law. Moreover, a personal hearing was duly granted by the lower authority to the appellant (refer para 2 of the Ruling) and submissions have been duly considered while passing the impugned Ruling. Hence, no infirmity could be found in the proceedings as the principles of natural justice have been complied with in true spirit of law. The case law of CB Gautam being not relevant to the case is of no help to the appellant. As regards, reasons for arriving at a decision on the issues, we observe that the Ruling has discussed the issues with reference to applicable portion of GST law and arrived at the conclusions accordingly. Moreover, all the points raised by them in their appeal memorandum and additional submissions are being considered once again in this appellate proceedings. Hence, the objection raised by the appellant and the case laws relied upon by them in this regard are found irrelevant.

11. Having dealt with their preliminary objections, we shall now examine each disputed issues in seriatim keeping in view the submissions made by the appellant. The main contention raised by the appellant is that they are

providing educational services based on the curriculum published by the recognized institutions and prescribed by law and is, therefore, eligible for exemption from GST as per Sl. No. 66 of the notification no. 12/2017-CT (rate) dated 28/6/2017. The appellant further contends that since their principal supply is exempted from GST, the other services that are ancillary to the same are also exempted from GST.

12. The contentions of the appellant regarding exemption of services provided by them are being examined in the light of relevant Entry No. 66 of Notification no. 12/2017-CT (rate), dated 28/6/2017, which provides exemption to services provided by Educational Institution. The Entry No. 66 with HSN 9992 specifies as follows:

"Services provided -
(a) by an educational institution to its students, faculty and staff;
(b) to an educational institution, by way of,-
(i) transportation of students, faculty and staff;
(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
(iii) security or cleaning or house-keeping services performed in such educational institution;
(iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary;
(v) supply of online educational journals or periodicals;

Provided that nothing contained in [sub-items (i), (ii) and (iii) of item (b)] shall apply to an educational institution other than an institution providing services by way of pre -school education and education up to higher secondary school or equivalent;

Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of, —

i. Pre-school education and education up to higher secondary school or equivalent; or

ii. Education as a part of an approved vocational education course."

Para 2 (y) of the notification no. 12/2017-CT(rate) defines "Educational institution", according to which "Educational Institution" means an institution providing services by way of:

(i) Pre-school education and education up to higher secondary school or equivalent;

(ii) **Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;**

(iii) Education as a part of an approved vocational education course.

13. We observe that the appellant's institution is not providing any elementary education or pre-school or upto higher secondary level or equivalent, thereby, they would not come under the purview of the 'educational institution' as defined in para 2(y)(i) of the said notification no. 12/2017-CT. Similarly, the appellant is not engaged in providing Education as a part of an approved vocational education course as envisaged in para 2(y)(iii) of the said notification. It is not the case of the appellant that they are providing any vocational courses. Hence, they cannot be categorized as 'education institution' within the meaning of sub-clauses (i) and (iii) of para 2 (y) of the said notification for the purpose of exemption. The appellant has also not claimed the exemption under these two sub-clauses either.

14. Now, it is to be examined whether the services rendered by the appellant would fall within the ambit of para 2(y)(ii) of the said notification no. 12/2017-CT as detailed above.

14.1. The term "Education" is not defined in the CGST/SGST Act but as per Apex Court's decision in "Loka Shikshana Trust v/s CIT", Education is process of training and developing knowledge, skill and character of students by normal schooling. The term "educational institution", under sub-clause (ii) ibid, covers institutions providing services by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force. In order to be qualified to get included under this sub-clause, educational service should be imparted as a part of curriculum and for obtaining a qualification recognized by extant law.

14.2. GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 issued by CBEC in connection with Service tax can be adopted. As per Education guide of 2012 meaning of 'education as a part of curriculum for obtaining a qualification recognized by law' is clarified to be "only such educational services are in the negative list (exempted) that are related to delivery of

education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law". It is important to understand that to be in the negative list (exempted) the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification. This clearly implies that only those institutions whose operations conform to the specifics given in the definition of the term "Educational Institution", would be treated as one and entitled to avail exemptions provided by the law.

14.3. Accordingly, the private coaching centers or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution. The appellant's institution as such has no specific curriculum and the institution itself does not conduct any examination or award any qualification recognized by law for the time being in force. The institute only provides coaching to the students registered with them. The appellant is not issuing any 'valid course completion certificate' or 'any study certificate' or any degree prescribed under any statute in respect of CA, CMA, CS, ICWA etc. Moreover, coaching or training in appellant's institution is not a mandatory compliance for an aspirant in pursuing their study and obtaining certificates for these courses. It is also not mandatory on the part of the students to furnish any certification or nomination or forwarding of their applications or registrations through the appellant to the concerned statutory body for awarding the certificate for the course. Therefore, the appellant is not qualified to be classified as an 'educational institution' within the meaning assigned and covered vide para 2(y)(ii) of Notification no.12/2017-CT (rate).

14.4. The appellant has contended that the Advance Ruling authority has erroneously reckoned that the appellant would need to be recognized/approved by the respective bodies, which is actually not required in GST law. They also added that they have obtained recognition of the ICAI and that courses undertaken by them in ACCA and CMA is also recognized by the Institute of Cost Accountant of India. They impart teaching solely based on curriculam prescribed by the concerned professional bodies, hence they are eligible to exemption as "educational institution" under Notification No.

12/2017-CT (Rate) dated 28/06/2017. They have referred to the definition of 'education' and 'curriculum' given in Cambridge Dictionary, Oxford Dictionary and Dictionary.com and stated that 'education as a part of curriculum...' can be understood as "imparting knowledge (education) through a systematic syllabus in an institution, college or school". According to them, the coaching/training institute that imparts/prepares the students for obtaining a qualification duly organized by any law, are exempted under the said notification. They have also submitted that the taxation statute is to be construed strictly for which they have relied upon several case laws in their favour. At the same time, they also contended that when an exemption notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict interpretation. They have relied upon case of Reliance Petroleum Ltd [2008] 227 ELT 3 [SC] in this regard.

15. In this regard, it is emerging from above discussions, that the coaching or training service provided by the appellant to the aspirants of CA-Foundation, CA-Inter, CA-Final, CMA (ICWA)-Foundation, CMA-Inter, CMA-Final and Intermediate is not the service provided by means of 'education as a part of curriculum that has been prescribed for obtaining a qualification prescribed by law'. The coaching / training imparted by the appellant to CA/CMA aspiring students (for appearing and qualifying in the respective examinations) would not lead to grant of certificate/qualification recognized by law. Instead, all the aspirants are required to take a separate set of examinations conducted by the said recognized institutions like ICAI, ICWA etc. for acquiring certificate or degree recognized by law. The training / coaching imparted by the appellant might be helping the aspirants to clear the tests/examinations organized by the recognized institutions but not per se lead to grant of any certificate or degree as such recognized by law.

16.1. It is settled law that the person availing the exemption notification shall satisfy all the conditions prescribed in the notification and failure to do so would disentitle him from the exemption. In the case of Harichand Shri Gopal 2010 (260) ELT 3 (SC), Larger bench of Hon'ble Supreme Court has observed as under:

"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the

conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption....."

16.2. As regards conditions of the notification and fulfillment thereof in true spirit, reliance is placed on the case of M/s Eagle flask Industries Limited [2004(09)LCX 0235] wherein Hon'ble Supreme Court has held that the conditions laid down in notification are statutory conditions and same are to be followed/fulfilled in its true letters and spirits and these are not mere formalities and once the conditions of notification granting exemption/refund are not satisfied, the refund cannot be granted to the assessee.

16.3. It is well settled law that the exemption notification being a liberal piece of legislation, needs to be interpreted strictly within the plain words and language provided therein and there is no scope of intendments. We rely upon the verdict of Hon'ble Supreme Court in case of H.M.M Ltd Vs .Collector - 1986 (87) ELT 593(SC) that *"Exemption Notification is not only to be construed strictly but also reasonably having regard to the language employed therein"*. Also in Srl Sathya Sai Institute of High Medical Sciences Vs UOI [2003 (158) ELT 214 SC], the Hon'ble Supreme Court ruled that *"Even the court cannot interpose further conditions in the notification". Further, It is settled law that* statute/ notification has to be understood by its plain words and no intendment is allowed as is held in following cases:

(i) In the case of Dharmandra Textile Processors Vs. Union of India reported in [2008 (231) ELT.3 (S.C.)], the Apex Court held that

> *" it is a well settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent".*

(ii) The above views have been expressed by the Hon'ble Supreme Court in the case of Novopan India Ltd vs. CCE. reported in [1994(73) ELT.769 (S.C.)], holding that

> *"a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification".*

(iii) Further, in case of CCE vs. Sunder Steels Ltd., reported in [2005(181) E.L.T. 154 (SC.)] the Apex Court has also held that

> *"the Notification has to be interpreted on its wording. No words, not used in the notification can be added."*

(iv) Also, the Supreme Court in the case of Rajasthan Spg. &Wvg. Mills vs. CCE reported in [1995 (77) ELT.474 (SC)] observed that

> *"since it was a case of exemption from duty, there was no question of any liberal construction to extend the term and scope of the notification as such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification to which no extended meaning can be given to exempt the items by enlarging the scope of exemption granted by the notification".*

16.4. In the case of Dilip Kumar & Co. 2018 (361) E.L.T. 577 (SC), Hon'ble Supreme Court has held with regard to interpretation of tax exemption Notification that it is the law that any ambiguity in a taxing statute should ensure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue – and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. It is further affirmed that every taxing statue and exemption clause should be interpreted strictly.

16.5. In view of above settled position of law in respect of exemption notification, and by applying the settled law of strict interpretation of taxing statute, which are plainly worded, as in the case in hand, the services rendered by the appellant are held to be not a service by way of 'education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force' as envisaged under entry no. 66 of the said notification, for exemption from GST.

17. The other issue for consideration before us is service accounting code of the services rendered by the appellant. As per the Scheme of classification of services under GST Law, SAC 999293 Specifies about commercial training and coaching services. This service code includes any training or coaching provided by any Institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field

other than the sports with or without issuance of a certificate and includes coaching or tutorial classes. Thereby the services rendered by the appellant can rightly be classified under this SAC.

18. The next issue raised before this authority is that whether there is any GST liability on the appellant for collecting and transferring examination fees and other fees to the recognized institutes or universities on behalf of the students studying at their institute.

18.1. The value of taxable supply of goods and / or services is determined by the provisions of Section 15 of the CGST/ SGST Act, 2017. Section 15 (2) provides that the value of supply shall include-

> (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
>
> (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) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
>
> (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
>
> (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

18.2. Rule 33 of the CGST Rules, 2017 deals with value of supply of services in case of pure agent, wherein it is provided that

"Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, –

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. – For the purposes of this rule, the expression "pure agent" means a person who –

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and .

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."

18.3. As per the provisions of Section 15 of the CGST/SGST Act, 2017 the entire consideration received by the appellant from the recipient of services is taxable under GST. However, if the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied and the appellant acts as a pure agent on behalf of the students enrolled with them, there will be no tax liability for the amount collected as examination fees / other fees. Accordingly, such amount can be excluded from the value of taxable supply as expenditure incurred by the appellant as a pure agent of the recipient of services.

19. Another issue for determination before us is that the appellant offers hostel facility to its students at a rate of less than Rs. 200/- per day per person including food and at a monthly rate of maximum Rs. 6000/-. Whether there is any tax liability on such hostel fee?

19.1. In order to determine this issue, the provisions of Composite supply under CGST /SGST Act is relevant. Section 2(30) of the CGST Act, 2017 defines composite supply, according to which, "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." Further, Section 8 of the CGST Act, 2017 contains the provisions of tax liability on composite and mixed supplies. Section 8 prescribes that

"the tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."

19.2. The Advance Ruling authority has held that provision of coaching / training provided by the appellant to their students along with hostel facility qualifies as a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and the tax liability on the composite supply has to be determined as per provisions of Section 8 (a) of the CGST Act, 2017. Therefore, the entire supply is to be treated as falling under SAC – 9992- 999293 – Commercial training and coaching services; being the principal supply and will be liable to GST at the rate applicable for the principal supply. The appellant has however contended that hostel facility is a standalone facility and not naturally bundled along with educational services; and that hostel facility, being available to any person, is not mandatory and in conjunction with educational services to fall under the category of composite services; that it is not provided as a package and hence is a divisible contract. The appellant has placed reliance on the Education Guide Issued by CBEC and the case law of European Court of Justice in Volker Ludwig [2013]31 Taxmann.com 287 and UK Upper Tribunal in Hon'ble Society of the Middle Temple Vs HMRC [2013] UKUT 0250 etc. They have also claimed exemption on hostel fees under exemption notification No.12/2017-CT (Rate) dated 28.06.2017 as the declared tariff is less than Rs. 1000 per day, and has relied upon several case laws.

19.3. We observe that the appellant is mainly and principally engaged in imparting training/coaching to their students and thereby providing educational services, which is classifiable under SAC 9992-999293. The student who opts to take coaching from them stays in their hostel and pay hostel fees @ less than Rs. 200 per day or maximum Rs. 6000/- per month, in addition to the course charges as a package. It is also undisputed that they are charging Rs. 250/- per day from outside students/residents staying at their hostel. It may be seen here that they are charging different rates from their students and outside persons possibly they differentiate between the two categories of residents. The students enrolled with them are presumably charged lesser amount of hostel fees as a part of the package with educational services. In such a situation, when the appellant are distinguishing the two types of residents for charging different hostel fees for the same lodging and food services, it is not difficult to infer that their students enjoy the concession only as a part of composite services of educational services and hostel facility. No explanation is forthcoming from their appeal memorandum regarding the said difference in charges of hostel fees. In such a situation, applying the provisions of Section 2(30) read with Section 8 of CGST Act, 2017, it is conveniently held that the appellant is providing a composite services of educational service (being principal service) and hostel facility, as is rightly held by the lower authority. The arguments of the appellant therefore are liable to be rejected in this regard. Having held that the hostel facility is being provided by the appellant to their enrolled students as a part of composite services along with educational service, the entire set of service shall be classified under SAC 9992-999293 – Commercial training and coaching services, being principal service and shall be charged to GST accordingly. The claim of the appellant regarding benefit of exemption notification No. 12/2017-CT for hostel fees is also devoid of merit in view of the fact that exemption is granted to the services falling under Sl No. 14 – heading 9963 only and not for heading 9992 as is applicable in this case.

20. Another issue for determination by us is regarding tax liability on the appellant for selling text books to its students.

20.1. The lower authority has held that the sale of text books to the students will attract GST as per the schedule of rates notified under Notification No. 01/2017-Central Tax (Rate) dtd 28-06-2017. Whereas, the appellant has contended that the context of hostel facility would also apply to text books,

as the same is sold to any willing consumer and students for a separately agreed consideration. They have sought exemption from GST in terms of Sl. No. 119 of the Notification No. 2/2017-CT (Rate) dated 28.06.2017 and also relied upon case of Sonka Publication India (P) Ltd 2019 (74) GST 6 (Delhi) to support their arguments. We observe that the supply of text book to students are again at different lower rate than that of outside persons, as is admitted by the appellant in their submissions. Hence, the supply of books or printed material relating to the course opted for them shall have to be treated as part of composite services along with educational service, being the principal service, as is held by us in case of hostel fees charged from the students. Consequently, the supply of books shall also be charged to rate of GST as applicable to educational service under SAC 9992-999293.

21. The various case laws referred to by the appellants are not applicable in the current case because the coaching institute run by the appellant does not qualify to be classified as an education institution as provided under Notification no. 12/2017-CT (rate) dated 28-6-2017. The decisions of AAR pointed out cannot be applied to this case by virtue of section 103 of the CGST/SGST Act and facts and circumstances being distinguishable.

22. On the basis of the above stated law and facts, the following orders are issued:

ORDER No. AAAR/ 13/ 21 DATED 05/05/2021

Issue No. 1: Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum] published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

Issue No. 2 : Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the

specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

Issue No.3: Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc. and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by International institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

Decision - Issue Nos. 1, 2 and 3 :- As per the provisions contained in Para 2 (y) of the Notification No. 12/2017-Central Tax (rate) dated 28-06-2017, the appellant does not qualify to be categorized as "educational institution" and therefore the above stated services provided by the appellant are not exempted from GST as per entry no. 66 of the Notification no.12/2017-Central Tax (rate) dated 28-6-2017.

Issue No.4: What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

Decision : As per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, the impugned services provided by the appellant fall under "SAC – 9992-999293 - Commercial training and coaching services".

Issue No.5: Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized institutes or universities on behalf of students studying at the appellant institute.

Decision: Section 15 of the CGST/SGST Act, 2017 specifies that the entire consideration received by the supplier from the recipient of services is liable to GST. However, if the conditions prescribed for "Pure Agent" in Rule 33 of the CGST Rules, 2017 are satisfied in respect of the amount collected as examination fees / other fees by the appellant from the students enrolled with them, then such amount can be excluded from the value of taxable supply.

Issue No. 6: The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee?

Decision: The coaching / training provided by the appellant to their students along with hostel facility qualifies to be categorized as a composite supply as defined in Section 2 (30) of the CGST Act, 2017. As per Section 8 (a) of the CGST/SGST Act, 2017, the entire supply is to be treated as falling under "SAC - 9992- 999293 - Commercial training and coaching services" being the principal supply and will be liable to GST at the rate applicable for the principal supply.

Issue No. 7: Whether there is any tax liability on the appellant for selling text books to its students?

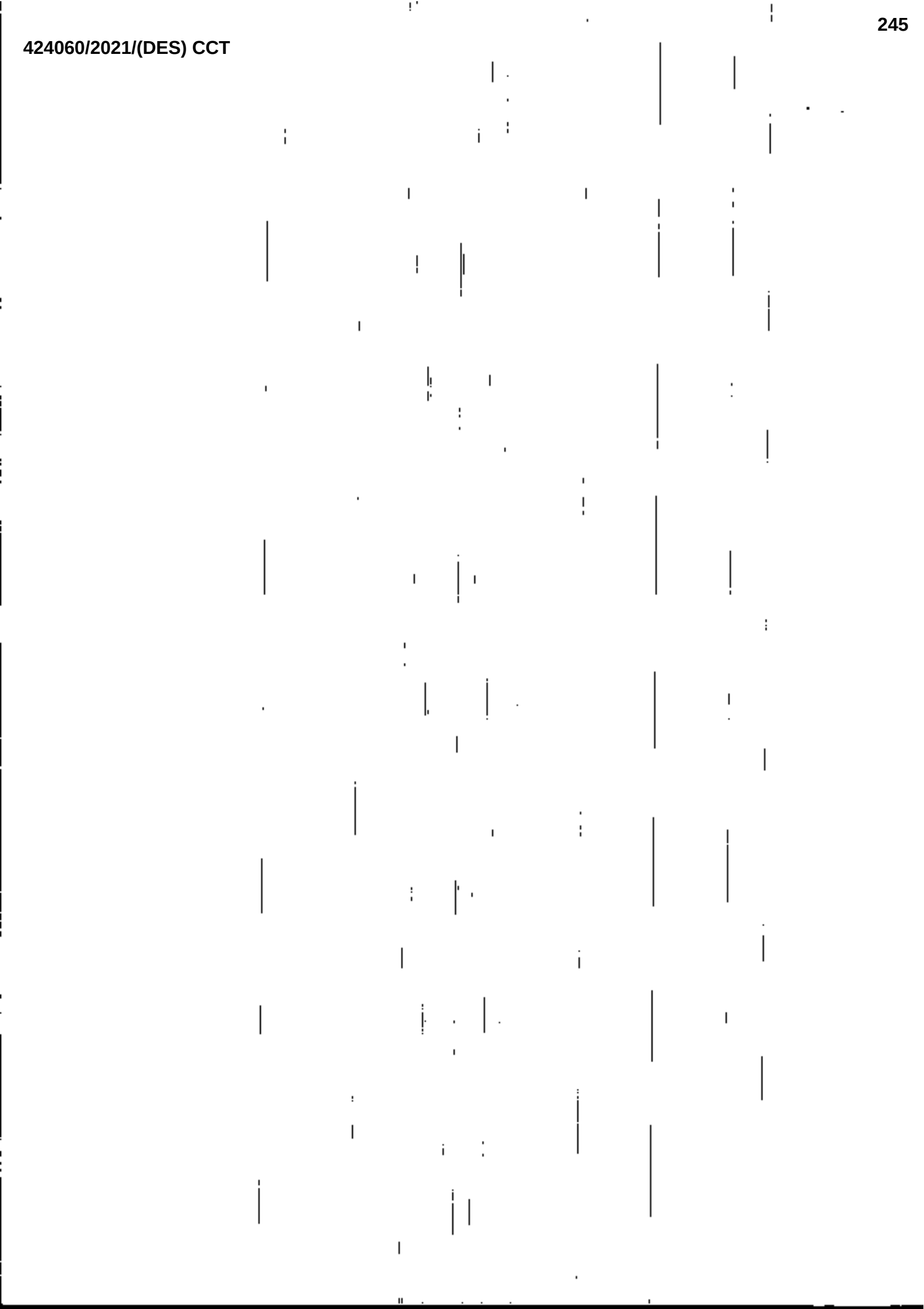
Decision: As held in respect of hostel fees, the sale of text books to the students qualifies to be categorized as a composite supply as defined in Section 2 (30) of the CGST Act, 2017. As per Section 8 (a) of the CGST/SGST Act, 2017, the entire supply is to be treated as falling under "SAC - 9992-999293 - Commercial training and coaching services" being the principal supply and will be liable to GST at the rate applicable for the principal supply.

In nut shell, the Advance Ruling No. KER/76/2019 dated 20/5/2020 of the Advance Ruling Authority, Kerala stands upheld with aforesaid modification and consequently the appeal filed by the appellant is rejected.

Shyam Raj Prasad, IRS
Chief Commissioner,
Central Tax, Central Excise & Customs
Thiruvananthapuram Zone, Kerala

Anand Singh, IAS
Commissioner,
State Goods & Service Tax Dept
Kerala

424060/2021/(DES) CCT



APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA

PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE RULING

(U/s.101 OF THE KERALA/ CENTRAL GOODS AND SERVICES TAX ACT, 2017).

Members present:

Shyam Raj Prasad IRS
Chief Commissioner,
Central Tax, Central Excise and Customs
Thiruvananthapuram Zone, Cochin

Anand Singh , IAS.
Commissioner
State Taxes, Kerala

Name and Address of the Appellant	M/s Logic Management Training Institutes Pvt Ltd, 7th Providence , Mahakavi Vylopilly lane, Pallarivattom, Kochi
GSTIN	32AABCL8151B1Z1
Advance ruling against which appeal is filed	KER/76/2019 DATED 20/5/2020
Date of filing Appeal	15-7-2020
Date of Personal Hearing	31-03-2021
Authorized Representative	Adv. Sherry Oommen

ORDER No. AAAR/ 13 /21 DATED 05/05/2021

The instant appeal stands filed under section 100(1) of the GST Act, 2017, by M/s Logic Management Training Institutes Pvt Ltd, Kochi holding GSTIN 32AABCL8151B1Z1 (hereinafter also referred as the appellant or M/s Logic Management) against the Advance Ruling Order No. KER/76/2019 dated 20/5/2020. The appellant is an institute imparting coaching to the students to facilitate them to obtain qualification such as Chartered Accountant, Cost Accountant, Company Secretary, certified Management Accountant, certified Public accountant, Association of Chartered certified Accountant etc.

Brief facts of the Case

1. The Appellant challenges the legality, correctness and propriety of the impugned order dated 20/05/2020 passed by the Advance Ruling Authority, Kerala on the following grounds and contentions, which are in the alternative and without prejudice to one another.

2. The Authority for Advance Ruling has not considered with a legal perspective the various facts, law and circumstances and even the ruling of the prevailing law on the subject submitted by the appellant. Therefore all the details submitted by the appellant so far, may be read as one of the points of this appeal memorandum. The following are the queries raised by the appellant in the original application and except query number 7, the Authority for Advance Ruling, ruled that the service rendered by the appellant is taxable services and is composite supply. 7th query has been answered as exempted.

2.1. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum] published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

2.2. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

2.3. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc.

and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

2.4. What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

2.5. Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized institutes or universities on behalf of students studying at the appellant institute.

2.6. The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee.

2.7. Whether there is any tax liability on hostel fees collected from outside students staying at the hostel for study purpose at a rate of Rs.250/- per day per person including food.

2.8. Whether there is any tax liability on the appellant for selling text books to its students.

3. The Rulings provided by the Authority are given below:

3.1. Questions Nos. 1, 2 and 3 -The appellant is not covered under the definition of "educational institution" in Para 2 (y) of the Notification 10. 12/2017 Central Tax (rate) dated 28-06-2017 and hence the services provided by the appellant is not exempted from GST.

3.2. Question No.4 - As per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017, the education services provided by the appellant come under SAC - 9992- 999293 - Commercial training and coaching services. As per Explanatory Notes to the Scheme of Classification of Services the service code - 999293 includes any training or coaching provided by any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

3.3. Question No.5 - As per Section 15 of the CGST Act, 2017 the entire consideration received by the appellant from the recipient of services is liable to GST. However, if in respect of the amount collected as examination fees / other fees the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied then such amount can be excluded from the value of taxable supply as expenditure incurred by the appellant as a pure agent of the recipient of services.

3.4. Question No.6 - The provision of coaching / training provided by the appellant to their students along with hostel facility qualifies as a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and the tax liability on the composite supply has to be determined as per provisions of Section 8 (a) of the CGST Act. 2017. Therefore the entire supply is to be treated as falling under SAC - 9992- 999293 - Commercial training and coaching services: being the principal supply and will be liable to GST at the rate applicable for the principal supply.

3.5. Question No.7 - As the value of supply of a unit of accommodation in the hostel facility provided by the appellant to outside students is below one thousand rupees per day, the appellant is eligible for the exemption under Sl. No. 14 of the Notification No.12/2017 Central Tax (Rate) dtd.28-06-2017 in respect of the supply.

3.6. Question No.8 - The sale of text books to the students will attract GST as per the schedule of rates notified under Notification No.01/2017-Central Tax (Rate) dtd.28-06-2017.

Grounds of Appeal

4. The appellant submits the following points against the ruling made by the Authority:

4.1 Regarding Questions 1 to 3 in the impugned order, the Authority ought to have found that the exemption Notification No. 12/2017 Central Tax (Rate) never intended that the benefit exemption should be limited to a class of professional students. On the other hand, the exemption facilities provided through the notification are for imparting education and thereby interpreting

that the exemption is only to limited institutions is against law. The appellant believes that the Intention of Government as per the notification is to all students studying the subject and taking part in the Recognized courses, whether directly or Indirectly. As long as there is no special condition specified in the notification the benefit is also to be given to Private players in Education. The Authority has passed the order without considering the law of equality and thus failed to render justice to the appellant. By restricting the exemption to a part of the society, or class of institutions, the settled principles of equality granted by the Constitution under Article 14 is violated.

4.2. With regard to Question No. 4 in the impugned order, the Authority wrongly classified the nature of services of the appellant under the SAC9992-999293 - Commercial training and coaching services. As the service of the appellant providing education as per the curriculum recognized by law is covered in the exemption category, the Authority misconstrued the classification 'as commercial training and coaching institutes'. Thus the appellant who is falling under the exempted category as per Notification No. 12/2017 Central Tax (rate) becomes liable to pay tax.

4.3. With regard to Question No. 5 in the impugned order, the learned Authority for Advance Ruling, ought to have found that the collection of fees to Government/university or Institute working on the basis of Act passed in the Parliament is only the work of an agent and treating the same as taxable supply is incorrect. The Authority for Advance Ruling under Karnataka Goods and Services Act wherein a similar activity of a similar institution, wherein the Institution was collecting exam fees and paying it on behalf of the students was considered. In Advance Ruling No.KAR ADRG 116/2019 dated 30-09-2019, it was observed by the Authority under therein that "The activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the appellant as per Rule 33 of the Central GST Rules." It is the appellant's submission that appellant's activity also is eligible for exclusion by virtue of Rule 33 of Central GST Rules. Thus, by following the above provisions the service rendered by the appellant would fall under the exempted category.

4.4. With regard to Question No.6 in the impugned order, the Authority failed to consider the exemption given to hostel students as per Entry 14 of Notification No. 12/2017. A student of the appellant institute, who stays with the appellant's students' hostel is liable to pay tax on his hostel fee whereas the same student stay in another hostel is exempted. It is pertinent to note that in Entry 12 of Notification No. 12/2017 the Hostel expenses below Rs.1000 per day is blanketly given exemption. No need to club it with other Services since it is no way related to the main services provided. As per the decision in the case of re Sarj Educational Centre (GST AAR West Bangal), the hostel facilities and educational services provided by the appellant does not fall under the composite supply.

4.5. With regard to Question No.8, by issuing impugned order fixing tax on exempted goods like books, the Authority ought to have found that if a student purchases the same book from a book shop, the same is exempted as books, and it is taxable at 18% when students purchases the very same book from the appellant. By issuing such an incorrect order, the authority has failed to note the fact that the appellant will be singled out from the main stream of Institutions.

4.6. It is pertinent to note that in the period of the Service Tax, which is the pre-GST regime, and still in GST, the supply of reading books in open Market is exempted. The authority for Advance Ruling failed to find that in the Ruling, it never considered the fact that the composite supply should be taxable supply. Here the books are not taxable supply so it never come under GST. Also, the books are priced in Open Market. The peculiar circumstances here will adversely affect the Interest of imparting education. As per the impugned Ruling, those, students who are purchasing the books from the appellant institute is taxable as composite supplier, where as if the same students purchase the same book from a book shop or other institute, it is exempted. This position is also unfair and against the "right to practice any profession, or to carryon any occupation, trade or business under Article 19(1)(g)of the Constitution of India.

5. The detailed submissions of the Appellant on above grounds are as follows, which are without prejudice to each other:

5.1. The appellant is following the same curriculum as specified or recognized by the bodies constituted under Acts of Parliament so providing education in a format recognized by law. After getting proper guidelines, lectures and other educational support as prescribed by the above institutions, the students appear for examinations conducted by the above Government recognized institutions. The concerned Government-recognized institutions are conducting the exams by collecting fees for examinations books, etc. as per their rules of conduct, and the appellant is providing the very same service such as classes for the students of the appellant institute to comply with the regulations and all requirements of such institutions working under the Acts of legislature and Parliament. The regular colleges, whether aided or self-financed affiliated to Universities are also rendering the same service to students and though they are not awarding any degrees or diplomas, they are not subjected to levy of GST on service tax by the Department of GST and so much so, if such colleges are not liable for payment of GST on their service, then there is no reason why the appellant who are rendering the very same service should be treated differently and subjected to tax.

5.2. The Authority for Advance Rulings (AAR), Karnataka in the application filed by M/s Emerge Vocational Skills Private Ltd. AAR No. KAR ADRG 20/2018 has held that the service of providing Degree courses under related curriculum's by educational institutions to students exempt from the liability to pay Goods and Services Tax (GST). The question on which advance ruling is sought in the above case is as follows: "Whether the services provided by the appellant in affiliation to specified universities and providing degree courses to students under related curriculum's are exempt from Goods and Services Tax vide entry no. 66 of the Notification No. 12/2017 - Central Tax dated 28.06.2017?" The Authority for Advance Ruling held that "The services provided by the appellant in affiliation to specified universities and providing degree courses to students under related curriculum's to its students exempt from Central Goods and Services Tax vide entry no. 66 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28.06.2017 subject to the condition that such education services provided must be as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force".

5.3. The appellant is following the same curriculum as specified or recognized by the bodies constituted under Acts of Parliament so providing

education in a format recognized by law. The appellant herein is also providing B.com and M.com degree courses which is a recognized course under Indian law. The appellant offers University-recognized B.Com and M.Com education simultaneously with training for the professional qualifications, as that helps students to obtain graduation simultaneously with professional studies, and also because the study materials for both are fundamentally similar. The appellant provides:

1) education by following a legally recognized Curriculum
2) for obtaining a legally recognized qualification.

5.4. In the case of ITM International Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi [2017 (7) GSTL 448 (Tri. Del)], the Hon'ble CESTAT Principal Bench had passed an order holding that educational qualifications issued by foreign institutes which are recognized by Government of India, are also to be treated as certificate recognized by law for taxation purposes. By virtue of this interpretation, the appellant's activities of providing services to qualify for courses offered by Indian Government-recognized foreign institutions also fall within the purview of courses recognized by law. The order had also re-emphasized that an institution offering degree courses recognized by law was exempted from tax. The decisions of the Hon'ble High Court of Kerala in The Malappuram District Parallel College v. The Uhion of India [W.P.(C)No. 728 of 2005] and Union of India and others v. The Kasaragod District Parallel College and another [2013 (3) KHC 509] are also relevant here wherein levy of Service Tax on services offered by parallel colleges in Kerala was held to be invalid. In the latter case, the Hon'ble Court had held that:

"... 35. Therefore, what is important to consider is that if the institution is one wherein students are being prepared for acquiring qualification, certificate or diploma or degree which is recognized by law in force, then the same will come within the second limb of the exclusion clause under Section 65(27)..."

5.5. The Appellant is preparing students to obtain qualifications and degrees as spelt out by the Hon'ble Court so was eligible for exemption under the Service Tax regime. When the same exemption has been carried forward to GST regime by virtue of Notification No.12/2017-Central Tax (Rate), appellant's eligibility for exemption would automatically get carried

over into the GST period as well. The Impugned AAR Ruling has been passed by the Respondent No.1 based on a misapplication of law.

5.6. The term "educational institution" has been defined in 2(y) of Notification No.12/2017-Central Tax (Rate) and the same reads as under:

2(y) "educational institution" means an institution providing services by way of

- *(i) pre-school education and education up to higher secondary school or equivalent:*
- *(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- *(iii) education as a part of an approved vocational education course:*

The appellant's services are eligible for exemption from GST by virtue of Entry 66 of Notification No. 12/2017- Central Tax (Rate) dated 28-062017 Issued by the Government of India whereby intra-State supply of educational services are exempted. In the earlier Service Tax regime as well, educational services facilitating qualifications recognized by law were exempted from tax and the Government carried forward this exemption through Notification No. 12/20 17-Central Tax (Rate). The word 'education' is derived from the Latin word 'educa' which means bringing out latent faculties. 'Education' means the act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment and generally of preparing onself or others intellectually or mature life: the act or process of imparting or acquiring particular knowledge or skills. It is the result produced by instruction, training or study. Thus, the word has very wide import. [Padmanav Dhury v. State of Orissa, AIR 1999 Ori 97,99]. In case of Sole Trustee, Loka Shikshana Trust v. CIT, [1975 (8) TMI 1 - SUPREME Court], Honble Supreme Court observed that education connotes the process of training and developing knowledge, skill and character of students by normal schooling.

The expression 'education' occurring In various articles of the Constitution of India means and includes education at all levels, from the primary school level up to the postgraduate level and professional' education. [TMA Pal Foundation v. State of Karnataka (2002) 8 SCC 481 (sc),

para 450]. In Soorya Educational Trust v. ITO 2012 (6) TMI 602 it was held that "Memorandum of Understanding entered by the assessee with Annamalai University and objects of the Trust it is clear that ex-facie the objects are nothing but educational and assessee was imparting a type of oral education and students studying in assessee's institutions were being awarded formal Diploma/degree. There is no case for the Revenue that Annamalai University was existing for any commercial purposes. In our opinion, if Annamalai University was an educational institution, then assessee, which was conducting classes for the said University under its authority, was also an educational institution. Hence fees like admission fees, tuition fees, examination fees, computer fees, sports fees, annual subscription of journal fees of schools, universities shall be construed as covered within the ambit of 'education' and shall be covered by negative list - thus no service tax".

5.7. The conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognized by law would be covered by the Notification No.12/2017. Thus the appellant falls within the exempted category and not liable to pay any tax. The Authority misconstrued the appellant's services as one which falls under the SAC-9992-999293-commercial training and coaching institutes. Thus by classifying the educational services provided by the appellant -under the above SAC, the appellant has been denied the availment of exemption. The exam fees collected by the appellant and paid to respective exams bodies in India and Abroad Universities and Education Bodies without any profit mind as a facility to students are also exempted from tax liability. The appellant is only acting as a facility provider for students to pay their exam fees on time without any technical difficulties. Normally Students can pay the examination fees directly to CA, CS, CMA, IMA USA, ACCA UK, IFRS, CPA USA, etc. using their debit or Credit Card. Lot students especially those coming from disadvantaged backgrounds, face difficulty in making such online payments since they would not be having credit or debit cards or enough technical knowledge to make such payments. So the appellant helps them to pay it through the appellant's banking facility and so that they can concentrate on their studies and no need to panic about the technicalities related to examination. There is no profit element in this as we are just collecting the exam fees from students and paying it to the respective institutions. The activity of collecting and transferring examination fees and

other fees of the recognized Institutes or Universities on behalf of students studying at the appellant institute is carried out by the appellant acting as a mere agent of students without any value addition or profit generation, but with the only underlying objective to lend a helping hand to students to get past the technicalities of online fee payment. Therefore, the said activity would not qualify as a supply under GST laws and hence would not be eligible to attract GST.

5.8. The Authority for Advance Ruling under Karnataka Goods and Services Act considered a similar activity of a similar institution, wherein the institution was collecting exam fees and paying it on behalf of the students. In Advance Ruling No. KAR-ADRG 116/2019 dated 30-09-2019, it was observed by the Authority that "The activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the appellant as per Rule 33 of the Central GST Rules". It is the appellant's submission that appellant's activity also is eligible for exclusion by virtue of Rule 33 of Central GST Rules. Thus by following the above provisions, the service rendered by the appellant would fall under the exempted category.

5.9. The appellant sells text books and notes pertaining to the courses with very slight margin to ensure that the students of the appellant get them hassle-free and at reduced prices than that offered by outside sources like book shops or shopping websites. The appellant sells these books at an open market price. Printed books were exempted from GST under the VAT regime and the exemption is continued into GST regime as well. As per the official list of commodities and tax rates published in the official website of Central Goods and Services Tax Department, namely www.cbic-gst.gov.in printed books fall within the category of exempted goods. It is the appellant's submission that since printed books are exempted from GST, appellant's activity of supplying to its students books of courses offered by the appellant, shall be eligible for exemption as well. In the case of re M/s.Shri Ashok Chaturvedi (GST AAR Chhattisgarh), the court held that supply of specified printed educational books by CHHATTISGARH TEXT BOOK CORPORATION as per the instructions of School Education Department CG [Loksikshan Sanchnalay] or as per instruction of various agencies of school Education Department CG such as Rajiv Gandhi Siksha Mission / SCERT /

office of District Education officer etc. consequent to printing of the Syllabus as decided by the SCERT, merits consideration as supply of printed books attracting zero rate, under Notification No. 2/2017-State Tax(Rate) No. F-10-43/2017-CT/V/70, Dated 28-06-2017, under HSN Code 4901.

6. The Appellant craves leave to add, amend and alter any of the submissions mentioned here in above and produce such documentary evidence as may be necessary for the case. The Appellant further craves leave to rely on such judicial precedents as may be required in their defense.

7. On the facts and circumstances, the Appellant prays for modification in the impugned rulings as under:

7.1. With respect to Question No. 1, 2 and 3 raised in the Original Application for Advance Ruling, that the educational services provided by the Appellant is exempted and does not attract any tax under the GST laws.

7.2. With respect to Question No.4 raised in the Application, that the SAC of the services of the appellant, may be modified in the light of the non-taxability of the services rendered by the appellant.

7.3. With respect to Question No.5, 6 & 8 raised in the Application, that the ruling of the Authority for Advance Ruling may be modified by considering the facts, law and the circumstances of the activities of the appellant.

7.4. In short, according to the appellant, except question number 7, the appellant has not received a clear and legally sustainable ruling and therefore all the queries except query number 7 may be reviewed and justice may be rendered to the appellant.

Personal hearing

8. The appellant was afforded an opportunity of personal hearing via virtual media on 31/3/2021. The authorized representative of the appellant Adv. Sherry Oommen appeared before the authority and reiterated the contentions raised in the appeal memorandum. He also submitted additional brief dated 29.03.2021 in their favour for consideration, which was also taken on record.

Discussion and Findings

9. We have carefully gone through the facts of the case, the Advance Ruling Authority order dated 20/05/2020, the appeal memorandum filed by the appellant and other submissions made by them during the course of personal hearing and other evidences on record. The seven disputed issues to be decided in this appeal proceeding are listed as follows:-

Issue No. 1, 2 & 3: Whether all the following Education program and trainings being offered by the appellant are exempted from GST as imparting of education?

1. The appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum] published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

2. The appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

3. The appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc. and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

Issue No. 4: What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

Issue No. 5: Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized

institutes or universities on behalf of students studying at the appellant institute?

Issue No. 6: The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee?

Issue No. 7: Whether there is any tax liability on the appellant for selling text books to its students?

10. Before going into the merit of the issues involved, it is noticed that the appellant in their additional submissions has raised some preliminary objections against the advance ruling stating therein that the ruling has been pronounced in absence of issue of a notice or seeking explanation from them or by attributing any reasons/grounds for the findings and therefore the ruling has been issued in violation of principles of natural justice. They have relied upon the case law of CB Gautam (1993) 1 SCC 78. We observe that the procedure prescribed for dealing with the application filed by the appellant before Advance ruling authority has been followed by the lower authority, in accordance with law. It is further observed that there is no provision for either issue of notice or seeking explanation from the appellant before giving verdict on the application, prescribed in the GST Law. Moreover, a personal hearing was duly granted by the lower authority to the appellant (refer para 2 of the Ruling) and submissions have been duly considered while passing the impugned Ruling. Hence, no infirmity could be found in the proceedings as the principles of natural justice have been complied with in true spirit of law. The case law of CB Gautam being not relevant to the case is of no help to the appellant. As regards, reasons for arriving at a decision on the issues, we observe that the Ruling has discussed the issues with reference to applicable portion of GST law and arrived at the conclusions accordingly. Moreover, all the points raised by them in their appeal memorandum and additional submissions are being considered once again in this appellate proceedings. Hence, the objection raised by the appellant and the case laws relied upon by them in this regard are found irrelevant.

11. Having dealt with their preliminary objections, we shall now examine each disputed issues in seriatim keeping in view the submissions made by the appellant. The main contention raised by the appellant is that they are

providing educational services based on the curriculum published by the recognized institutions and prescribed by law and is, therefore, eligible for exemption from GST as per Sl. No. 66 of the notification no. 12/2017-CT (rate) dated 28/6/2017. The appellant further contends that since their principal supply is exempted from GST, the other services that are ancillary to the same are also exempted from GST.

12. The contentions of the appellant regarding exemption of services provided by them are being examined in the light of relevant Entry No. 66 of Notification no. 12/2017-CT (rate), dated 28/6/2017, which provides exemption to services provided by Educational institution. The Entry No. 66 with HSN 9992 specifies as follows:

"Services provided -
(a) by an educational institution to its students, faculty and staff;
(b) to an educational institution, by way of,-
(i) transportation of students, faculty and staff;
(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
(iii) security or cleaning or house-keeping services performed in such educational institution;
(iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary;
(v) supply of online educational journals or periodicals:

Provided that nothing contained in [sub-items (i), (ii) and (iii) of item (b)] shall apply to an educational institution other than an institution providing services by way of pre -school education and education up to higher secondary school or equivalent:

Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of, —

i. Pre-school education and education up to higher secondary school or equivalent; or

ii. Education as a part of an approved vocational education course."

Para 2 (y) of the notification no. 12/2017-CT(rate) defines "Educational institution", according to which "Educational Institution" means an institution providing services by way of:

(i) Pre-school education and education up to higher secondary school or equivalent;

(ii) **Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;**

(iii) Education as a part of an approved vocational education course.

13. We observe that the appellant's Institution is not providing any elementary education or pre-school or upto higher secondary level or equivalent, thereby, they would not come under the purview of the 'educational institution' as defined in para 2(y)(i) of the said notification no. 12/2017-CT. Similarly, the appellant is not engaged in providing Education as a part of an approved vocational education course as envisaged in para 2(y) (iii) of the said notification. It is not the case of the appellant that they are providing any vocational courses. Hence, they cannot be categorized as 'education institution' within the meaning of sub-clauses (i) and (iii) of para 2 (y) of the said notification for the purpose of exemption. The appellant has also not claimed the exemption under these two sub-clauses either.

14. Now, it is to be examined whether the services rendered by the appellant would fall within the ambit of para 2(y)(ii) of the said notification no. 12/2017-CT as detailed above.

14.1. The term "Education" is not defined in the CGST/SGST Act but as per Apex Court's decision in "Loka Shikshana Trust v/s CIT", Education is process of training and developing knowledge, skill and character of students by normal schooling. The term "educational institution", under sub-clause (ii) ibid, covers institutions providing services by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force. In order to be qualified to get included under this sub-clause, educational service should be imparted as a part of curriculum and for obtaining a qualification recognized by extant law.

14.2. GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 issued by CBEC in connection with Service tax can be adopted. As per Education guide of 2012 meaning of 'education as a part of curriculum for obtaining a qualification recognized by law' is clarified to be "only such educational services are in the negative list (exempted) that are related to delivery of

education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law". It is important to understand that to be in the negative list (exempted) the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification. This clearly implies that only those institutions whose operations conform to the specifics given in the definition of the term "Educational Institution", would be treated as one and entitled to avail exemptions provided by the law.

14.3. Accordingly, the private coaching centers or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution. The appellant's institution as such has no specific curriculum and the institution itself does not conduct any examination or award any qualification recognized by law for the time being in force. The institute only provides coaching to the students registered with them. The appellant is not issuing any 'valid course completion certificate' or 'any study certificate' or any degree prescribed under any statute in respect of CA, CMA, CS, ICWA etc. Moreover, coaching or training in appellant's institution is not a mandatory compliance for an aspirant in pursuing their study and obtaining certificates for these courses. It is also not mandatory on the part of the students to furnish any certification or nomination or forwarding of their applications or registrations through the appellant to the concerned statutory body for awarding the certificate for the course. Therefore, the appellant is not qualified to be classified as an 'educational institution' within the meaning assigned and covered vide para 2(y)(ii) of Notification no.12/2017-CT (rate).

14.4. The appellant has contended that the Advance Ruling authority has erroneously reckoned that the appellant would need to be recognized/approved by the respective bodies, which is actually not required in GST law. They also added that they have obtained recognition of the ICAI and that courses undertaken by them in ACCA and CMA is also recognized by the Institute of Cost Accountant of India. They impart teaching solely based on curriculam prescribed by the concerned professional bodies, hence they are eligible to exemption as "educational institution" under Notification No.

12/2017-CT (Rate) dated 28/06/2017. They have referred to the definition of 'education' and 'curriculum' given in Cambridge Dictionary, Oxford Dictionary and Dictionary.com and stated that 'education as a part of curriculum...' can be understood as "imparting knowledge (education) through a systematic syllabus in an institution, college or school". According to them, the coaching/training institute that imparts/prepares the students for obtaining a qualification duly organized by any law, are exempted under the said notification. They have also submitted that the taxation statute is to be construed strictly for which they have relied upon several case laws in their favour. At the same time, they also contended that when an exemption notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict interpretation. They have relied upon case of Reliance Petroleum Ltd [2008] 227 ELT 3 [SC] in this regard.

15. In this regard, it is emerging from above discussions, that the coaching or training service provided by the appellant to the aspirants of CA-Foundation, CA-Inter, CA-Final, CMA (ICWA)-Foundation, CMA-Inter, CMA-Final and Intermediate is not the service provided by means of 'education as a part of curriculum that has been prescribed for obtaining a qualification prescribed by law'. The coaching / training imparted by the appellant to CA/CMA aspiring students (for appearing and qualifying in the respective examinations) would not lead to grant of certificate/qualification recognized by law. Instead, all the aspirants are required to take a separate set of examinations conducted by the said recognized institutions like ICAI, ICWA etc. for acquiring certificate or degree recognized by law. The training / coaching imparted by the appellant might be helping the aspirants to clear the tests/examinations organized by the recognized institutions but not per se lead to grant of any certificate or degree as such recognized by law.

16.1. It is settled law that the person availing the exemption notification shall satisfy all the conditions prescribed in the notification and failure to do so would disentitle him from the exemption. In the case of Harichand Shri Gopal 2010 (260) ELT 3 (SC), Larger bench of Hon'ble Supreme Court has observed as under:

"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the

conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption....."

16.2. As regards conditions of the notification and fulfillment thereof in true spirit, reliance is placed on the case of M/s Eagle flask Industries Limited [2004(09)LCX 0235] wherein Hon'ble Supreme Court has held that the conditions laid down in notification are statutory conditions and same are to be followed/fulfilled in its true letters and spirits and these are not mere formalities and once the conditions of notification granting exemption/refund are not satisfied, the refund cannot be granted to the assessee.

16.3. It is well settled law that the exemption notification being a liberal piece of legislation, needs to be interpreted strictly within the plain words and language provided therein and there is no scope of intendments. We rely upon the verdict of Hon'ble Supreme Court in case of H.M.M Ltd Vs .Collector - 1986 (87) ELT 593(SC) that *"Exemption Notification is not only to be construed strictly but also reasonably having regard to the language employed therein"*. Also in Sri Sathya Sai Institute of High Medical Sciences Vs UOI [2003 (158) ELT 214 SC], the Hon'ble Supreme Court ruled that *"Even the court cannot interpose further conditions in the notification". Further, it is settled law that* statute/ notification has to be understood by its plain words and no intendment is allowed as is held in following cases:

(i) In the case of Dharmandra Textile Processors Vs. Union of India reported in [2008 (231) ELT.3 (S.C.)], the Apex Court held that

> *" it is a well settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent".*

(ii) The above views have been expressed by the Hon'ble Supreme Court in the case of Novopan India Ltd vs. CCE. reported in [1994(73) ELT.769 (S.C.)], holding that

> *"a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification".*

(iii) Further, in case of CCE vs. Sunder Steels Ltd., reported in [2005(181) E.L.T. 154 (SC.)] the Apex Court has also held that

> *"the Notification has to be interpreted on its wording. No words, not used in the notification can be added."*

(iv) Also, the Supreme Court in the case of Rajasthan Spg. &Wvg. Mills vs. CCE reported in [1995 (77) ELT 474 (SC)] observed that

> *"since it was a case of exemption from duty, there was no question of any liberal construction to extend the term and scope of the notification as such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification to which no extended meaning can be given to exempt the items by enlarging the scope of exemption granted by the notification".*

16.4. In the case of Dilip Kumar & Co. 2018 (361) E.L.T. 577 (SC), Hon'ble Supreme Court has held with regard to interpretation of tax exemption Notification that it is the law that any ambiguity in a taxing statute should ensure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue – and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. It is further affirmed that every taxing statue and exemption clause should be interpreted strictly.

16.5. In view of above settled position of law in respect of exemption notification, and by applying the settled law of strict interpretation of taxing statute, which are plainly worded, as in the case in hand, the services rendered by the appellant are held to be not a service by way of 'education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force' as envisaged under entry no. 66 of the said notification, for exemption from GST.

17. The other issue for consideration before us is service accounting code of the services rendered by the appellant. As per the Scheme of classification of services under GST Law, SAC 999293 Specifies about commercial training and coaching services. This service code includes any training or coaching provided by any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field

other than the sports with or without issuance of a certificate and includes coaching or tutorial classes. Thereby the services rendered by the appellant can rightly be classified under this SAC.

18. The next issue raised before this authority is that whether there is any GST liability on the appellant for collecting and transferring examination fees and other fees to the recognized institutes or universities on behalf of the students studying at their institute.

18.1. The value of taxable supply of goods and / or services is determined by the provisions of Section 15 of the CGST/ SGST Act, 2017. Section 15 (2) provides that the value of supply shall include-

> (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
>
> (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) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
>
> (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
>
> (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

18.2. Rule 33 of the CGST Rules, 2017 deals with value of supply of services in case of pure agent, wherein it is provided that

"Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, –

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. – For the purposes of this rule, the expression "pure agent" means a person who –

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and.

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."

18.3. As per the provisions of Section 15 of the CGST/SGST Act, 2017 the entire consideration received by the appellant from the recipient of services is taxable under GST. However, if the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied and the appellant acts as a pure agent on behalf of the students enrolled with them, there will be no tax liability for the amount collected as examination fees / other fees. Accordingly, such amount can be excluded from the value of taxable supply as expenditure incurred by the appellant as a pure agent of the recipient of services.

19. Another issue for determination before us is that the appellant offers hostel facility to its students at a rate of less than Rs. 200/- per day per person including food and at a monthly rate of maximum Rs. 6000/-. Whether there is any tax liability on such hostel fee?

19.1. In order to determine this issue, the provisions of Composite supply under CGST /SGST Act is relevant. Section 2(30) of the CGST Act, 2017 defines composite supply, according to which, "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." Further, Section 8 of the CGST Act, 2017 contains the provisions of tax liability on composite and mixed supplies. Section 8 prescribes that

"the tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."

19.2. The Advance Ruling authority has held that provision of coaching / training provided by the appellant to their students along with hostel facility qualifies as a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and the tax liability on the composite supply has to be determined as per provisions of Section 8 (a) of the CGST Act, 2017. Therefore, the entire supply is to be treated as falling under SAC - 9992- 999293 - Commercial training and coaching services; being the principal supply and will be liable to GST at the rate applicable for the principal supply. The appellant has however contended that hostel facility is a standalone facility and not naturally bundled along with educational services; and that hostel facility, being available to any person, is not mandatory and in conjunction with educational services to fall under the category of composite services; that it is not provided as a package and hence is a divisible contract. The appellant has placed reliance on the Education Guide issued by CBEC and the case law of European Court of Justice in Volker Ludwig [2013]31 Taxmann.com 287 and UK Upper Tribunal in Hon'ble Society of the Middle Temple Vs HMRC [2013] UKUT 0250 etc. They have also claimed exemption on hostel fees under exemption notification No.12/2017-CT (Rate) dated 28.06.2017 as the declared tariff is less than Rs. 1000 per day, and has relied upon several case laws.

19.3. We observe that the appellant is mainly and principally engaged in imparting training/coaching to their students and thereby providing educational services, which is classifiable under SAC 9992-999293. The student who opts to take coaching from them stays in their hostel and pay hostel fees @ less than Rs. 200 per day or maximum Rs. 6000/- per month, in addition to the course charges as a package. It is also undisputed that they are charging Rs. 250/- per day from outside students/residents staying at their hostel. It may be seen here that they are charging different rates from their students and outside persons possibly they differentiate between the two categories of residents. The students enrolled with them are presumably charged lesser amount of hostel fees as a part of the package with educational services. In such a situation, when the appellant are distinguishing the two types of residents for charging different hostel fees for the same lodging and food services, it is not difficult to infer that their students enjoy the concession only as a part of composite services of educational services and hostel facility. No explanation is forthcoming from their appeal memorandum regarding the said difference in charges of hostel fees. In such a situation, applying the provisions of Section 2(30) read with Section 8 of CGST Act, 2017, it is conveniently held that the appellant is providing a composite services of educational service (being principal service) and hostel facility, as is rightly held by the lower authority. The arguments of the appellant therefore are liable to be rejected in this regard. Having held that the hostel facility is being provided by the appellant to their enrolled students as a part of composite services along with educational service, the entire set of service shall be classified under SAC 9992-999293 – Commercial training and coaching services, being principal service and shall be charged to GST accordingly. The claim of the appellant regarding benefit of exemption notification No. 12/2017-CT for hostel fees is also devoid of merit in view of the fact that exemption is granted to the services falling under Sl No. 14 – heading 9963 only and not for heading 9992 as is applicable in this case.

20. Another issue for determination by us is regarding tax liability on the appellant for selling text books to its students.

20.1. The lower authority has held that the sale of text books to the students will attract GST as per the schedule of rates notified under Notification No. 01/2017-Central Tax (Rate) dtd.28-06-2017. Whereas, the appellant has contended that the context of hostel facility would also apply to text books,

as the same is sold to any willing consumer and students for a separately agreed consideration. They have sought exemption from GST in terms of Sl. No. 119 of the Notification No. 2/2017-CT (Rate) dated 28.06.2017 and also relied upon case of Sonka Publication India (P) Ltd 2019 (74) GST 6 (Delhi) to support their arguments. We observe that the supply of text book to students are again at different lower rate than that of outside persons, as is admitted by the appellant in their submissions. Hence, the supply of books or printed material relating to the course opted for them shall have to be treated as part of composite services along with educational service, being the principal service, as is held by us in case of hostel fees charged from the students. Consequently, the supply of books shall also be charged to rate of GST as applicable to educational service under SAC 9992-999293.

21. The various case laws referred to by the appellants are not applicable in the current case because the coaching institute run by the appellant does not qualify to be classified as an education institution as provided under Notification no. 12/2017-CT (rate) dated 28-6-2017. The decisions of AAR pointed out cannot be applied to this case by virtue of section 103 of the CGST/SGST Act and facts and circumstances being distinguishable.

22. On the basis of the above stated law and facts, the following orders are issued:

ORDER No. AAAR/ 13/ 21 DATED 05/05/2021

Issue No. 1: Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum] published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

Issue No. 2 : Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the

specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

Issue No.3: Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc. and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

Decision - Issue Nos. 1, 2 and 3 - As per the provisions contained in Para 2 (y) of the Notification No. 12/2017-Central Tax (rate) dated 28-06-2017, the appellant does not qualify to be categorized as "educational institution" and therefore the above stated services provided by the appellant are not exempted from GST as per entry no. 66 of the Notification no.12/2017-Central Tax (rate) dated 28-6-2017.

Issue No.4: What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

Decision : As per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, the impugned services provided by the appellant fall under "SAC - 9992-999293 - Commercial training and coaching services".

Issue No.5: Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized institutes or universities on behalf of students studying at the appellant institute.

Decision: Section 15 of the CGST/SGST Act, 2017 specifies that the entire consideration received by the supplier from the recipient of services is liable to GST. However, if the conditions prescribed for "Pure Agent" in Rule 33 of the CGST Rules, 2017 are satisfied in respect of the amount collected as examination fees / other fees by the appellant from the students enrolled with them, then such amount can be excluded from the value of taxable supply.

Issue No. 6: The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee?

Decision: The coaching / training provided by the appellant to their students along with hostel facility qualifies to be categorized as a composite supply as defined in Section 2 (30) of the CGST Act, 2017. As per Section 8 (a) of the CGST/SGST Act, 2017, the entire supply is to be treated as falling under "SAC - 9992- 999293 - Commercial training and coaching services" being the principal supply and will be liable to GST at the rate applicable for the principal supply.

Issue No. 7: Whether there is any tax liability on the appellant for selling text books to its students?

Decision: As held in respect of hostel fees, the sale of text books to the students qualifies to be categorized as a composite supply as defined in Section 2 (30) of the CGST Act, 2017. As per Section 8 (a) of the CGST/SGST Act, 2017, the entire supply is to be treated as falling under "SAC - 9992-999293 - Commercial training and coaching services" being the principal supply and will be liable to GST at the rate applicable for the principal supply.

In nut shell, the Advance Ruling No. KER/76/2019 dated 20/5/2020 of the Advance Ruling Authority, Kerala stands upheld with aforesaid modification and consequently the appeal filed by the appellant is rejected.

Shyam Raj Prasad, IRS
Chief Commissioner,
Central Tax, Central Excise & Customs
Thiruvananthapuram Zone, Kerala

Anand Singh, IAS
Commissioner,
State Goods & Service Tax Dept
Kerala

424060/2021/(DES) CCT

APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA

PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE RULING

(U/s.101 OF THE KERALA/ CENTRAL GOODS AND SERVICES TAX ACT, 2017).

Members present:

Shyam Raj Prasad IRS
Chief Commissioner,
Central Tax, Central Excise and Customs
Thiruvananthapuram Zone, Cochin

Anand Singh , IAS.
Commissioner
State Taxes, Kerala

Name and Address of the Appellant	M/s Logic Management Training Institutes Pvt Ltd, 7th Providence , Mahakavi Vyloplily lane, Pallarivattom, Kochi
GSTIN	32AABCL8151B1Z1
Advance ruling against which appeal is filed	KER/76/2019 DATED 20/5/2020
Date of filing Appeal	15-7-2020
Date of Personal Hearing	31-03-2021
Authorized Representative	Adv. Sherry Oommen

ORDER No. AAAR/ 13 /21 DATED 05/05/2021

The instant appeal stands filed under section 100(1) of the GST Act, 2017, by M/s Logic Management Training Institutes Pvt Ltd. Kochi holding GSTIN 32AABCL8151B1Z1 (hereinafter also referred as the appellant or M/s Logic Management) against the Advance Ruling Order No. KER/76/2019 dated 20/5/2020. The appellant is an institute imparting coaching to the students to facilitate them to obtain qualification such as Chartered Accountant, Cost Accountant, Company Secretary, certified Management Accountant, certified Public accountant, Association of Chartered certified Accountant etc.

Brief facts of the Case

1. The Appellant challenges the legality, correctness and propriety of the impugned order dated 20/05/2020 passed by the Advance Ruling Authority, Kerala on the following grounds and contentions, which are in the alternative and without prejudice to one another.

2. The Authority for Advance Ruling has not considered with a legal perspective the various facts, law and circumstances and even the ruling of the prevailing law on the subject submitted by the appellant. Therefore all the details submitted by the appellant so far, may be read as one of the points of this appeal memorandum. The following are the queries raised by the appellant in the original application and except query number 7, the Authority for Advance Ruling, ruled that the service rendered by the appellant is taxable services and is composite supply. 7th query has been answered as exempted.

2.1. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum) published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

2.2. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

2.3. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government recognized institutions like ACCA, IMA USA, etc.

and also availed from online facilities of the said Institutions on the basis of the specific syllabus (curriculum) published by International institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

2.4. What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

2.5. Is there any tax liability under GST laws on the appellant [or collecting and transferring examination fees and other fees of the recognized Institutes or universities on behalf of students studying al the appellant Institute.

2.6. The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any (ax liability on such hostel fee.

2.7. Whether there is any tax liability on hostel fees collected from outside students staying at the hostel for study purpose at a rate of Rs.250/- per day per person including food.

2.8. Whether there is any tax liability on the appellant for selling text books to its students.

3. The Rulings provided by the Authority are given below:

3.1. Questions Nos. 1, 2 and 3 -The appellant is not covered under the definition of "educational Institution" in Para 2 (y) of the Notification 10. 12/2017 Central Tax (rate) dated 28-06-2017 and hence the services provided by the appellant is not exempted from GST.

3.2. Question No.4 - As per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017, the education services provided by the appellant come under SAC - 9992· 999293 - Commercial training and coaching services. As per Explanatory Notes to the Scheme of Classification of Services the service code - 999293 includes any training or coaching provided by any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

3.3. Question No.5 - As per Section 15 of the CGST Act, 2017 the entire consideration received by the appellant from the recipient of services is liable to GST. However, if in respect of the amount collected as examination fees / other fees the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied then such amount can be excluded from the value of taxable supply as expenditure incurred by the appellant as a-pure-agent of the recipient of services.

3.4. Question No.6 - The provision of coaching / training provided by the appellant to their students along with hostel facility qualifies as a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and the tax liability on the composite supply has to be determined as per provisions of Section 8 (a) of the CGST Act. 2017. Therefore the entire supply is to be treated as falling under SAC - 9992- 999293 - Commercial training and coaching services: being the principal supply and will be liable to GST at the rate applicable for the principal supply.

3.5. Question No.7 - As the value of supply of a unit of accommodation in the hostel facility provided by the appellant to outside students is below one thousand rupees per day, the appellant is eligible for the exemption under Sl. No. 14 of the Notification No.12/2017 Central Tax (Rate) dtd.28-06-2017 in respect of the supply.

3.6. Question No.8 – The sale of text books to the students will attract GST as per the schedule of rates notified under Notification No.01/2017-Central Tax (Rate) dtd.28-06-2017.

Grounds of Appeal

4. The appellant submits the following points against the ruling made by the Authority:

4.1 Regarding Questions 1 to 3 in the Impugned order, the Authority ought to have found that the exemption Notification No. 12/2017 Central Tax (Rate) never intended that the benefit exemption should be limited to a class of professional students. On the other hand, the exemption facilities provided through the notification are for imparting education and thereby interpreting

that the exemption is only to limited institutions is against law. The appellant believes that the intention of Government as per the notification is to all students studying the subject and taking part in the Recognized courses, whether directly or indirectly. As long as there is no special condition specified in the notification the benefit is also to be given to Private players in Education. The Authority has passed the order without considering the law of equality and thus failed to render justice to the appellant. By restricting the exemption to a part of the society, or class of institutions, the settled principles of equality granted by the Constitution under Article 14 is violated.

4.2. With regard to Question No. 4 in the impugned order, the Authority wrongly classified the nature of services of the appellant under the SAC9992-999293 - Commercial training and coaching services. As the service of the appellant providing education as per the curriculum recognized by law is covered in the exemption category, the Authority misconstrued the classification 'as commercial training and coaching institutes'. Thus the appellant who is falling under the exempted category as per Notification No. 12/2017 Central Tax (rate) becomes liable to pay tax.

4.3. With regard to Question No. 5 in the impugned order, the learned Authority for Advance Ruling, ought to have found that the collection of fees to Government/university or Institute working on the basis of Act passed in the Parliament is only the work of an agent and treating the same as taxable supply is incorrect. The Authority for Advance Ruling under Karnataka Goods and Services Act wherein a similar activity of a similar institution, wherein the Institution was collecting exam fees and paying it on behalf of the students was considered. In Advance Ruling No.KAR ADRG 116/2019 dated 30-09-2019, it was observed by the Authority under thereln that "The activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the appellant as per Rule 33 of the Central GST Rules." It is the appellant's submission that appellant's activity also is eligible for exclusion by virtue of Rule 33 of Central GST Rules. Thus, by following the above provisions the service rendered by the appellant would fall under the exempted category.

4.4. With regard to Question No.6 in the impugned order, the Authority failed to consider the exemption given to hostel students as per Entry 14 of Notification No. 12/2017. A student of the appellant institute, who stays with the appellant's students' hostel is liable to pay tax on his hostel fee whereas the same student stay in another hostel is exempted. It is pertinent to note that In Entry 12 of Notification No. 12/2017 the Hostel expenses below Rs.1000 per day is blanketly given exemption. No need to club it with other Services since it is no way related to the main services provided. As per the decision in the case of re Sarj Educational Centre (GST AAR West Bangal), the hostel facilities and educational services provided by the appellant does not fall under the composite supply.

4.5. With regard to Question No.8, by issuing impugned order fixing tax on exempted goods like books, the Authority ought to have found that if a student purchases the same book from a book shop, the same is exempted as books, and it is taxable at 18% when students purchases the very same book from the appellant. By issuing such an incorrect order, the authority has failed to note the fact that the appellant will be singled out from the main stream of Institutions.

4.6. It is pertinent to note that in the period of the Service Tax, which is the pre-GST regime, and still in GST, the supply of reading books in open Market is exempted. The authority for Advance Ruling failed to find that in the Ruling, it never considered the fact that the composite supply should be taxable supply. Here the books are not taxable supply so it never come under GST. Also, the books are priced in Open Market. The peculiar circumstances here will adversely affect the interest of imparting education. As per the impugned Ruling, those, students who are purchasing the books from the appellant institute is taxable as composite supplier, where as if the same students purchase the same book from a book shop or other institute, it is exempted. This position is also unfair and against the "right to practice any profession, or to carryon any occupation, trade or business under Article 19(1)(g)of the Constitution of India.

5. The detailed submissions of the Appellant on above grounds are as follows, which are without prejudice to each other:

5.1. The appellant is following the same curriculum as specified or recognized by the bodies constituted under Acts of Parliament so providing education in a format recognized by law. After getting proper guidelines, lectures and other educational support as prescribed by the above institutions, the students appear for examinations conducted by the above Government recognized institutions. The concerned Government-recognized institutions are conducting the exams by collecting fees for examinations books, etc. as per their rules of conduct, and the appellant is providing the very same service such as classes for the students of the appellant institute to comply with the regulations and all requirements of such institutions working under the Acts of legislature and Parliament. The regular colleges, whether aided or self-financed affiliated to Universities are also rendering the same service to students and though they are not awarding any degrees or diplomas, they are not subjected to levy of GST on service tax by the Department of GST and so much so, if such colleges are not liable for payment of GST on their service, then there is no reason why the appellant who are rendering the very same service should be treated differently and subjected to tax.

5.2. The Authority for Advance Rulings (AAR), Karnataka in the application filed by M/s Emerge Vocational Skills Private Ltd. AAR No. KAR ADRG 20/2018 has held that the service of providing Degree courses under related curriculum's by educational institutions to students exempt from the liability to pay Goods and Services Tax (GST). The question on which advance ruling is sought in the above case is as follows: "Whether the services provided by the appellant in affiliation to specified universities and providing degree courses to students under related curriculum's are exempt from Goods and Services Tax vide entry no. 66 of the Notification No. 12/2017 - Central Tax dated 28.06.2017?" The Authority for Advance Ruling held that "The services provided by the appellant in affiliation to specified universities and providing degree courses to students under related curriculum's to its students exempt from Central Goods and Services Tax vide entry no. 66 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28.06.2017 subject to the condition that such education services provided must be as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force".

5.3. The appellant is following the same curriculum as specified or recognized by the bodies constituted under Acts of Parliament so providing

education in a format recognized by law. The appellant herein is also providing B.com and M.com degree courses which is a recognized course under Indian law. The appellant offers University-recognized B.Com and M.Com education simultaneously with training for the professional qualifications, as that helps students to obtain graduation simultaneously with professional studies, and also because the study materials for both are fundamentally similar. The appellant provides;

1) education by following a legally recognized Curriculum
2) for obtaining a legally recognized qualification.

5.4. In the case of ITM International Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi [2017 (7) GSTL 448 (Tri. Del)], the Hon'ble CESTAT Principal Bench had passed an order holding that educational qualifications issued by foreign institutes which are recognized by Government of India, are also to be treated as certificate recognized by law for taxation purposes. By virtue of this interpretation, the appellant's activities of providing services to qualify for courses offered by Indian Government-recognized foreign institutions also fall within the purview of courses recognized by law. The order had also re-emphasized that an institution offering degree courses recognized by law was exempted from tax. The decisions of the Hon'ble High Court of Kerala in The Malappuram District Parallel College v. The Union of India [W.P.(C)No. 728 of 2005] and Union of India and others v. The Kasaragod District Parallel College and another [2013 (3) KHC 509] are also relevant here wherein levy of Service Tax on services offered by parallel colleges in Kerala was held to be invalid. In the latter case, the Hon'ble Court had held that:

"... 35. Therefore, what is important to consider is that if the institution is one wherein students are being prepared for acquiring qualification, certificate or diploma or degree which is recognized by law in force, then the same will come within the second limb of the exclusion clause under Section 65(27)..."

5.5. The Appellant is preparing students to obtain qualifications and degrees as spelt out by the Hon'ble Court so was eligible for exemption under the Service Tax regime. When the same exemption has been carried forward to GST regime by virtue of Notification No.12/2017-Central Tax (Rate), appellant's eligibility for exemption would automatically get carried

over into the GST period as well. The Impugned AAR Ruling has been passed by the Respondent No.1 based on a misapplication of law.

5.6. The term "educational institution" has been defined in 2(y) of Notification No.12/2017-Central Tax (Rate) and the same reads as under:

2(y) "educational institution" means an institution providing services by way of

- *(i) pre-school education and education up to higher secondary school or equivalent;*
- *(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- *(iii) education as a part of an approved vocational education course;*

The appellant's services are eligible for exemption from GST by virtue of Entry 66 of Notification No. 12/2017- Central Tax (Rate) dated 28-062017 issued by the Government of India whereby Intra-State supply of educational services are exempted. In the earlier Service Tax regime as well, educational services facilitating qualifications recognized by law were exempted from tax and the Government carried forward this exemption through Notification No. 12/20 17-Central Tax (Rate). The word 'education' is derived from the Latin word 'educa' which means bringing out latent faculties. 'Education' means the act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment and generally of preparing onself or others intellectually or mature life: the act or process of Imparting or acquiring particular knowledge or skills. It Is the result produced by Instruction, training or study. Thus, the word has very wide import. [Padmanav Dhury v. State of Orissa, AIR 1999 Ori 97,99]. In case of Sole Trustee, Loka Shikshana Trust v. CIT, [1975 (8) TMI 1 - SUPREME Court], Honble Supreme Court observed that education connotes the process of training and developing knowledge, skill and character of students by normal schooling.

The expression 'education' occurring In various articles of the Constitution of India means and includes education at all levels, from the primary school level up to the postgraduate level and professional' education. [TMA Pai Foundation v. State of Karnataka (2002) 8 SCC 481 (sc),

para 450]. In Soorya Educational Trust v. ITO 2012 (6) TMI 602 It was held that "Memorandum of Understanding entered by the assessee with Annamalai University and objects of the Trust it is clear that ex-facie the objects are nothing but educational and assessee was imparting a type of oral education and students studying in assessee's institutions were being awarded formal Diploma/degree. There is no case for the Revenue that Annamalai University was existing for any commercial purposes. In our opinion, if Annamalai University was an educational institution, then assessee, which was conducting classes for the said University under its authority, was also an educational institution. Hence fees like admission fees, tuition fees, examination fees, computer fees, sports fees, annual subscription of journal fees of schools/ universities shall be construed as covered within the ambit of 'education' and shall be covered by negative list - thus no service tax".

5.7. The conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognized by law would be covered by the Notification No.12/2017. Thus the appellant falls within the exempted category and not liable to pay any tax. The Authority misconstrued the appellant's services as one which falls under the SAC-9992-999293-commercial training and coaching Institutes. Thus by classifying the educational services provided by the appellant -under the above SAC, the appellant has been denied the availment of exemption. The exam fees collected by the appellant and paid to respective exams bodies in India and Abroad Universities and Education Bodies without any profit mind as a facility to students are also exempted from tax liability. The appellant is only acting as a facility provider for students to pay their exam fees on time without any technical difficulties. Normally Students can pay the examination fees directly to CA, CS, CMA, IMA USA, ACCA UK, IFRS, CPA USA, etc. using their debit or Credit Card. Lot students especially those coming from disadvantaged backgrounds, face difficulty in making such online payments since they would not be having credit or debit cards or enough technical knowledge to make such payments. So the appellant helps them to pay it through the appellant's banking facility and so that they can concentrate on their studies and no need to panic about the technicalities related to examination. There is no profit element in this as we are just collecting the exam fees from students and paying it to the respective institutions. The activity of collecting and transferring examination fees and

other fees of the recognized Institutes or Universities on behalf of students studying at the appellant institute is carried out by the appellant acting as a mere agent of students without any value addition or profit generation, but with the only underlying objective to lend a helping hand to students to get past the technicalities of online fee payment. Therefore, the said activity would not qualify as a supply under GST laws and hence would not be eligible to attract GST.

5.8. The Authority for Advance Ruling under Karnataka Goods and Services Act considered a similar activity of a similar institution, wherein the institution was collecting exam fees and paying it on behalf of the students. In Advance Ruling No. KAR-ADRG 116/2019 dated 30-09-2019, it was observed by the Authority that "The activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the appellant as per Rule 33 of the Central GST Rules". It is the appellant's submission that appellant's activity also is eligible for exclusion by virtue of Rule 33 of Central GST Rules. Thus by following the above provisions, the service rendered by the appellant would fall under the exempted category.

5.9. The appellant sells text books and notes pertaining to the courses with very slight margin to ensure that the students of the appellant get them hassle-free and at reduced prices than that offered by outside sources like book shops or shopping websites. The appellant sells these books at an open market price. Printed books were exempted from GST under the VAT regime and the exemption is continued into GST regime as well. As per the official list of commodities and tax rates published in the official website of Central Goods and Services Tax Department, namely www.cbic-gst.gov.in printed books fall within the category of exempted goods. It is the appellant's submission that since printed books are exempted from GST, appellant's activity of supplying to its students books of courses offered by the appellant, shall be eligible for exemption as well. In the case of re M/s.Shri Ashok Chaturvedi (GST AAR Chhattisgarh), the court held that supply of specified printed educational books by CHHATTISGARH TEXT BOOK CORPORATION as per the instructions of School Education Department CG [Loksikshan Sanchnalay] or as per instruction of various agencies of school Education Department CG such as Rajiv Gandhi Siksha Mission / SCERT /

office of District Education officer etc. consequent to printing of the Syllabus as decided by the SCERT, merits consideration as supply of printed books attracting zero rate, under Notification No. 2/2017-State Tax(Rate) No. F-10-43/2017-CT/V/70, Dated 28-06-2017, under HSN Code 4901.

6. The Appellant craves leave to add, amend and alter any of the submissions mentioned here in above and produce such documentary evidence as may be necessary for the case. The Appellant further craves leave to rely on such judicial precedents as may be required in their defense.

7. On the facts and circumstances, the Appellant prays for modification in the Impugned rulings as under:

7.1. With respect to Question No. 1, 2 and 3 raised in the Original Application for Advance Ruling, that the educational services provided by the Appellant is exempted and does not attract any tax under the GST laws.

7.2. With respect to Question No.4 raised in the Application, that the SAC of the services of the appellant, may be modified in the light of the non-taxability of the services rendered by the appellant.

7.3. With respect to Question No.5, 6 & 8 raised in the Application, that the ruling of the Authority for Advance Ruling may be modified by considering the facts, law and the circumstances of the activities of the appellant.

7.4. In short, according to the appellant, except question number 7, the appellant has not received a clear and legally sustainable ruling and therefore all the queries except query number 7 may be reviewed and justice may be rendered to the appellant.

Personal hearing

8. The appellant was afforded an opportunity of personal hearing via virtual media on 31/3/2021. The authorized representative of the appellant Adv. Sherry Oommen appeared before the authority and reiterated the contentions raised in the appeal memorandum. He also submitted additional brief dated 29.03.2021 in their favour for consideration, which was also taken on record.

Discussion and Findings

9. We have carefully gone through the facts of the case, the Advance Ruling Authority order dated 20/05/2020, the appeal memorandum filed by the appellant and other submissions made by them during the course of personal hearing and other evidences on record. The seven disputed issues to be decided in this appeal proceeding are listed as follows:-

Issue No. 1, 2 & 3: Whether all the following Education program and trainings being offered by the appellant are exempted from GST as imparting of education?

1. The appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum] published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

2. The appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

3. The appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc. and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

Issue No. 4: What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

Issue No. 5: Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized

institutes or universities on behalf of students studying at the appellant institute?

Issue No. 6: The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee?

Issue No. 7: Whether there is any tax liability on the appellant for selling text books to its students?

10. Before going into the merit of the issues involved, it is noticed that the appellant in their additional submissions has raised some preliminary objections against the advance ruling stating therein that the ruling has been pronounced in absence of issue of a notice or seeking explanation from them or by attributing any reasons/grounds for the findings and therefore the ruling has been issued in violation of principles of natural justice. They have relied upon the case law of CB Gautam (1993) 1 SCC 78. We observe that the procedure prescribed for dealing with the application filed by the appellant before Advance ruling authority has been followed by the lower authority, in accordance with law. It is further observed that there is no provision for either issue of notice or seeking explanation from the appellant before giving verdict on the application, prescribed in the GST Law. Moreover, a personal hearing was duly granted by the lower authority to the appellant (refer para 2 of the Ruling) and submissions have been duly considered while passing the impugned Ruling. Hence, no infirmity could be found in the proceedings as the principles of natural justice have been complied with in true spirit of law. The case law of CB Gautam being not relevant to the case is of no help to the appellant. As regards, reasons for arriving at a decision on the issues, we observe that the Ruling has discussed the issues with reference to applicable portion of GST law and arrived at the conclusions accordingly. Moreover, all the points raised by them in their appeal memorandum and additional submissions are being considered once again in this appellate proceedings. Hence, the objection raised by the appellant and the case laws relied upon by them in this regard are found irrelevant.

11. Having dealt with their preliminary objections, we shall now examine each disputed issues in seriatim keeping in view the submissions made by the appellant. The main contention raised by the appellant is that they are

providing educational services based on the curriculum published by the recognized institutions and prescribed by law and is, therefore, eligible for exemption from GST as per Sl. No. 66 of the notification no. 12/2017-CT (rate) dated 28/6/2017. The appellant further contends that since their principal supply is exempted from GST, the other services that are ancillary to the same are also exempted from GST.

12. The contentions of the appellant regarding exemption of services provided by them are being examined in the light of relevant Entry No. 66 of Notification no. 12/2017-CT (rate), dated 28/6/2017, which provides exemption to services provided by Educational institution. The Entry No. 66 with HSN 9992 specifies as follows:

"Services provided -
(a) by an educational institution to its students, faculty and staff;
(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;
(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
(iii) security or cleaning or house-keeping services performed in such educational institution;
(iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary;
(v) supply of online educational journals or periodicals;

Provided that nothing contained in [sub-items (i), (ii) and (iii) of item (b)] shall apply to an educational institution other than an institution providing services by way of pre -school education and education up to higher secondary school or equivalent;

Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of, —

i. Pre-school education and education up to higher secondary school or equivalent; or

ii. Education as a part of an approved vocational education course."

Para 2 (y) of the notification no. 12/2017-CT(rate) defines "Educational institution", according to which "Educational Institution" means an institution providing services by way of:

(i) Pre-school education and education up to higher secondary school or equivalent;

(ii) **Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;**

(iii) Education as a part of an approved vocational education course.

13. We observe that the appellant's institution is not providing any elementary education or pre-school or upto higher secondary level or equivalent, thereby, they would not come under the purview of the 'educational institution' as defined in para 2(y)(l) of the said notification no. 12/2017-CT. Similarly, the appellant is not engaged in providing Education as a part of an approved vocational education course as envisaged in para 2(y)(iii) of the said notification. It is not the case of the appellant that they are providing any vocational courses. Hence, they cannot be categorized as 'education institution' within the meaning of sub-clauses (i) and (iii) of para 2 (y) of the said notification for the purpose of exemption. The appellant has also not claimed the exemption under these two sub-clauses either.

14. Now, it is to be examined whether the services rendered by the appellant would fall within the ambit of para 2(y)(ii) of the said notification no. 12/2017-CT as detailed above.

14.1. The term "Education" is not defined in the CGST/SGST Act but as per Apex Court's decision in "Loka Shikshana Trust v/s CIT", Education is process of training and developing knowledge, skill and character of students by normal schooling. The term "educational institution", under sub-clause (II) ibid, covers institutions providing services by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force. In order to be qualified to get included under this sub-clause, educational service should be imparted as a part of curriculum and for obtaining a qualification recognized by extant law.

14.2. GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 issued by CBEC in connection with Service tax can be adopted. As per Education guide of 2012 meaning of 'education as a part of curriculum for obtaining a qualification recognized by law' is clarified to be "only such educational services are in the negative list (exempted) that are related to delivery of

education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law". It is important to understand that to be in the negative list (exempted) the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification. This clearly implies that only those institutions whose operations conform to the specifics given in the definition of the term "Educational Institution", would be treated as one and entitled to avail exemptions provided by the law.

14.3. Accordingly, the private coaching centers or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution. The appellant's institution as such has no specific curriculum and the institution itself does not conduct any examination or award any qualification recognized by law for the time being in force. The institute only provides coaching to the students registered with them. The appellant is not issuing any 'valid course completion certificate' or 'any study certificate' or any degree prescribed under any statute in respect of CA, CMA, CS, ICWA etc. Moreover, coaching or training in appellant's institution is not a mandatory compliance for an aspirant in pursuing their study and obtaining certificates for these courses. It is also not mandatory on the part of the students to furnish any certification or nomination or forwarding of their applications or registrations through the appellant to the concerned statutory body for awarding the certificate for the course. Therefore, the appellant is not qualified to be classified as an 'educational institution' within the meaning assigned and covered vide para 2(y)(ii) of Notification no.12/2017-CT (rate).

14.4. The appellant has contended that the Advance Ruling authority has erroneously reckoned that the appellant would need to be recognized/approved by the respective bodies, which is actually not required in GST law. They also added that they have obtained recognition of the ICAI and that courses undertaken by them in ACCA and CMA is also recognized by the Institute of Cost Accountant of India. They impart teaching solely based on curriculam prescribed by the concerned professional bodies, hence they are eligible to exemption as "educational institution" under Notification No.

12/2017-CT (Rate) dated 28/06/2017. They have referred to the definition of 'education' and 'curriculum' given in Cambridge Dictionary, Oxford Dictionary and Dictionary.com and stated that 'education as a part of curriculum...' can be understood as "imparting knowledge (education) through a systematic syllabus in an institution, college or school". According to them, the coaching/training institute that imparts/prepares the students for obtaining a qualification duly organized by any law, are exempted under the said notification. They have also submitted that the taxation statute is to be construed strictly for which they have relied upon several case laws in their favour. At the same time, they also contended that when an exemption notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict interpretation. They have relied upon case of Reliance Petroleum Ltd [2008] 227 ELT 3 [SC] in this regard.

15. In this regard, it is emerging from above discussions, that the coaching or training service provided by the appellant to the aspirants of CA-Foundation, CA-Inter, CA-Final, CMA (ICWA)-Foundation, CMA-Inter, CMA-Final and Intermediate is not the service provided by means of 'education as a part of curriculum that has been prescribed for obtaining a qualification prescribed by law'. The coaching / training imparted by the appellant to CA/CMA aspiring students (for appearing and qualifying in the respective examinations) would not lead to grant of certificate/qualification recognized by law. Instead, all the aspirants are required to take a separate set of examinations conducted by the said recognized institutions like ICAI, ICWA etc. for acquiring certificate or degree recognized by law. The training / coaching imparted by the appellant might be helping the aspirants to clear the tests/examinations organized by the recognized institutions but not per se lead to grant of any certificate or degree as such recognized by law.

16.1. It is settled law that the person availing the exemption notification shall satisfy all the conditions prescribed in the notification and failure to do so would disentitle him from the exemption. In the case of Harichand Shri Gopal 2010 (260) ELT 3 (SC), Larger bench of Hon'ble Supreme Court has observed as under:

"22. *The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the*

conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption....."

16.2. As regards conditions of the notification and fulfillment thereof in true spirit, reliance is placed on the case of M/s Eagle flask Industries Limited [2004(09)LCX 0235] wherein Hon'ble Supreme Court has held that the conditions laid down in notification are statutory conditions and same are to be followed/fulfilled in its true letters and spirits and these are not mere formalities and once the conditions of notification granting exemption/refund are not satisfied, the refund cannot be granted to the assessee.

16.3. It is well settled law that the exemption notification being a liberal piece of legislation, needs to be interpreted strictly within the plain words and language provided therein and there is no scope of intendments. We rely upon the verdict of Hon'ble Supreme Court in case of H.M.M Ltd Vs .Collector – 1986 (87) ELT 593(SC) that *"Exemption Notification is not only to be construed strictly but also reasonably having regard to the language employed therein"*. Also in Sri Sathya Sai Institute of High Medical Sciences Vs UOI [2003 (158) ELT 214 SC], the Hon'ble Supreme Court ruled that *"Even the court cannot interpose further conditions in the notification". Further, it is settled law that* statute/ notification has to be understood by its plain words and no intendment is allowed as is held in following cases:

(i) In the case of Dharmandra Textile Processors Vs. Union of India reported in [2008 (231) ELT.3 (S.C.)], the Apex Court held that

> *" it is a well settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent".*

(ii) The above views have been expressed by the Hon'ble Supreme Court in the case of Novopan India Ltd vs. CCE. reported in [1994(73) ELT.769 (S.C.)], holding that

> *"a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification".*

(iii) Further, in case of CCE vs. Sunder Steels Ltd., reported in [2005(181) E.L.T. 154 (SC.)] the Apex Court has also held that

> *"the Notification has to be interpreted on its wording. No words, not used in the notification can be added."*

(iv) Also, the Supreme Court in the case of Rajasthan Spg. &Wvg. Mills vs. CCE reported in [1995 (77) ELT 474 (SC)] observed that

> *"since it was a case of exemption from duty, there was no question of any liberal construction to extend the term and scope of the notification as such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification to which no extended meaning can be given to exempt the items by enlarging the scope of exemption granted by the notification".*

16.4. In the case of Dilip Kumar & Co. 2018 (361) E.L.T. 577 (SC), Hon'ble Supreme Court has held with regard to interpretation of tax exemption Notification that it is the law that any ambiguity in a taxing statute should ensure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue – and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. It is further affirmed that every taxing statue and exemption clause should be interpreted strictly.

16.5. In view of above settled position of law in respect of exemption notification, and by applying the settled law of strict interpretation of taxing statute, which are plainly worded, as in the case in hand, the services rendered by the appellant are held to be not a service by way of 'education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force' as envisaged under entry no. 66 of the said notification, for exemption from GST.

17. The other issue for consideration before us is service accounting code of the services rendered by the appellant. As per the Scheme of classification of services under GST Law, SAC 999293 Specifies about commercial training and coaching services. This service code includes any training or coaching provided by any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field

other than the sports with or without issuance of a certificate and includes coaching or tutorial classes. Thereby the services rendered by the appellant can rightly be classified under this SAC.

18. The next issue raised before this authority is that whether there is any GST liability on the appellant for collecting and transferring examination fees and other fees to the recognized institutes or universities on behalf of the students studying at their institute.

18.1. The value of taxable supply of goods and / or services is determined by the provisions of Section 15 of the CGST/ SGST Act, 2017. Section 15 (2) provides that the value of supply shall include-

> (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
>
> (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) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
>
> (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
>
> (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

18.2. Rule 33 of the CGST Rules, 2017 deals with value of supply of services in case of pure agent, wherein it is provided that

"Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, –

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. – For the purposes of this rule, the expression "pure agent" means a person who –

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and .

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."

18.3. As per the provisions of Section 15 of the CGST/SGST Act, 2017 the entire consideration received by the appellant from the recipient of services is taxable under GST. However, if the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied and the appellant acts as a pure agent on behalf of the students enrolled with them, there will be no tax liability for the amount collected as examination fees / other fees. Accordingly, such amount can be excluded from the value of taxable supply as expenditure incurred by the appellant as a pure agent of the recipient of services.

19. Another issue for determination before us is that the appellant offers hostel facility to its students at a rate of less than Rs. 200/- per day per person including food and at a monthly rate of maximum Rs. 6000/-. Whether there is any tax liability on such hostel fee?

19.1. In order to determine this issue, the provisions of Composite supply under CGST /SGST Act is relevant. Section 2(30) of the CGST Act, 2017 defines composite supply, according to which, "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." Further, Section 8 of the CGST Act, 2017 contains the provisions of tax liability on composite and mixed supplies. Section 8 prescribes that

"the tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax;"

19.2. The Advance Ruling authority has held that provision of coaching / training provided by the appellant to their students along with hostel facility qualifies as a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and the tax liability on the composite supply has to be determined as per provisions of Section 8 (a) of the CGST Act, 2017. Therefore, the entire supply is to be treated as falling under SAC – 9992- 999293 - Commercial training and coaching services; being the principal supply and will be liable to GST at the rate applicable for the principal supply. The appellant has however contended that hostel facility is a standalone facility and not naturally bundled along with educational services; and that hostel facility, being available to any person, is not mandatory and in conjunction with educational services to fall under the category of composite services; that it is not provided as a package and hence is a divisible contract. The appellant has placed reliance on the Education Guide issued by CBEC and the case law of European Court of Justice in Volker Ludwig [2013]31 Taxmann.com 287 and UK Upper Tribunal in Hon'ble Society of the Middle Temple Vs HMRC [2013] UKUT 0250 etc. They have also claimed exemption on hostel fees under exemption notification No.12/2017-CT (Rate) dated 28.06.2017 as the declared tariff is less than Rs. 1000 per day, and has relied upon several case laws.

19.3. We observe that the appellant is mainly and principally engaged in imparting training/coaching to their students and thereby providing educational services, which is classifiable under SAC 9992-999293. The student who opts to take coaching from them stays in their hostel and pay hostel fees @ less than Rs. 200 per day or maximum Rs. 6000/- per month, in addition to the course charges as a package. It is also undisputed that they are charging Rs. 250/- per day from outside students/residents staying at their hostel. It may be seen here that they are charging different rates from their students and outside persons possibly they differentiate between the two categories of residents. The students enrolled with them are presumably charged lesser amount of hostel fees as a part of the package with educational services. In such a situation, when the appellant are distinguishing the two types of residents for charging different hostel fees for the same lodging and food services, it is not difficult to infer that their students enjoy the concession only as a part of composite services of educational services and hostel facility. No explanation is forthcoming from their appeal memorandum regarding the said difference in charges of hostel fees. In such a situation, applying the provisions of Section 2(30) read with Section 8 of CGST Act, 2017, it is conveniently held that the appellant is providing a composite services of educational service (being principal service) and hostel facility, as is rightly held by the lower authority. The arguments of the appellant therefore are liable to be rejected in this regard. Having held that the hostel facility is being provided by the appellant to their enrolled students as a part of composite services along with educational service, the entire set of service shall be classified under SAC 9992-999293 – Commercial training and coaching services, being principal service and shall be charged to GST accordingly. The claim of the appellant regarding benefit of exemption notification No. 12/2017-CT for hostel fees is also devoid of merit in view of the fact that exemption is granted to the services falling under Sl No. 14 – heading 9963 only and not for heading 9992 as is applicable in this case.

20. Another issue for determination by us is regarding tax liability on the appellant for selling text books to its students.

20.1. The lower authority has held that the sale of text books to the students will attract GST as per the schedule of rates notified under Notification No. 01/2017-Central Tax (Rate) dtd.28-06-2017. Whereas, the appellant has contended that the context of hostel facility would also apply to text books,

as the same is sold to any willing consumer and students for a separately agreed consideration. They have sought exemption from GST in terms of Sl. No. 119 of the Notification No. 2/2017-CT (Rate) dated 28.06.2017 and also relied upon case of Sonka Publication India (P) Ltd 2019 (74) GST 6 (Delhi) to support their arguments. We observe that the supply of text book to students are again at different lower rate than that of outside persons, as is admitted by the appellant in their submissions. Hence, the supply of books or printed material relating to the course opted for them shall have to be treated as part of composite services along with educational service, being the principal service, as is held by us in case of hostel fees charged from the students. Consequently, the supply of books shall also be charged to rate of GST as applicable to educational service under SAC 9992-999293.

21. The various case laws referred to by the appellants are not applicable in the current case because the coaching institute run by the appellant does not qualify to be classified as an education institution as provided under Notification no. 12/2017-CT (rate) dated 28-6-2017. The decisions of AAR pointed out cannot be applied to this case by virtue of section 103 of the CGST/SGST Act and facts and circumstances being distinguishable.

22. On the basis of the above stated law and facts, the following orders are issued:

ORDER No. AAAR/ 13/ 21 DATED 05/05/2021

Issue No. 1: Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum) published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

Issue No. 2 : Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the

specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

Issue No.3: Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc. and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by International institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

Decision - Issue Nos. 1, 2 and 3 - As per the provisions contained in Para 2 (y) of the Notification No. 12/2017-Central Tax (rate) dated 28-06-2017, the appellant does not qualify to be categorized as "educational institution" and therefore the above stated services provided by the appellant are not exempted from GST as per entry no. 66 of the Notification no.12/2017-Central Tax (rate) dated 28-6-2017.

Issue No.4: What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

Decision : As per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, the impugned services provided by the appellant fall under "SAC – 9992-999293 – Commercial training and coaching services".

Issue No.5: Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized institutes or universities on behalf of students studying at the appellant institute.

Decision: Section 15 of the CGST/SGST Act, 2017 specifies that the entire consideration received by the supplier from the recipient of services is liable to GST. However, if the conditions prescribed for "Pure Agent" in Rule 33 of the CGST Rules, 2017 are satisfied in respect of the amount collected as examination fees / other fees by the appellant from the students enrolled with them, then such amount can be excluded from the value of taxable supply.

Issue No. 6: The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee?

Decision: The coaching / training provided by the appellant to their students along with hostel facility qualifies to be categorized as a composite supply as defined in Section 2 (30) of the CGST Act, 2017. As per Section 8 (a) of the CGST/SGST Act, 2017, the entire supply is to be treated as falling under "SAC - 9992- 999293 - Commercial training and coaching services" being the principal supply and will be liable to GST at the rate applicable for the principal supply.

Issue No. 7: Whether there is any tax liability on the appellant for selling text books to its students?

Decision: As held in respect of hostel fees, the sale of text books to the students qualifies to be categorized as a composite supply as defined in Section 2 (30) of the CGST Act, 2017. As per Section 8 (a) of the CGST/SGST Act, 2017, the entire supply is to be treated as falling under "SAC - 9992-999293 - Commercial training and coaching services" being the principal supply and will be liable to GST at the rate applicable for the principal supply.

In nut shell, the Advance Ruling No. KER/76/2019 dated 20/5/2020 of the Advance Ruling Authority, Kerala stands upheld with aforesaid modification and consequently the appeal filed by the appellant is rejected.

Shyam Raj Prasad, IRS
Chief Commissioner,
Central Tax, Central Excise & Customs
Thiruvananthapuram Zone, Kerala

Anand Singh, IAS
Commissioner,
State Goods & Service Tax Dept
Kerala

APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA

PROCEEDINGS OF THE APPELLATE AUTHORITY FOR ADVANCE RULING

(U/s.101 OF THE KERALA/ CENTRAL GOODS AND SERVICES TAX ACT, 2017).

Members present:

Shyam Raj Prasad IRS
Chief Commissioner,
Central Tax, Central Excise and Customs
Thiruvananthapuram Zone, Cochin

Anand Singh , IAS.
Commissioner
State Taxes, Kerala

Name and Address of the Appellant	M/s Logic Management Training Institutes Pvt Ltd, 7th Providence , Mahakavi Vylopilly lane, Pallarivattom, Kochi
GSTIN	32AABCL8151B1Z1
Advance ruling against which appeal is filed	KER/76/2019 DATED 20/5/2020
Date of filing Appeal	15-7-2020
Date of Personal Hearing	31-03-2021
Authorized Representative	Adv. Sherry Oommen

ORDER No. AAAR/ 13 /21 DATED 05/05/2021

The instant appeal stands filed under section 100(1) of the GST Act, 2017, by M/s Logic Management Training Institutes Pvt Ltd, Kochi holding GSTIN 32AABCL8151B1Z1 (hereinafter also referred as the appellant or M/s Logic Management) against the Advance Ruling Order No. KER/76/2019 dated 20/5/2020. The appellant is an institute imparting coaching to the students to facilitate them to obtain qualification such as Chartered Accountant, Cost Accountant, Company Secretary, certified Management Accountant, certified Public accountant, Association of Chartered certified Accountant etc.

Brief facts of the Case

1. The Appellant challenges the legality, correctness and propriety of the impugned order dated 20/05/2020 passed by the Advance Ruling Authority, Kerala on the following grounds and contentions, which are in the alternative and without prejudice to one another.

2. The Authority for Advance Ruling has not considered with a legal perspective the various facts, law and circumstances and even the ruling of the prevailing law on the subject submitted by the appellant. Therefore all the details submitted by the appellant so far, may be read as one of the points of this appeal memorandum. The following are the queries raised by the appellant in the original application and except query number 7, the Authority for Advance Ruling, ruled that the service rendered by the appellant is taxable services and is composite supply. 7th query has been answered as exempted.

2.1. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum) published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

2.2. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

2.3. Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc.

and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

2.4. What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

2.5. Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized institutes or universities on behalf of students studying at the appellant institute.

2.6. The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee.

2.7. Whether there is any tax liability on hostel fees collected from outside students staying at the hostel for study purpose at a rate of Rs.250/- per day per person including food.

2.8. Whether there is any tax liability on the appellant for selling text books to its students.

3. The Rulings provided by the Authority are given below:

3.1. Questions Nos. 1, 2 and 3 -The appellant is not covered under the definition of "educational institution" in Para 2 (y) of the Notification 10. 12/2017 Central Tax (rate) dated 28-06-2017 and hence the services provided by the appellant is not exempted from GST.

3.2. Question No.4 - As per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017, the education services provided by the appellant come under SAC - 9992- 999293 - Commercial training and coaching services. As per Explanatory Notes to the Scheme of Classification of Services the service code - 999293 includes any training or coaching provided by any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

3.3. Question No.5 - As per Section 15 of the CGST Act, 2017 the entire consideration received by the appellant from the recipient of services is liable to GST. However, if in respect of the amount collected as examination fees / other fees the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied then such amount can be excluded from the value of taxable supply as expenditure incurred by the appellant as a-pure-agent of the recipient of services.

3.4. Question No.6 - The provision of coaching / training provided by the appellant to their students along with hostel facility qualifies as a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and the tax liability on the composite supply has to be determined as per provisions of Section 8 (a) of the CGST Act. 2017. Therefore the entire supply is to be treated as falling under SAC - 9992- 999293 - Commercial training and coaching services: being the principal supply and will be liable to GST at the rate applicable for the principal supply.

3.5. Question No.7 – As the value of supply of a unit of accommodation in the hostel facility provided by the appellant to outside students is below one thousand rupees per day, the appellant is eligible for the exemption under Sl. No. 14 of the Notification No.12/2017 Central Tax (Rate) dtd.28-06-2017 in respect of the supply.

3.6. Question No.8 – The sale of text books to the students will attract GST as per the schedule of rates notified under Notification No.01/2017-Central Tax (Rate) dtd.28-06-2017.

Grounds of Appeal

4. The appellant submits the following points against the ruling made by the Authority:

4.1 Regarding Questions 1 to 3 in the impugned order, the Authority ought to have found that the exemption Notification No. 12/2017 Central Tax (Rate) never intended that the benefit exemption should be limited to a class of professional students. On the other hand, the exemption facilities provided through the notification are for imparting education and thereby interpreting

that the exemption is only to limited institutions is against law. The appellant believes that the intention of Government as per the notification is to all students studying the subject and taking part in the Recognized courses, whether directly or indirectly. As long as there is no special condition specified in the notification the benefit is also to be given to Private players in Education. The Authority has passed the order without considering the law of equality and thus failed to render justice to the appellant. By restricting the exemption to a part of the society, or class of institutions, the settled principles of equality granted by the Constitution under Article 14 is violated.

4.2. With regard to Question No. 4 in the impugned order, the Authority wrongly classified the nature of services of the appellant under the SAC9992-999293 - Commercial training and coaching services. As the service of the appellant providing education as per the curriculum recognized by law is covered in the exemption category, the Authority misconstrued the classification 'as commercial training and coaching institutes'. Thus the appellant who is falling under the exempted category as per Notification No. 12/2017 Central Tax (rate) becomes liable to pay tax.

4.3. With regard to Question No. 5 in the impugned order, the learned Authority for Advance Ruling, ought to have found that the collection of fees to Government/university or institute working on the basis of Act passed in the Parliament is only the work of an agent and treating the same as taxable supply is incorrect. The Authority for Advance Ruling under Karnataka Goods and Services Act wherein a similar activity of a similar institution, wherein the institution was collecting exam fees and paying it on behalf of the students was considered. In Advance Ruling No.KAR ADRG 116/2019 dated 30-09-2019, it was observed by the Authority under therein that "The activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the appellant as per Rule 33 of the Central GST Rules." It is the appellant's submission that appellant's activity also is eligible for exclusion by virtue of Rule 33 of Central GST Rules. Thus, by following the above provisions the service rendered by the appellant would fall under the exempted category.

4.4. With regard to Question No.6 in the impugned order, the Authority failed to consider the exemption given to hostel students as per Entry 14 of Notification No. 12/2017. A student of the appellant institute, who stays with the appellant's students' hostel is liable to pay tax on his hostel fee whereas the same student stay in another hostel is exempted. It is pertinent to note that In Entry 12 of Notification No. 12/2017 the Hostel expenses below Rs.1000 per day is blanketly given exemption. No need to club it with other Services since it is no way related to the main services provided. As per the decision in the case of re Sarj Educational Centre (GST AAR West Bangal), the hostel facilities and educational services provided by the appellant does not fall under the composite supply.

4.5. With regard to Question No.8, by issuing impugned order fixing tax on exempted goods like books, the Authority ought to have found that if a student purchases the same book from a book shop, the same is exempted as books, and it is taxable at 18% when students purchases the very same book from the appellant. By issuing such an incorrect order, the authority has failed to note the fact that the appellant will be singled out from the main stream of Institutions.

4.6. It is pertinent to note that in the period of the Service Tax, which is the pre-GST regime, and still in GST, the supply of reading books in open Market is exempted. The authority for Advance Ruling failed to find that in the Ruling, it never considered the fact that the composite supply should be taxable supply. Here the books are not taxable supply so it never come under GST. Also, the books are priced in Open Market. The peculiar circumstances here will adversely affect the interest of imparting education. As per the Impugned Ruling, those, students who are purchasing the books from the appellant institute is taxable as composite supplier, where as if the same students purchase the same book from a book shop or other institute, it is exempted. This position is also unfair and against the "right to practice any profession, or to carryon any occupation, trade or business under Article 19(1)(g)of the Constitution of India.

5. The detailed submissions of the Appellant on above grounds are as follows, which are without prejudice to each other:

5.1. The appellant is following the same curriculum as specified or recognized by the bodies constituted under Acts of Parliament so providing education in a format recognized by law. After getting proper guidelines, lectures and other educational support as prescribed by the above institutions, the students appear for examinations conducted by the above Government recognized institutions. The concerned Government-recognized institutions are conducting the exams by collecting fees for examinations books, etc. as per their rules of conduct, and the appellant is providing the very same service such as classes for the students of the appellant institute to comply with the regulations and all requirements of such institutions working under the Acts of legislature and Parliament. The regular colleges, whether aided or self-financed affiliated to Universities are also rendering the same service to students and though they are not awarding any degrees or diplomas, they are not subjected to levy of GST on service tax by the Department of GST and so much so, if such colleges are not liable for payment of GST on their service, then there is no reason why the appellant who are rendering the very same service should be treated differently and subjected to tax.

5.2. The Authority for Advance Rulings (AAR), Karnataka in the application filed by M/s Emerge Vocational Skills Private Ltd. AAR No. KAR ADRG 20/2018 has held that the service of providing Degree courses under related curriculum's by educational institutions to students exempt from the liability to pay Goods and Services Tax (GST). The question on which advance ruling is sought in the above case is as follows: "Whether the services provided by the appellant in affiliation to specified universities and providing degree courses to students under related curriculum's are exempt from Goods and Services Tax vide entry no. 66 of the Notification No. 12/2017 - Central Tax dated 28.06.2017?" The Authority for Advance Ruling held that "The services provided by the appellant in affiliation to specified universities and providing degree courses to students under related curriculum's to its students exempt from Central Goods and Services Tax vide entry no. 66 of the Notification No. 12/ 2017 Central Tax (Rate) dated 28.06.2017 subject to the condition that such education services provided must be as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force".

5.3. The appellant is following the same curriculum as specified or recognized by the bodies constituted under Acts of Parliament so providing

education in a format recognized by law. The appellant herein is also providing B.com and M.com degree courses which is a recognized course under Indian law. The appellant offers University-recognized B.Com and M.Com education simultaneously with training for the professional qualifications, as that helps students to obtain graduation simultaneously with professional studies, and also because the study materials for both are fundamentally similar. The appellant provides:

1) education by following a legally recognized Curriculum
2) for obtaining a legally recognized qualification.

5.4. In the case of ITM International Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi [2017 (7) GSTL 448 (Tri. Del)], the Hon'ble CESTAT Principal Bench had passed an order holding that educational qualifications issued by foreign institutes which are recognized by Government of India, are also to be treated as certificate recognized by law for taxation purposes. By virtue of this interpretation, the appellant's activities of providing services to qualify for courses offered by Indian Government-recognized foreign institutions also fall within the purview of courses recognized by law. The order had also re-emphasized that an institution offering degree courses recognized by law was exempted from tax. The decisions of the Hon'ble High Court of Kerala in The Malappuram District Parallel College v. The Union of India [W.P.(C)No. 728 of 2005] and Union of India and others v. The Kasaragod District Parallel College and another [2013 (3) KHC 509] are also relevant here wherein levy of Service Tax on services offered by parallel colleges in Kerala was held to be invalid. In the latter case, the Hon'ble Court had held that:

"... 35. Therefore, what is important to consider is that if the institution is one wherein students are being prepared for acquiring qualification, certificate or diploma or degree which is recognized by law in force, then the same will come within the second limb of the exclusion clause under Section 65(27)..."

5.5. The Appellant is preparing students to obtain qualifications and degrees as spelt out by the Hon'ble Court so was eligible for exemption under the Service Tax regime. When the same exemption has been carried forward to GST regime by virtue of Notification No.12/2017-Central Tax (Rate), appellant's eligibility for exemption would automatically get carried

over into the GST period as well. The impugned AAR Ruling has been passed by the Respondent No.1 based on a misapplication of law.

5.6. The term "educational institution" has been defined in 2(y) of Notification No.12/2017-Central Tax (Rate) and the same reads as under:

2(y) "educational institution" means an institution providing services by way of

(i) pre-school education and education up to higher secondary school or equivalent:
(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
(iii) education as a part of an approved vocational education course:

The appellant's services are eligible for exemption from GST by virtue of Entry 66 of Notification No. 12/2017- Central Tax (Rate) dated 28-062017 issued by the Government of India whereby intra-State supply of educational services are exempted. In the earlier Service Tax regime as well, educational services facilitating qualifications recognized by law were exempted from tax and the Government carried forward this exemption through Notification No. 12/20 17-Central Tax (Rate). The word 'education' is derived from the Latin word 'educa' which means bringing out latent faculties. 'Education' means the act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment and generally of preparing onself or others intellectually or mature life: the act or process of imparting or acquiring particular knowledge or skills. It is the result produced by instruction, training or study. Thus, the word has very wide import. [Padmanav Dhury v. State of Orissa, AIR 1999 Ori 97,99]. In case of Sole Trustee, Loka Shikshana Trust v. CIT, [1975 (8) TMI 1 - SUPREME Court], Honble Supreme Court observed that education connotes the process of training and developing knowledge, skill and character of students by normal schooling.

The expression 'education' occurring in various articles of the Constitution of India means and includes education at all levels, from the primary school level up to the postgraduate level and professional' education. [TMA Pai Foundation v. State of Karnataka (2002) 8 SCC 481 (sc).

para 450]. In Soorya Educational Trust v. ITO 2012 (6) TMI 602 it was held that "Memorandum of Understanding entered by the assessee with Annamalai University and objects of the Trust it is clear that ex-facie the objects are nothing but educational and assessee was imparting a type of oral education and students studying in assessee's institutions were being awarded formal Diploma/degree. There is no case for the Revenue that Annamalai University was existing for any commercial purposes. In our opinion, if Annamalai University was an educational institution, then assessee, which was conducting classes for the said University under its authority, was also an educational institution. Hence fees like admission fees, tuition fees, examination fees, computer fees, sports fees, annual subscription of journal fees of schools, universities shall be construed as covered within the ambit of 'education' and shall be covered by negative list - thus no service tax".

5.7. The conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognized by law would be covered by the Notification No.12/2017. Thus the appellant falls within the exempted category and not liable to pay any tax. The Authority misconstrued the appellant's services as one which falls under the SAC-9992-999293-commercial training and coaching institutes. Thus by classifying the educational services provided by the appellant under the above SAC, the appellant has been denied the availment of exemption. The exam fees collected by the appellant and paid to respective exams bodies in India and Abroad Universities and Education Bodies without any profit mind as a facility to students are also exempted from tax liability. The appellant is only acting as a facility provider for students to pay their exam fees on time without any technical difficulties. Normally Students can pay the examination fees directly to CA, CS, CMA, IMA USA, ACCA UK, IFRS, CPA USA, etc. using their debit or Credit Card. Lot students especially those coming from disadvantaged backgrounds, face difficulty in making such online payments since they would not be having credit or debit cards or enough technical knowledge to make such payments. So the appellant helps them to pay it through the appellant's banking facility and so that they can concentrate on their studies and no need to panic about the technicalities related to examination. There is no profit element in this as we are just collecting the exam fees from students and paying it to the respective institutions. The activity of collecting and transferring examination fees and

other fees of the recognized Institutes or Universities on behalf of students studying at the appellant institute is carried out by the appellant acting as a mere agent of students without any value addition or profit generation, but with the only underlying objective to lend a helping hand to students to get past the technicalities of online fee payment. Therefore, the said activity would not qualify as a supply under GST laws and hence would not be eligible to attract GST.

5.8. The Authority for Advance Ruling under Karnataka Goods and Services Act considered a similar activity of a similar institution, wherein the institution was collecting exam fees and paying it on behalf of the students. In Advance Ruling No. KAR-ADRG 116/2019 dated 30-09-2019, it was observed by the Authority that "The activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the appellant as per Rule 33 of the Central GST Rules". It is the appellant's submission that appellant's activity also is eligible for exclusion by virtue of Rule 33 of Central GST Rules. Thus by following the above provisions, the service rendered by the appellant would fall under the exempted category.

5.9. The appellant sells text books and notes pertaining to the courses with very slight margin to ensure that the students of the appellant get them hassle-free and at reduced prices than that offered by outside sources like book shops or shopping websites. The appellant sells these books at an open market price. Printed books were exempted from GST under the VAT regime and the exemption is continued into GST regime as well. As per the official list of commodities and tax rates published in the official website of Central Goods and Services Tax Department, namely www.cbic-gst.gov.in printed books fall within the category of exempted goods. It is the appellant's submission that since printed books are exempted from GST, appellant's activity of supplying to its students books of courses offered by the appellant, shall be eligible for exemption as well. In the case of re M/s.Shri Ashok Chaturvedi (GST AAR Chhattisgarh), the court held that supply of specified printed educational books by CHHATTISGARH TEXT BOOK CORPORATION as per the instructions of School Education Department CG [Lokslkshan Sanchnalay] or as per instruction of various agencies of school Education Department CG such as Rajiv Gandhl Siksha Mission / SCERT /

office of District Education officer etc. consequent to printing of the Syllabus as decided by the SCERT, merits consideration as supply of printed books attracting zero rate, under Notification No. 2/2017-State Tax(Rate) No. F-10-43/2017-CT/V/70, Dated 28-06-2017, under HSN Code 4901.

6. The Appellant craves leave to add, amend and alter any of the submissions mentioned here in above and produce such documentary evidence as may be necessary for the case. The Appellant further craves leave to rely on such judicial precedents as may be required in their defense.

7. On the facts and circumstances, the Appellant prays for modification in the Impugned rulings as under:

7.1. With respect to Question No. 1, 2 and 3 raised in the Original Application for Advance Ruling, that the educational services provided by the Appellant is exempted and does not attract any tax under the GST laws.

7.2. With respect to Question No.4 raised in the Application, that the SAC of the services of the appellant, may be modified in the light of the non-taxability of the services rendered by the appellant.

7.3. With respect to Question No.5, 6 & 8 raised in the Application, that the ruling of the Authority for Advance Ruling may be modified by considering the facts, law and the circumstances of the activities of the appellant.

7.4. In short, according to the appellant, except question number 7, the appellant has not received a clear and legally sustainable ruling and therefore all the queries except query number 7 may be reviewed and justice may be rendered to the appellant.

Personal hearing

8. The appellant was afforded an opportunity of personal hearing via virtual media on 31/3/2021. The authorized representative of the appellant Adv. Sherry Oommen appeared before the authority and reiterated the contentions raised in the appeal memorandum. He also submitted additional brief dated 29.03.2021 in their favour for consideration, which was also taken on record.

Discussion and Findings

9. We have carefully gone through the facts of the case, the Advance Ruling Authority order dated 20/05/2020, the appeal memorandum filed by the appellant and other submissions made by them during the course of personal hearing and other evidences on record. The seven disputed issues to be decided in this appeal proceeding are listed as follows:-

Issue No. 1, 2 & 3: Whether all the following Education program and trainings being offered by the appellant are exempted from GST as imparting of education?

1. The appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum) published by the very same Institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

2. The appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

3. The appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc. and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

Issue No. 4: What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

Issue No. 5: Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized

institutes or universities on behalf of students studying at the appellant institute?

Issue No. 6: The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee?

Issue No. 7: Whether there is any tax liability on the appellant for selling text books to its students?

10. Before going into the merit of the issues involved, it is noticed that the appellant in their additional submissions has raised some preliminary objections against the advance ruling stating therein that the ruling has been pronounced in absence of issue of a notice or seeking explanation from them or by attributing any reasons/grounds for the findings and therefore the ruling has been issued in violation of principles of natural justice. They have relied upon the case law of CB Gautam (1993) 1 SCC 78. We observe that the procedure prescribed for dealing with the application filed by the appellant before Advance ruling authority has been followed by the lower authority, in accordance with law. It is further observed that there is no provision for either issue of notice or seeking explanation from the appellant before giving verdict on the application, prescribed in the GST Law. Moreover, a personal hearing was duly granted by the lower authority to the appellant (refer para 2 of the Ruling) and submissions have been duly considered while passing the impugned Ruling. Hence, no infirmity could be found in the proceedings as the principles of natural justice have been complied with in true spirit of law. The case law of CB Gautam being not relevant to the case is of no help to the appellant. As regards, reasons for arriving at a decision on the issues, we observe that the Ruling has discussed the issues with reference to applicable portion of GST law and arrived at the conclusions accordingly. Moreover, all the points raised by them in their appeal memorandum and additional submissions are being considered once again in this appellate proceedings. Hence, the objection raised by the appellant and the case laws relied upon by them in this regard are found irrelevant.

11. Having dealt with their preliminary objections, we shall now examine each disputed issues in seriatim keeping in view the submissions made by the appellant. The main contention raised by the appellant is that they are

providing educational services based on the curriculum published by the recognized institutions and prescribed by law and is, therefore, eligible for exemption from GST as per Sl. No. 66 of the notification no. 12/2017-CT (rate) dated 28/6/2017. The appellant further contends that since their principal supply is exempted from GST, the other services that are ancillary to the same are also exempted from GST.

12. The contentions of the appellant regarding exemption of services provided by them are being examined in the light of relevant Entry No. 66 of Notification no. 12/2017-CT (rate), dated 28/6/2017, which provides exemption to services provided by Educational Institution. The Entry No. 66 with HSN 9992 specifies as follows:

"Services provided -
(a) by an educational institution to its students, faculty and staff;
(b) to an educational institution, by way of,-
(i) transportation of students, faculty and staff;
(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
(iii) security or cleaning or house-keeping services performed in such educational institution;
(iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary;
(v) supply of online educational journals or periodicals:

Provided that nothing contained in [sub-items (i), (ii) and (iii) of item (b)] shall apply to an educational institution other than an institution providing services by way of pre -school education and education up to higher secondary school or equivalent:

Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of, —

i. Pre-school education and education up to higher secondary school or equivalent; or

ii. Education as a part of an approved vocational education course."

Para 2 (y) of the notification no. 12/2017-CT(rate) defines "Educational Institution", according to which "Educational Institution" means an institution providing services by way of:

(i) Pre-school education and education up to higher secondary school or equivalent;

(ii) **Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;**

(iii) Education as a part of an approved vocational education course.

13. We observe that the appellant's institution is not providing any elementary education or pre-school or upto higher secondary level or equivalent, thereby, they would not come under the purview of the 'educational institution' as defined in para 2(y)(i) of the said notification no. 12/2017-CT. Similarly, the appellant is not engaged in providing Education as a part of an approved vocational education course as envisaged in para 2(y) (iii) of the said notification. It is not the case of the appellant that they are providing any vocational courses. Hence, they cannot be categorized as 'education institution' within the meaning of sub-clauses (i) and (iii) of para 2 (y) of the said notification for the purpose of exemption. The appellant has also not claimed the exemption under these two sub-clauses either.

14. Now, it is to be examined whether the services rendered by the appellant would fall within the ambit of para 2(y)(ii) of the said notification no. 12/2017-CT as detailed above.

14.1. The term "Education" is not defined in the CGST/SGST Act but as per Apex Court's decision in "Loka Shikshana Trust v/s CIT", Education is process of training and developing knowledge, skill and character of students by normal schooling. The term "educational institution", under sub-clause (ii) ibid, covers institutions providing services by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force. In order to be qualified to get included under this sub-clause, educational service should be imparted as a part of curriculum and for obtaining a qualification recognized by extant law.

14.2. GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 issued by CBEC in connection with Service tax can be adopted. As per Education guide of 2012 meaning of 'education as a part of curriculum for obtaining a qualification recognized by law' is clarified to be "only such educational services are in the negative list (exempted) that are related to delivery of

education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law". It is important to understand that to be in the negative list (exempted) the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead to grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification. This clearly implies that only those institutions whose operations conform to the specifics given in the definition of the term "Educational Institution", would be treated as one and entitled to avail exemptions provided by the law.

14.3. Accordingly, the private coaching centers or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution. The appellant's institution as such has no specific curriculum and the institution itself does not conduct any examination or award any qualification recognized by law for the time being in force. The Institute only provides coaching to the students registered with them. The appellant is not issuing any 'valid course completion certificate' or 'any study certificate' or any degree prescribed under any statute in respect of CA, CMA, CS, ICWA etc. Moreover, coaching or training in appellant's institution is not a mandatory compliance for an aspirant in pursuing their study and obtaining certificates for these courses. It is also not mandatory on the part of the students to furnish any certification or nomination or forwarding of their applications or registrations through the appellant to the concerned statutory body for awarding the certificate for the course. Therefore, the appellant is not qualified to be classified as an 'educational institution' within the meaning assigned and covered vide para 2(y)(ii) of Notification no.12/2017-CT (rate).

14.4. The appellant has contended that the Advance Ruling authority has erroneously reckoned that the appellant would need to be recognized/approved by the respective bodies, which is actually not required in GST law. They also added that they have obtained recognition of the ICAI and that courses undertaken by them in ACCA and CMA is also recognized by the Institute of Cost Accountant of India. They impart teaching solely based on curriculam prescribed by the concerned professional bodies, hence they are eligible to exemption as "educational institution" under Notification No.

12/2017-CT (Rate) dated 28/06/2017. They have referred to the definition of 'education' and 'curriculum' given in Cambridge Dictionary, Oxford Dictionary and Dictionary.com and stated that 'education as a part of curriculum...' can be understood as "imparting knowledge (education) through a systematic syllabus in an institution, college or school". According to them, the coaching/training institute that imparts/prepares the students for obtaining a qualification duly organized by any law, are exempted under the said notification. They have also submitted that the taxation statute is to be construed strictly for which they have relied upon several case laws in their favour. At the same time, they also contended that when an exemption notification ex facie applies, there is no reason as to why the purport thereof would be limited by giving a strict interpretation. They have relied upon case of Reliance Petroleum Ltd [2008] 227 ELT 3 [SC] in this regard.

15. In this regard, it is emerging from above discussions, that the coaching or training service provided by the appellant to the aspirants of CA-Foundation, CA-Inter, CA-Final, CMA (ICWA)-Foundation, CMA-Inter, CMA-Final and Intermediate is not the service provided by means of 'education as a part of curriculum that has been prescribed for obtaining a qualification prescribed by law'. The coaching / training imparted by the appellant to CA/CMA aspiring students (for appearing and qualifying in the respective examinations) would not lead to grant of certificate/qualification recognized by law. Instead, all the aspirants are required to take a separate set of examinations conducted by the said recognized institutions like ICAI, ICWA etc. for acquiring certificate or degree recognized by law. The training / coaching imparted by the appellant might be helping the aspirants to clear the tests/examinations organized by the recognized institutions but not per se lead to grant of any certificate or degree as such recognized by law.

16.1. It is settled law that the person availing the exemption notification shall satisfy all the conditions prescribed in the notification and failure to do so would disentitle him from the exemption. In the case of Harichand Shri Gopal 2010 (260) ELT 3 (SC), Larger bench of Hon'ble Supreme Court has observed as under:

"22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the

conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown; if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption……"

16.2. As regards conditions of the notification and fulfillment thereof in true spirit, reliance is placed on the case of M/s Eagle flask Industries Limited [2004(09)LCX 0235] wherein Hon'ble Supreme Court has held that the conditions laid down in notification are statutory conditions and same are to be followed/fulfilled in its true letters and spirits and these are not mere formalities and once the conditions of notification granting exemption/refund are not satisfied, the refund cannot be granted to the assessee.

16.3. It is well settled law that the exemption notification being a liberal piece of legislation, needs to be interpreted strictly within the plain words and language provided therein and there is no scope of intendments. We rely upon the verdict of Hon'ble Supreme Court in case of H.M.M Ltd Vs .Collector – 1986 (87) ELT 593(SC) that *"Exemption Notification is not only to be construed strictly but also reasonably having regard to the language employed therein"*. Also in Sri Sathya Sai Institute of High Medical Sciences Vs UOI [2003 (158) ELT 214 SC], the Hon'ble Supreme Court ruled that *"Even the court cannot interpose further conditions in the notification". Further, it is settled law that* statute/ notification has to be understood by its plain words and no intendment is allowed as is held in following cases:

(i) In the case of Dharmandra Textile Processors Vs. Union of India reported in [2008 (231) ELT.3 (S.C.)], the Apex Court held that

> *" it is a well settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent".*

(ii) The above views have been expressed by the Hon'ble Supreme Court in the case of Novopan India Ltd vs. CCE, reported in [1994(73) ELT.769 (S.C.)], holding that

> *"a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification".*

(iii) Further, in case of CCE vs. Sunder Steels Ltd., reported in [2005(181) E.L.T. 154 (SC.)] the Apex Court has also held that

> *"the Notification has to be interpreted on its wording. No words, not used in the notification can be added."*

(iv) Also, the Supreme Court in the case of Rajasthan Spg. &Wvg. Mills vs. CCE reported in [1995 (77) ELT 474 (SC)] observed that

> *"since it was a case of exemption from duty, there was no question of any liberal construction to extend the term and scope of the notification as such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification to which no extended meaning can be given to exempt the items by enlarging the scope of exemption granted by the notification".*

16.4. In the case of Dilip Kumar & Co. 2018 (361) E.L.T. 577 (SC), Hon'ble Supreme Court has held with regard to interpretation of tax exemption Notification that it is the law that any ambiguity in a taxing statute should ensure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue – and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. It is further affirmed that every taxing statue and exemption clause should be interpreted strictly.

16.5. In view of above settled position of law in respect of exemption notification, and by applying the settled law of strict interpretation of taxing statute, which are plainly worded, as in the case in hand, the services rendered by the appellant are held to be not a service by way of 'education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force' as envisaged under entry no. 66 of the said notification, for exemption from GST.

17. The other issue for consideration before us is service accounting code of the services rendered by the appellant. As per the Scheme of classification of services under GST Law, SAC 999293 Specifies about commercial training and coaching services. This service code includes any training or coaching provided by any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field

other than the sports with or without issuance of a certificate and includes coaching or tutorial classes. Thereby the services rendered by the appellant can rightly be classified under this SAC.

18. The next issue raised before this authority is that whether there is any GST liability on the appellant for collecting and transferring examination fees and other fees to the recognized institutes or universities on behalf of the students studying at their institute.

18.1. The value of taxable supply of goods and / or services is determined by the provisions of Section 15 of the CGST/ SGST Act, 2017. Section 15 (2) provides that the value of supply shall include-

> (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
>
> (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) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
>
> (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
>
> (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

18.2. Rule 33 of the CGST Rules, 2017 deals with value of supply of services in case of pure agent, wherein it is provided that

"Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, –

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. – For the purposes of this rule, the expression "pure agent" means a person who –

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and .

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."

18.3. As per the provisions of Section 15 of the CGST/SGST Act, 2017 the entire consideration received by the appellant from the recipient of services is taxable under GST. However, if the conditions prescribed in Rule 33 of the CGST Rules, 2017 are satisfied and the appellant acts as a pure agent on behalf of the students enrolled with them, there will be no tax liability for the amount collected as examination fees / other fees. Accordingly, such amount can be excluded from the value of taxable supply as expenditure incurred by the appellant as a pure agent of the recipient of services.

19. Another issue for determination before us is that the appellant offers hostel facility to its students at a rate of less than Rs. 200/- per day per person including food and at a monthly rate of maximum Rs. 6000/-. Whether there is any tax liability on such hostel fee?

23

19.1. In order to determine this issue, the provisions of Composite supply under CGST /SGST Act is relevant. Section 2(30) of the CGST Act, 2017 defines composite supply, according to which, "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." Further, Section 8 of the CGST Act, 2017 contains the provisions of tax liability on composite and mixed supplies. Section 8 prescribes that

"the tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."

19.2. The Advance Ruling authority has held that provision of coaching / training provided by the appellant to their students along with hostel facility qualifies as a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and the tax liability on the composite supply has to be determined as per provisions of Section 8 (a) of the CGST Act, 2017. Therefore, the entire supply is to be treated as falling under SAC – 9992- 999293 – Commercial training and coaching services; being the principal supply and will be liable to GST at the rate applicable for the principal supply. The appellant has however contended that hostel facility is a standalone facility and not naturally bundled along with educational services; and that hostel facility, being available to any person, is not mandatory and in conjunction with educational services to fall under the category of composite services; that it is not provided as a package and hence is a divisible contract. The appellant has placed reliance on the Education Guide issued by CBEC and the case law of European Court of Justice in Volker Ludwig [2013]31 Taxmann.com 287 and UK Upper Tribunal in Hon'ble Society of the Middle Temple Vs HMRC [2013] UKUT 0250 etc. They have also claimed exemption on hostel fees under exemption notification No.12/2017-CT (Rate) dated 28.06.2017 as the declared tariff is less than Rs. 1000 per day, and has relied upon several case laws.

19.3. We observe that the appellant is mainly and principally engaged in imparting training/coaching to their students and thereby providing educational services, which is classifiable under SAC 9992-999293. The student who opts to take coaching from them stays in their hostel and pay hostel fees @ less than Rs. 200 per day or maximum Rs. 6000/- per month, in addition to the course charges as a package. It is also undisputed that they are charging Rs. 250/- per day from outside students/residents staying at their hostel. It may be seen here that they are charging different rates from their students and outside persons possibly they differentiate between the two categories of residents. The students enrolled with them are presumably charged lesser amount of hostel fees as a part of the package with educational services. In such a situation, when the appellant are distinguishing the two types of residents for charging different hostel fees for the same lodging and food services, it is not difficult to infer that their students enjoy the concession only as a part of composite services of educational services and hostel facility. No explanation is forthcoming from their appeal memorandum regarding the said difference in charges of hostel fees. In such a situation, applying the provisions of Section 2(30) read with Section 8 of CGST Act, 2017, it is conveniently held that the appellant is providing a composite services of educational service (being principal service) and hostel facility, as is rightly held by the lower authority. The arguments of the appellant therefore are liable to be rejected in this regard. Having held that the hostel facility is being provided by the appellant to their enrolled students as a part of composite services along with educational service, the entire set of service shall be classified under SAC 9992-999293 – Commercial training and coaching services, being principal service and shall be charged to GST accordingly. The claim of the appellant regarding benefit of exemption notification No. 12/2017-CT for hostel fees is also devoid of merit in view of the fact that exemption is granted to the services falling under Sl No. 14 – heading 9963 only and not for heading 9992 as is applicable in this case.

20. Another issue for determination by us is regarding tax liability on the appellant for selling text books to its students.

20.1. The lower authority has held that the sale of text books to the students will attract GST as per the schedule of rates notified under Notification No. 01/2017-Central Tax (Rate) dtd.28-06-2017. Whereas, the appellant has contended that the context of hostel facility would also apply to text books,

as the same is sold to any willing consumer and students for a separately agreed consideration. They have sought exemption from GST in terms of Sl. No. 119 of the Notification No. 2/2017-CT (Rate) dated 28.06.2017 and also relied upon case of Sonka Publication India (P) Ltd 2019 (74) GST 6 (Delhi) to support their arguments. We observe that the supply of text book to students are again at different lower rate than that of outside persons, as is admitted by the appellant in their submissions. Hence, the supply of books or printed material relating to the course opted for them shall have to be treated as part of composite services along with educational service, being the principal service, as is held by us in case of hostel fees charged from the students. Consequently, the supply of books shall also be charged to rate of GST as applicable to educational service under SAC 9992-999293.

21. The various case laws referred to by the appellants are not applicable in the current case because the coaching institute run by the appellant does not qualify to be classified as an education institution as provided under Notification no. 12/2017-CT (rate) dated 28-6-2017. The decisions of AAR pointed out cannot be applied to this case by virtue of section 103 of the CGST/SGST Act and facts and circumstances being distinguishable.

22. On the basis of the above stated law and facts, the following orders are issued:

ORDER No. AAAR/ 13/ 21 DATED 05/05/2021

Issue No. 1: Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Govt. recognized institutes, on the basis of the specific syllabus (curriculum] published by the very same institutes formed under Acts of Parliament and also facilitating the students to appear for the examinations conducted by the same institutes.

Issue No. 2 : Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like Universities and also availed from online facilities of the said institutions on the basis of the

specific syllabus (curriculum) published by various Universities including Mahatma Gandhi University formed under Acts of State Legislature.

Issue No.3: Whether the education programme and training being offered by the appellant is exempted from GST as imparting of education since the appellant is giving lecture classes and notes including printed books published by Government-recognized institutions like ACCA, IMA USA, etc. and also availed from online facilities of the said institutions on the basis of the specific syllabus (curriculum) published by international institutions like ACCA, IMA USA, etc. which are approved by Govt. of India.

Decision - Issue Nos. 1, 2 and 3 - As per the provisions contained in Para 2 (y) of the Notification No. 12/2017-Central Tax (rate) dated 28-06-2017, the appellant does not qualify to be categorized as "educational institution" and therefore the above stated services provided by the appellant are not exempted from GST as per entry no. 66 of the Notification no.12/2017-Central Tax (rate) dated 28-6-2017.

Issue No.4: What is the Service Accounting Code (SAC) of the appellant's services, under GST laws?

Decision : As per the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, the impugned services provided by the appellant fall under "SAC - 9992-999293 - Commercial training and coaching services".

Issue No.5: Is there any tax liability under GST laws on the appellant for collecting and transferring examination fees and other fees of the recognized institutes or universities on behalf of students studying at the appellant Institute.

Decision: Section 15 of the CGST/SGST Act, 2017 specifies that the entire consideration received by the supplier from the recipient of services is liable to GST. However, if the conditions prescribed for "Pure Agent" in Rule 33 of the CGST Rules, 2017 are satisfied in respect of the amount collected as examination fees / other fees by the appellant from the students enrolled with them, then such amount can be excluded from the value of taxable supply.

Issue No. 6: The appellant offers hostel facility to its students at a rate of less than Rs.200/- per day per person including food and at a monthly rate of maximum Rs.6000/-. Whether there is any tax liability on such hostel fee?

Decision: The coaching / training provided by the appellant to their students along with hostel facility qualifies to be categorized as a composite supply as defined in Section 2 (30) of the CGST Act, 2017. As per Section 8 (a) of the CGST/SGST Act, 2017, the entire supply is to be treated as falling under "SAC - 9992- 999293 - Commercial training and coaching services" being the principal supply and will be liable to GST at the rate applicable for the principal supply.

Issue No. 7: Whether there is any tax liability on the appellant for selling text books to its students?

Decision: As held in respect of hostel fees, the sale of text books to the students qualifies to be categorized as a composite supply as defined in Section 2 (30) of the CGST Act, 2017. As per Section 8 (a) of the CGST/SGST Act, 2017, the entire supply is to be treated as falling under "SAC - 9992-999293 - Commercial training and coaching services" being the principal supply and will be liable to GST at the rate applicable for the principal supply.

In nut shell, the Advance Ruling No. KER/76/2019 dated 20/5/2020 of the Advance Ruling Authority, Kerala stands upheld with aforesaid modification and consequently the appeal filed by the appellant is rejected.

Shyam Raj Prasad, IRS
Chief Commissioner,
Central Tax, Central Excise & Customs
Thiruvananthapuram Zone, Kerala

Anand Singh, IAS
Commissioner,
State Goods & Service Tax Dept
Kerala