

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,  
AHMEDABAD – 380 009.**



ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2022/**16**  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/37)

Date : **22.08.2022**

Name and address of the appellant	:	M/s. D M Net Technologies (Isha Chirag Patel) 2 <sup>nd</sup> Floor, Shop No.6, Opp. Jagatnagar P-2, India Colony Road, Bapunagar, Ahmedabad, Gujarat-380024.
GSTIN of the appellant	:	24AKYPP8973B2ZG
Advance Ruling No. and Date	:	GUJ/GAAR/R/75/2020 dated 17.09.2020
Date of appeal	:	02.11.2020
Date of Personal Hearing	:	28.07.2022
Present for the appellant	:	Shri Priyam Shah (CA)

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017) by M/s. D M Net Technologies (Isha Chirag Patel) (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/75/2020 dated 17.09.2020.

3. The appellant has raised the following question for advance ruling in the application for Advance Ruling filed by it.

*“Whether the services provided by the applicant in affiliation to/partnered with Gujarat University and providing education for degree courses to students under specific curriculum as approved by the Gujarat University, for which degrees are awarded by the Gujarat University are exempt from GST vide Entry No.66 of the Notification No.12/2017-Central Tax (Rate) dated 28th June 2017?”*

4. The appellant has submitted that they are engaged in providing education in partnership with Gujarat University, in the field of M.Sc.-IT in Animation, M.Sc.-IT in Mobile Application , M.Sc.-IT in IMS (Infrastructure Management Systems), and M.Sc.-IT in Network Securities, for which courses are approved by Gujarat University.





Degree shall also be given by Gujarat University; that the appellant helps in designing the aforementioned courses on request of Gujarat University and then the contents of the courses are approved by the Gujarat University; that the appellant is granting and processing the admission of students for aforementioned courses and informing Gujarat University through University coordinator; that the appellant also collect the fees from students, however for administrative purposes it is being deposited into account of Gujarat University, out of that 60% fees is being shared to appellant as per MOU of partnership; the appellant on the basis of the approved courses, provides theoretical as well as practical training to the students as a partner under MOU with Gujarat University; that Gujarat University is providing the infrastructure facility such as classroom, computer systems, internet facilities etc; that while the administration and curriculum is managed by the appellant, the examination is conducted by the University on the basis of question papers set with the help of the appellant and on the basis of internal marks allotted by the appellant as well as evaluation made by the appellant of practical/project reports submitted by the student alongwith marks obtained by the students in final exams, the University is granting degree to the students. The appellant attached MOU and Agreement with University in support of their contentions.

5. The Gujarat Authority for Advance Ruling (herein after referred to as 'the GAAR'), vide Advance Ruling No. GUJ/GAAR/R/75/2020 dated 17.09.2020, *inter-alia* observed that the appellant is an educational consultant and a professional in the fields of Computer Animation, IT-Infrastructure Management System and Mobile Computing & Application Education which uses their experience and knowledge in teaching, to help with curriculum development and other issues to Gujarat University. The appellant does not have any specific curriculum and does not conduct any examination or award any qualification/ degree. Hence, the appellant does not qualify as educational institution. GAAR concluded that the appellant is not at all entitled for exemption in respect of said services provided by them to Gujarat University under Entry at Sr.No.66 of the exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended. In view of the foregoing, the GAAR answered in negative to the question raised by the appellant before it. Thus GAAR concluded that the services provided by the appellant are not exempted from GST vide Entry No.66 of the Notification No.12/2017-Central Tax (Rate) dated 28th June 2017.

6. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

6.1 The appellant has submitted that the ruling given by the Advance Ruling Authority is bad in law and required to be quashed and set aside. The advance ruling authority has erred in issuing ruling dated 17.09.2020 after the appellant has filed a withdrawal application by mail on 24.08.2020 and in hard copy submitted on 25.08.2020. The learned advance ruling authority has erred in interpreting entry no. 66 of Notification No.12/2017-Central Tax (Rate) whereby services provided by the appellant is treated as taxable. Alternatively, services of the appellant are also covered by Entry No. 3 of Notification No.12/2017.





6.2 The appellant requested to quash and set aside the order of the advance ruling authority issued after the date of withdrawal letter submitted. To consider their services to Gujarat University as covered by entry no. 66 of Notification No. 12 of 2017 or alternatively to treat their services to Government entity as covered by entry 3 of notification No.12 of 2017.

7. There has been change in one of the two Members of this authority consequent upon the transfer and posting of the Chief Commissioner, Central Tax, after Personal Hearing has been held in this case. The appellant was therefore given fresh hearing on 28.07.2022. The authorized representative of the appellant appeared for the personal hearing, which was conducted through virtual mode on 28.07.2022

7.1 During the course of personal hearing held on 28.07.2022, the authorized representative reiterated the submissions made in the appeal dated 02.11.2020. The representative further submitted that on 17.08.2020 the authority for advance ruling had conducted preliminary hearing and appellant was asked to submit further documents in support of their application for advance ruling. Further the appellant was informed that the next date of hearing would be on 31.08.2020. That on 24.08.2020 the appellant informed the authority for advance ruling through email that they were in process of withdrawing their application for advance ruling. That on 25.08.2020 they submitted hard copy of their application to the authority for advance ruling informing that they were willingly withdrawing their application dated 24.07.2019 and requested to pass the order for withdrawal. That on 17.09.2020 the authority for advance ruling passed order without considering their request for withdrawal of the application. The authority also did not give any findings to their application for withdrawal. The said order was received by the appellant on 03.10.2020. The order was passed without hearing the appellant and therefore the same amounts to violation of principles of natural justice.

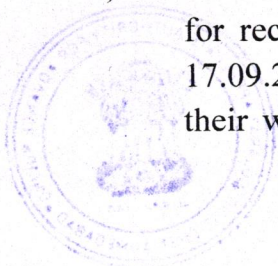
### **FINDINGS :-**

8. We have carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

9. Before going into the merits of the case, we find it proper to decide on the following issues raised by the appellant in their appeal and also during the course of personal hearing.

9.1 The appellant has contended the following:

- i) The GAAR has not considered their application dated 25.08.2020 wherein they had given their willingness for withdrawal of application for advance ruling.
- ii) The GAAR has not passed any order on their application dated 09.10.2020 for rectification of mistake in the Order No.Guj/GAAR/R/75/2020 dated 17.09.2020 passed by GAAR. The order was passed without considering their withdrawal application filed before the authority for advance ruling.





and also before providing the necessary chance of hearing which is against the principles of natural justice.

- iii) The GAAR has failed to follow the principles of natural justice as the order was passed without hearing them on merits.
- iv) Their services are exempted if alternate ground is considered that their services are covered by Entry No.3 of Notification No.12/2017-Central Tax dated 28.06.2017. This ground has been raised for the first time before this appellate authority.

10. On examining the appeal and documents submitted alongwith it, we find that the appellant has submitted letter dated 25.08.2020, against dated acknowledgement to GAAR, vide which they had submitted that they were willingly withdrawing their application dated 24.07.2019 for advance ruling. Further we also find that the appellant has submitted application dated 09.10.2020 against dated acknowledgement to GAAR for rectification of order passed by GAAR. We therefore find that the principles of natural justice have not been followed in as much as the ruling/order passed does not give any findings with respect to the withdrawal application submitted by the appellant. Further no order on application for rectification of mistake has been passed as required under the provisions of Section 102 of CGST Act, 2017. The provisions of Section 102 ibid are reproduced below:

**Section 102: Rectification of advance ruling.**

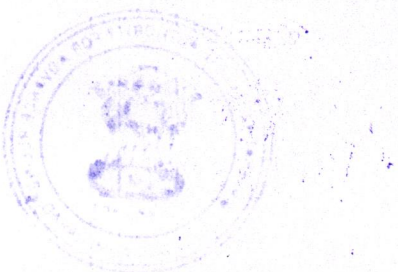
*The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:*

*'Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.*

We find that the appellant has filed the application within six months of order passed by the GAAR as required under the provisions of Section 102 referred above. However GAAR did not pass any order on the appellant's application.

10.1 We find that the appellant for the first time has raised additional plea before this appellate authority that their services are exempted as they are also covered by Entry No.3 of Notification No.12/2017-Central Tax dated 28.06.2017. This plea has been raised for the first time before this authority and the same was never raised before the GAAR.

10.2 From the above we find that the issues mentioned above need to be re-examined at the level of GAAR, in view of the fact that it appears that the principles of natural justice have not been followed.





10.3 In this regard we would like to rely upon the judgment of the Hon'ble High Court of Bombay in the case of M/s.Riddhi Siddhi Collection Vs. Union of India [2019 (368) ELT 852 (Bom.)]. In this case the Hon'ble High Court held as under:

*"7. The objective of giving show cause notice is not an empty formality. The objective is to make the party aware of the case it has to meet. Thus time is given to respond to the same. The reduction of time as given in the notice, certainly causes prejudice to the party. The conduct of the petitioner in not attending the personal hearing would not absolve the Revenue from giving time of thirty days as stated in the notice, on serving the complete show cause notice on the parties. In these circumstances, there has been failure of principles of natural justice inasmuch as the petitioner has not been given sufficient opportunity to meet the show cause notice. In these circumstances, directing the parties to avail of alternative remedy would be unfair as original proceeding is itself in breach of natural justice."*

10.4 Further we would also like to rely upon the judgment of Hon'ble High Court of Gujarat at Ahmedabad in the case of Commissioner of Service Tax Vs. Associated Hotels Ltd. [2015 (37) STR 723 (Guj.)]. In the said case Hon'ble High Court has given its verdict as to whether the Commissioner (Appeals) exercising powers under Section 85 of the Finance Act, 1994 has the power to remand the proceedings back to the adjudicating authority. The relevant portion of Para 4 of the judgment is reproduced below:

*"If proper inquiry is not conducted or the proceedings is decided ex parte, it would not be necessary in every case that the Commissioner (Appeals) converts himself to the adjudicating authority and conducts the entire inquiry necessary for proper adjudication of the issues. In such a case, the Commissioner (Appeals) may as well decide to remand the proceedings, and we see no limitation on his powers to do so."*

[emphasis supplied]

10.5 In this regard we would also like to rely upon the order of the Principal Bench of CESTAT, New Delhi in the case of Commissioner of Central Excise, Meerut-II Vs. Honda Seil Power Products Ltd. [2013(287) ELT 353 (Tri.-Del.)].


The tribunal in the above referred case had held that *"There may be circumstances where only just and proper order could be remand of the matter for fresh adjudication. For example, if the order-in-original is passed without giving opportunity of being heard to the assessee or without permitting him to adduce evidence in support of his case then only order-in-appeal by the Commissioner (Appeals) could be to set aside the impugned order on the ground of failure of justice. This would create an anomaly and cause prejudice to the Revenue as it would bring an end to the litigation without adjudicating on the demand raised by the show cause notice. Therefore, only just and proper order in such a case would be the order of remand to adjudicate the matter de novo after giving due hearing to the assessee. Thus, we are of the view that power to remand the matter back in appropriate cases is inbuilt in Section 35A(3) of the Central Excise Act, 1944."*

11. In view of the above discussion we find it fit to remand the matter to the Authority for Advance Ruling i.e. the GAAR in the present case for fresh decision. The GAAR will take into consideration all aspects of the matter and decide the case afresh after affording adequate opportunity of hearing to the appellant.

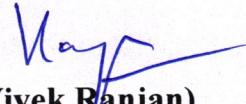




12. In view of the foregoing, the case is remanded back to the Gujarat Authority for Advance Ruling (GAAR) to issue necessary ruling after hearing the appellant afresh.

  
(Milind Torawane)  
Member (SGST)



  
(Vivek Ranjan)  
Member (CGST)

Place : Ahmedabad  
Date : 22.08.2022