

MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULINGS
UNDER GOODS AND SERVICES TAX (GST)
(Constituted u/s 99 of the Maharashtra Goods and Services Tax Act, 2017)

Order No. MAH/AAAR/DS-RM/01/2023-24

Date: 12/05/2023

Before the Bench of

(1) Dr. D. K. Srinivas, Member (Central Tax)

(2) Shri Rajeev Kumar Mital, Member (State Tax)

S. No.	PARTICULARS	REMARKS
1	Name and address of the Appellant	M/s Beep Skills Foundation (erstwhile M/s Beep Skills Foundation or M/s CLR Skills Training Foundation) Address: A-1, Minar Apartments, 1 st Floor, Plot No. 83, Law College Road, CTS No. 124/1, Erandwana, Pune-411004.
2	GSTIN/User id of the appellant	27AAGCC6533K1ZF; w.e.f. 31.5.2018
3	Clause(s) of sub-section (2) of Section 97 under which question(s) are raised	(c) determination of time and value of supply of goods or services or both;
4	Date of Personal Hearing	28 th February 2023
5	Present for the Appellant	Mr. Arun Jain, Advocate
6	Details of Appeal	MAH/GST-AAAR/Beep-Skills/04/2022-23 dated 25.05.2022 against Maharashtra Advance Ruling No. GST-ARA-122/2019-20/B-54 dated 27.04.2022
7	Jurisdictional officer/concerned officer	Deputy Commissioner of State Tax (PUNE_LTU_607), LTU-1 Div., Pune.
8	Nature of Activity: Category & Description.	Service Provision SAC 998513- Contract Staffing Services

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and Section 101 of the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Maharashtra GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Maharashtra GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter referred to as 'the CGST Act'**) read with Section 100 of the Maharashtra GST Act, 2017 (**hereinafter referred to as the 'MGST Act'**) by M/s Beep Skills Foundation, a Not-for-Profit company registered under Section 8 of the Companies Act, 2013, having its registered office at A-1, Minar Apartments, 1st Floor, Plot No. 83, Law College Road, CTS No. 124/1, Erandwana, Pune-

411004 (hereinafter referred to as 'the Appellant') against the advance Ruling No. GST-ARA-122/2019-20/B-54 dated 27.04.2022. The Appellant is registered under the CGST Act and MGST Act bearing GSTIN 27AAGCC6533K1ZF, effective from 01.04.2018, in the State of Maharashtra.

3. Brief Facts of the case

3.1 The Appellant was originally incorporated as M/s CLR Skills Training Foundation and filed application for ruling under same name. This name was changed on 25.06.2021 to M/s Firstbridge Skill Foundation, which was again changed on 27.07.2021 to its present name viz. M/s Beep Skills Foundation, which further changed on 8.10.2021 to M/s Beeup Skills Foundation.

3.2 With an objective to offer on the job practical training to enhance employability of a person either pursuing his or her Post Graduation/ graduation/diploma in any technical or non-technical stream or has discontinued studies after Class 10th to enhance his/her employability, the Ministry of Human Resource Development, Government of India, through All India Council for Technical Education (hereinafter referred to as the "AICTE") has launched a program known as National Employability Enhancement Mission ("NEEM").

3.3 AICTE is a statutory body established under All India Council for Technical Education Act, 1987 (52 of 1987) (hereinafter referred to as the "AICTE Act") with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

3.4 Further, in exercise of its powers conferred under sub-section (1) of Section 23 read with Section 10 of the AICTE Act, AICTE has formulated All India Council for Technical Education [National Employability Enhancement Mission (NEEM)] Regulations, 2017 [hereinafter referred to as the "AICTE (NEEM) Regulations" or "NEEM Regulation"].

3.5 AICTE (NEEM) Regulations applies to Society/ Trust/ Company registered under Section 25 of Companies Act, 1956/ Section 8 of Company Act, 2013 or Relevant Act as amended from time to time / Bodies of Central Government / Bodies of State Government / Government Institutes and Universities, who wish to obtain registration as Facilitator under NEEM.

3.6 In terms of Regulation 3 of AICTE (NEEM) Regulations, a company registered under Section 8 of the Companies Act, 2013 and is in the business of training for more than five years either itself or through its parent company can apply for registration as a NEEM Facilitator under AICTE (NEEM) Regulations.

3.7 The job of NEEM Facilitator is to engage with the candidates registered under AICTE (NEEM) Regulations as Trainees ("NEEM Trainees") for seeking training under NEEM, formulate

their "Training Program" and make suitable arrangements for facilitating their training in the companies/industries registered as Trainer ("NEEM Trainer") with the said NEEM facilitator. Upon successful completion of the training period, NEEM facilitator shall further issue a training skill assessment certificate to the NEEM Trainee.

3.8 The Appellant, being eligible to register as NEEM Facilitator, applied for and granted registration as NEEM Facilitator by AICTE vide Letter bearing F. No.1- 3173947111/NEEM/CLRSTF/2016 dated 15.03.2018.

3.9 Before initiation of training under NEEM, a NEEM Trainee must first enrol himself with the Appellant by signing a contract letter in the format prescribed in Annexure-II to AICTE (NEEM) Regulations. The contract letter is neither an offer of employment nor a guarantee of employment. As per letter, if contract is terminated because of failure on the part of NEEM Trainee, Trainee shall refund to the NEEM Facilitator as cost of training such amount as determined by the NEEM Facilitator.

3.10 The Appellant has further partnered with various companies/ industries who are desirous of registering themselves with the Appellant under AICTE (NEEM) Regulations as NEEM Trainer for deployment of NEEM Trainees and facilitation of their on-job training. Appellant submitted specimen copies of the Training Collaboration Agreement dated 07.03.2019 entered between the Appellant and LG Electronics India Private Limited (for brevity called as LG) and the Training Services Agreement dated 12.02.2019 between the Appellant and Interplex Electronics India Pvt. Ltd. (for brevity called as Interplex) Appellant has submitted that the specimen copies are similar to the agreements they have entered into with various companies /industries under AICTE (NEEM) Regulations as NEEM Trainer for deployment of NEEM Trainees and facilitation of their on-job training.

3.11 The agreement between Trainer and Appellant, *inter alia*, provides for:

- (i) NEEM Facilitator is engaged in the business of facilitating education, education related services including providing technical and non-technical training to Trainees.
- (ii) The Appellant shall execute an agreement with each NEEM Trainee prior to deploying them to Trainer for training.
- (iii) NEEM Trainees under no circumstances shall be deemed to be the employees of Trainer or of the Appellant.
- (iv) Trainer shall be solely responsible for providing adequate facilities in accordance with the AICTE (NEEM) Regulations or as may be deemed appropriate by the Appellant for the training.
- (v) Trainer shall, in consideration of dedicated deployment of Trainees to the company (Trainer), pay a monthly stipend to the appellant to be used solely for the purpose of paying NEEM Trainees in accordance with NEEM Regulations, which shall be equal to or greater

than the minimum wages for unskilled category and employment compensation insurance premium on/before 7th day of month. Stipend is payable in single consolidated amount without any deduction of TDS or statutory deduction.

(vi) Trainer shall further pay to the Appellant an administrative fee of Rs 300/- and WC (Workmen Compensation) policy of Rs 20/- per trainee per month for assisting the company the administrative tasks for deployment of trainees to the company for training. The Facilitator shall raise monthly invoice for stipend payable to the trainees and administrative fee and shall include therein such taxes as may be applicable. In addition to that, Trainer shall also pay a one-time sourcing fee of Rs. 1000/- to the Appellant for the NEEM Trainee sourced by the Appellant. All the payment shall be made to the appellant in the Bank A/c of the appellant.

(vii) The appellant shall cover every Trainee under WC Policy at the time of joining the company.

(viii) The Trainer shall provide adequate facilities in accordance with the NEEM Regulations or as deemed appropriate by the Appellant for the training.

(ix) The appellant shall ensure to issue Tax Invoice as per GST Rules. In the event of failure to discharge correct GST liability, the appellant will be liable to pay GST.

(x) The Trainer shall ensure that the personnel providing the training are fully competent and qualified to provide the training, shall observe the health, welfare and safety standards during the training.

(xi) The appellant shall pay stipend to the Trainees engaged by the company.

Pay to the Appellant by the 2nd of every month, a consolidated amount as monthly stipend in consideration for the deployment of the trainees which is to be utilized by the Appellant solely for the purpose of paying the trainees.

(xii) The company shall convene periodic meetings with the Appellant to discuss issues concerning areas for improving the training.

(xiii) The company shall not initiate disciplinary proceedings against any trainee without intimation to the Appellant.

(xiv) The Trainer shall notify the Appellant in writing if it is desirous of offering employment to any trainee during or after the completion of the training.

3.12 The role of the Appellant can be summarized as under:

(i) Partner with various trainers and employers/company/industry for providing on-the-job training to the NEEM trainees.

(ii) Deploy the trainee in a suitable industry for the purpose of getting a comprehensive on-the-job training.

(iii) Preparation of monthly attendance record of the NEEM Trainees and getting it certified from the NEEM Trainer.

(iv) Pay a consolidated amount (without any statutory deductions) by way of remuneration / stipend to the NEEM trainee which shall be at par with the prescribed minimum wages for unskilled labour.

(v) Providing uniform and safety shoes (as per the requirement of NEEM Trainer) to the NEEM Trainees.

(vi) Take insurance policies towards workman compensation and personal accident specifying name of the NEEM Trainee and NEEM Trainer. Be liable to pay compensation to a NEEM trainee as per the Workman Compensation Act, 1923, if a personal injury is caused to the trainee by incident or accident arising out of and in the course of training as a NEEM Trainee.

(vii) Be responsible for the conduct and discipline of the NEEM trainee during the period of deployment for training, as per the rules and regulations of the industry where the NEEM trainee is placed for training. Ensure compliance with respect to welfare, safety and health aspects of the Trainee under the applicable laws.

(viii) Monitor the daily and weekly working hours of the trainee including the entitlement to leaves.

(ix) Submit periodical reports to AICTE regarding the trainee details and the completion of the training.

(x) Ensure the NSQF compliant training will be given to NEEM Trainees.

(xi) Issue a training completion certificate at the end of the training period.

(xii) Conduct a certificate examination for all trainees who complete the training and issue a Training Skill Assessment Certificate to the trainee who obtains a minimum qualification threshold in the examination.

(xiii) Be responsible for complying with the NEEM Regulations failing which his registration as NEEM Facilitator is liable to be revoked/withdrawn.

(xiv) clause 4(e) of Interplex says that Trainees shall not deemed to be engaged by the company, but engaged by the appellant.

3.13 Important clauses of the AICTE (NEEM) Regulations are:

7.3 NEEM Facilitator can terminate the Training contract with the NEEM trainee on account of any unlawful behaviour on the part of the NEEM trainee or on account of repeated flouting of company / Industry policies or for continuous irregularity in attending to the scheduled training as notified for the NEEM trainee.

7.4 NEEM trainee can terminate the contract entered into with the NEEM Facilitator where the NEEM Facilitator fails to honour any of the terms of the contract by giving a written notice 30 days in advance to the NEEM Facilitator.

7.5 The selection of a NEEM trainee does not constitute an employment contract with NEEM Facilitator or the company/Industry where the NEEM trainee is placed for training under the contract.
10.1 NEEM Facilitator shall comply with the necessary provisions and the applicable Acts, to ensure welfare, safety and health aspects of the trainees while they undergo training.

12.0 NEEM FACILITATOR'S LIABILITY FOR COMPENSATION FOR INJURY

12.1 If personal injury is caused to a NEEM trainee, by incident/accident arising out of and in the course of his training as a NEEM trainee, NEEM Facilitator shall be liable to pay compensation which shall be determined and paid, so far as may be, in accordance with the provisions of the Workman Compensation Act, 1923 as amended from time to time.

15.0 REMUNERATION / STIPEND

15.1 NEEM Facilitator shall pay all enrolled NEEM trainees a remuneration/stipend which shall be at par with the prescribed minimum wages for unskilled category.

15.2 Remuneration/ Stipend shall be paid as a single consolidated amount and such payment will not attract any statutory deductions or payments applicable to regular employees i.e., PF/ESI etc., since the NEEM contract assures training and does not constitute employment.

16.0 DESIGNATED SUPERVISING AUTHORITY /RECORDS

16.1 The designated supervising authority shall be NEEM Facilitator or the company or the industry where the NEEM trainee will be placed.

16.2 NEEM Facilitator shall file online monthly report in the format as prescribed by AICTE from time to time.

16.3 NEEM Facilitator shall upload the NEEM trainee data on the AICTE web portal in the available formats thereon.

16.4 NEEM Facilitator will comply with any additional norms/condition as notified by AICTE from time to time.

17.0 PENALTY AND WITHDRAWAL OF REGISTRATION AND APPROVAL

17.1 If a NEEM Facilitator contravenes any of the provisions of these Regulations, the AICTE may, after making such enquiry, as it may consider appropriate and after giving NEEM Facilitator an opportunity for being heard, revoke/withdraw the registration and approval granted to such NEEM Facilitator.

17.2 If the Registration and Approval of NEEM is revoked or withdrawn, the concerned NEEM Facilitator will not be eligible to apply for fresh registration for a period of at least 2 years from the date of such revocation or withdrawal. "

3.14 The Appellant specifically placed reliance on the Advance Ruling by the Authority of Advance Ruling, Maharashtra, in the case of Yashaswi Academy for Skills and Advance Ruling by the Authority of Advance Ruling, Karnataka, in the case of Cadmaxx Solution Education Trust which were on the identical facts.

3.15 Pursuant to the application, the Authority for Advance Ruling, Maharashtra, vide its Advance Ruling bearing No. GST-ARA-122/2019-20/B-54 dated 27.04.2022 ('impugned Advance Ruling'), passed following order:

Question: *Whether the reimbursement amount received by the Applicant from Trainer towards "Stipend and other expenses incurred by the Applicant in accordance with AICTE (NEEM) Regulations to ensure wealth, safety and health of NEEM Trainees" is in the capacity of pure agent and hence not includible in the value of taxable supply made by the Applicant to Trainer for the purpose of payment of Goods and Service Tax ("GST")?*

Answer: *Not answered in view of discussions made above.*

3.16 It was, *inter alia*, held and observed in the impugned advance ruling that:

"5.3.1.2 We first of all observe that the agreement is not signed by LG and therefore the validity of the said agreement is in question and in doubt. Further, we also seen that, as per Clause 4 of the agreement mentioned above, the said agreement has expired on 29.02.2020 and therefore not valid after the said date and even if the contents of the said agreement are taken into account, notwithstanding the invalidity of the same due to absence of signatures of relevant parties to it, it would appear that the supply under the said agreement had been completed even prior to the date of the subject application which has been made on 11.3.2020 and in view of the provisions of Section 95 of the CGST Act, the application pertaining to this agreement would not be maintainable since the question raised by the applicant would not be in respect to a supply being undertaken or proposed to be undertaken by the applicant at the time of filing the subject application. Therefore, we do not take into consideration the specimen copy, of the Training Collaboration Agreement dated 7.3.2019 entered between the applicant and LG."

5.3.2 "... However, the Annexure 'B' to the said Agreement (Statement of Works) which mentions details with respect to Stipend, Other Charges, and CLR appear to be only for the period 2018-19 as per Sr. No. 1 under 'Other Terms & Conditions', while the agreement is for the period up to 13.02.2022. It therefore appears that, the impugned Statement of Work does not pertain to the entire period of the impugned Agreement dated 12.02.2019.

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.....

5.3.2.4 Thus, there appears to be some contradictions between clause 4 of the Agreement, where the applicant is held responsible "for payment of stipend or other required contributions" and from a reading of the Statement of Work (Annexure B- Sr. No. 4 of the 'Other Terms and Conditions'), it appears that the 'client' (not known whether it applies to

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IEIPL) is required to reimburse the actual cost of uniform, safety shoes, etc. provided to NEEM Trainees.

5.4 Both the specimen contracts attached with the application do not provide a clear picture of actual facts and therefore, question raised cannot be answered.

3.17 Being aggrieved by the impugned Advance Ruling, the Appellant preferred this appeal under Section 100 of the CGST Act with the following prayer to set aside/modify the impugned Advance Ruling, to grant a personal hearing and pass an appropriate order.

4. GROUNDS OF APPEAL

4.1 It was submitted that the AAR has erred in refraining from providing advance ruling on the premise that the specimen contracts furnished by the Appellant does not provide a clear picture of the actual facts in the respect of the matter. He further argued that the AAR did not consider the specimen contract with LG on the ground that the same is not signed by LG and also it has expired even before the date of filing of the application.

4.2 Validity of the contract between the Appellant and LG: It was submitted that the validity of the contract was not the subject matter of dispute before the learned AAR. It is for the parties to determine whether the contract is valid or not. Since, the Appellant has provided services under said contract and also received payment from LG for providing the said services, it is submitted that the agreement was valid and genuine. Even the revenue has not raised any objection in relation to the contract between the Appellant and LG. The revenue has further accepted the GST paid by the Appellant in relation to services provided and invoices raised under the said contract.

4.2.1 The appellant termed finding that the said contract has already expired even before the date of filing of the application as irrelevant. The Appellant stated that he had sought advance ruling in relation to a particular business and not in relation to a particular contract. He stressed that the business was ongoing and carried on by the Appellant on the date of making the advance ruling application.

4.2.2 It was submitted that the AAR has erred in giving a very narrow meaning to Section 95 of the CGST Act. The meaning of phrase "in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant is not to be read in the context of one of the contracts, but it has to read in the context of the business. An applicant may acquire new clients and lose earlier one while doing a particular business. What is relevant is the nature of business in relation to which advance ruling is sought should be either ongoing or proposed to be undertaken.

4.3 The appellant stated that the finding of the AAR has further erred in holding that the clauses of the **agreement between the Appellant and Interplex** are contradictory.

4.3.1 To support his argument, he submitted that Annexure-B to the said agreement clearly specifies that the quote mentioned therein is for the year 2018-19 and stipend will be revised as per the minimum wages fixed by the Government from 1st April of every year. Thus, the stipend amount was pegged with the minimum wages fixed by the Government every year.

4.3.2 Appellant further submitted that there is nothing contradictory in the agreement with Interplex. The agreement is perfectly in alignment with the AICTE (NEEM) Regulations. The AAR has erred in not appreciating the true objective of AICTE (NEEM) Regulations which is to enhance employability of NEEM Trainer and at the same time avoid their exploitation.

4.3.3 He pointed out that the Regulation 10 of the AICTE (NEEM) Regulations entrusts the responsibility of ensuring the welfare, safety and health of NEEM Trainees upon the NEEM Facilitator while they undergo training under the NEEM Trainer. Therefore, necessary compliance and insurance to ensure the welfare, safety and health of NEEM Trainees is initially done by the Appellant and subsequently, reimbursement is sought from the NEEM Trainer of the cost incurred. Thus, the cost of ensuring the welfare, safety and health of NEEM Trainees is actually borne by the NEEM Trainer though routed through the Appellant in compliance with the AICTE (NEEM) Regulations.

4.3.4 He further pointed out that to ensure that the NEEM Trainees are adequately compensated and not exploited by the NEEM Trainer, stipend and other charges also are all routed through the Appellant as per the AICTE (NEEM) Regulations. The appellant submitted that the AAR has failed to understand the role of a NEEM Facilitator which is to act as a guardian of the NEEM Trainee.

4.4 Without prejudice to above and in any event, even assuming without admitting that the clauses of the agreement were contradictory, the appellant submitted that the AAR was under an obligation to provide an advance ruling in relation to the questions posed by the Appellant. As per appellant, on the basis of the clauses of the agreement, even if contradictory, the Appellant would have been provided a clear answer on its liability to pay GST on the reimbursement amount received from NEEM Trainer towards "Stipend and other expenses incurred by the Appellant in accordance with AICTE (NEEM) Regulations to ensure wealth, safety and health of NEEM Trainees".

4.5 Without prejudice to above and in any event, it was submitted that the AAR never put the Appellant to the notice that it is of the view that the documents furnished by the Appellant were incomplete and inconclusive and it cannot answer the question raised on the basis of the said documents. It was further submitted that the impugned advance ruling passed by the AAR is in violation of the principles of natural justice. He invited our attention to the second proviso to Section 98(2) of the CGST Act which provides that no application shall be rejected unless an opportunity of hearing has been given to the applicant.

4.6 It was submitted that, since the questions regarding the validity / genuineness of the specimen contracts were never posed to the Appellant, it was incumbent upon the learned AAR to provide an opportunity of hearing to the Appellant before deciding upon the application. In view of the above, he stressed that the impugned advance ruling passed by the AAR is liable to be quashed and set aside.

4.7 Without prejudice to above and in any event, once the application is held as maintainable, the AAR is bound to admit or reject the application u/s 98(2) and answer the questions posed in the application u/s 98(4) of the CGST Act, 2017. He submitted that, if the learned AAR was unable to take any decision on the basis of the specimen contracts furnished by the Appellant, then it may have called for additional documents from the Appellant and thereafter, decided upon the application after giving an opportunity of hearing to the Appellant. Thereby, on this ground also, the impugned advance ruling is liable to be quashed and set aside.

4.8 **"Pure agent"**: Without prejudice to above and in any event, he submitted that the reimbursement amount received by the Appellant from NEEM Trainer is in the capacity of pure agent on which GST is not applicable. According to him, a NEEM Trainer registered with the Appellant in accordance with NEEM (AICTE) Regulations is required to pay stipend to NEEM Trainees deployed to it for on-job training. This stipend is paid by NEEM Trainer through the Appellant.

4.8.1 It was submitted that the Appellant is only acting as an intermediary in collecting the stipend amount from the NEEM Trainer and paying it to NEEM Trainee. He stated that the service to NEEM Trainer is provided by NEEM Trainees for which NEEM Trainer is liable to pay stipend. This stipend is paid through the Appellant and the Appellant is not allowed to make any deductions in that amount. He is submitted that the Appellant has only acted as a conduit for payment of stipend amount and the actual service to NEEM Trainer is provided by NEEM Trainees.

4.8.2 The appellant submitted that the contract between the Appellant and NEEM Trainer further specifies that the Trainer shall reimburse to the Appellant the premium paid by the Appellant for the Workmen Compensation Policy and / or Group Health Insurance Policy taken to ensure wealth, safety and health of NEEM Trainees. It was added that the beneficiary of the policy taken by the Appellant are NEEM Trainees in line with the requirement of AICTE (NEEM) Regulations.

4.8.3 It was claimed that the reimbursement amount received by the Appellant from NEEM Trainer towards "Stipend and other expenses incurred by the Appellant on NEEM Trainees in accordance with AICTE (NEEM) Regulations" is in the capacity of pure agent u/r 33 of the CGST Rules, which shall be excluded from the value of supply.

4.8.4 The Appellant claimed that it satisfies all the criteria prescribed under Rule 33 of the CGST Rules to qualify as "pure agent" in as much as:

(i) The NEEM Trainer has engaged NEEM Trainees and authorized the Appellant to pay them the stipend and incur other expenses for their wealth, safety and health. The service to NEEM Trainer is provided by NEEM Trainees.

(ii) The stipend amount and other expenses incurred by the Appellant on NEEM Trainees towards their wealth, safety and health are agreed in the agreement and also indicated separately in the invoice issued by the Appellant on the NEEM Trainer.

(iii) The reimbursement of stipend amount and other expenses incurred by the Appellant to ensure wealth, safety and health of NEEM Trainees are on actual basis and is in addition to the administrative fee received by the Appellant for the supplies made by it.

(iv) There is a contractual arrangement between the Appellant and NEEM Trainer under which the Appellant is paying stipend to NEEM Trainees and incurring other expenses to ensure their wealth, safety and health.

(v) Except to the extent required to ensure compliance of AICTE (NEEM) Regulations, the Appellant has no control over NEEM Trainees, and they work entirely under the control and supervision of NEEM Trainer.

4.8.5 Accordingly it is claimed that the Appellant is fulfilling all the criteria laid down for a pure agent and not liable to include the "Stipend amount and other expenses incurred by the Appellant in accordance with AICTE (NEEM) Regulations to ensure wealth, safety and health of NEEM Trainees" in the value of supply made to NEEM Trainee. Further, the Appellant does not dispute its liability to pay GST on administrative fee and sourcing fee.

4.9.1 It was also argued that the AAR has erred in not following its own advance ruling in the case of Yashaswi Academy for Skills wherein the issue was identical to the Appellant's case. The question raised for advance ruling was whether the reimbursement by the Industry Partner to Yashaswi Academy for Skills in relation to the stipend paid to the NEEM trainees attract GST. To this, the learned AAR held that reimbursement by Industry Partner to Yashaswi Academy for Skills does not attract GST.

4.9.2 Appellant submitted that even though advance ruling given in the case of one applicant is not binding in the case of another applicant, the judicial discipline demanded the learned AAR to be consistent in its approach especially when the facts are identical, and parties involved are governed by and working under the same scheme.

4.9.3 The Appellant also claimed support of the AAR, Karnataka, in the case of Cadmaxx Solutions Education Trust [2020 (32) G.S.T.L. 49 (A.A.R.- GST - Kar.)] wherein, on identical facts, it was held thus:



4.9.4 The appellant alleged that the AAR has erred in not answering the question raised by the Appellant in its application on technical reasons. The Appellant submitted that the ratio laid down in both the above Advance Ruling is squarely applicable to the present case.

4.9.5 Appellant also took support of the AAR in the case of Asiatic Clinical Research and further supported by the decision of the Hon'ble Tribunal in the case of Rolex Logistics Pvt. Ltd. v/s. Commissioner of Service Tax, Bangalore [2009 (13) S.T.R. 147 (Tri.-Bang.)], wherein, the Hon'ble Tribunal has held that reimbursement of payments made on behalf of service recipient are not includible in the value of service provided by the service provider.

4.10 In view of the above, appellant submitted that, the reimbursement of "Stipend amount and other expenses incurred by the Appellant in accordance with AICTE (NEEM) Regulations to ensure wealth, safety and health of NEEM Trainees" from NEEM Trainer is in the capacity of a pure agent and hence, not required to include the same in the value of taxable supply made by the Appellant to NEEM Trainer for the purpose of payment of GST.

5. PERSONAL HEARING and ADDITIONAL SUBMISSION

5.1 In terms of section 101 (1 of the CGST Act, 2017, the appellant was given personal hearing on 28.02.2023. Shri Arun Jain, Advocate, appeared for personal hearing on behalf of the Appellant. During the personal hearing he reiterated the grounds of appeal. He reiterated written submission made along with the application.

5.2 In order to explain the appellant's case with reference to definition and conditions of pure agent u/r 33 of the CGST Rules, 2017, the Ld Advocate made the following additional submission, which we find not more than the earlier one:

5.2.1. The appellant submitted that in the contract letter issued to the NEEM Trainee, name of the NEEM Trainer i.e., the Company in which NEEM Trainee shall be placed for training. Therefore, as per appellant, NEEM Trainee is always aware of the NEEM Trainer under which he will be placed for training. He further explained that the NEEM Trainee is aware that he shall be governed by the rules and regulations as may be prescribed by the NEEM Trainer where he will be placed for training.

5.2.2. He further invited our attention to the contract letter, as per that the training shall be in accordance with the NEEM regulations which prescribes that stipend shall be in accordance with the Minimum wages prescribed by the Government which is also what is mentioned in the contract letter. Thus, he argued that NEEM Trainee is always aware that the stipend will be equivalent to the Minimum wages prescribed by the Government.

5.2.3. The appellant pointed out that as per the agreement entered between the NEEM Facilitator and NEEM Trainer, it is clearly mentioned that the liability to pay stipend to the NEEM Trainee is that of the NEEM Trainer. Appellant further observes that as per agreement, it is further agreed in the

agreement that the stipend payable to the NEEM Trainee would be equivalent to the Minimum wages prescribed by the Government.

5.2.4. The appellant thus argued that there is absolute clarity between the NEEM Facilitator, NEEM Trainee and NEEM Trainer that the stipend amount would be equivalent to the Minimum wages prescribed by the Government. He therefore stressed that NEEM Facilitator would never be in position of adding any mark-up to the stipend payable to the NEEM Trainee as it is pegged with the Minimum wages prescribed by the Government and hence, the question of NEEM Facilitator adding any mark-up to the stipend amount does not arise.

5.2.5. Appellant pointed out the decision of the Hon'ble Tribunal in the case of Kiran Gems Pvt. Ltd. v/s. Commissioner of Central Excise & S.T., Surat-I reported in 2019 (25) G.S.T.L. 62 (Tri. - Ahmd.) wherein the Hon'ble Tribunal has held that the actual electricity charges recovered as pure agent from tenant shall not form part of the value of service of renting of immovable property service. It is stated that above contention is also supported by the judgment of the Hon'ble Bombay High Court in the case of Commissioner of S.T., Mumbai-VI v/s. Shri Krishna Chaitanya Enterprises reported in 2018 (14) G.S.T.L. 533 (Bom.) The issue before the Hon'ble High Court was whether service tax would be applicable on maintenance charges collected by builder for up-keep of the apartment or premises before formation of co-operative society.

5.2.6. It was submitted that provisions pertaining to "pure agent" under GST are in *pari materia* with service tax and therefore, he contended that the above case law applies squarely to the present case.

5.2.7. In view of the above, it was submitted that, as a NEEM Facilitator, the appellant is satisfying all the conditions of a "pure agent" and therefore, he is not liable to GST on the reimbursement of the stipend amount received from NEEM Trainer.

6. DISCUSSION AND FINDINGS

6.1 We have gone through the appeal memorandum encapsulating the facts of the case, written submissions and oral submissions during personal hearing. We have also gone through the case laws cited.

6.2 It is seen from the AAR and grounds of appeal that AAR Authority has not given ruling on the questions asked, but raised some doubts on the validity of the contracts and contradictions in the agreements. We have gone through the agreement between M/s. CLR Skills Foundation (presently known as M/s. Beeup Skills Foundation) and Interplex. As per agreement with Interplex in clause No 15 it is mentioned that said agreement shall continue up to 13.2.2022. Thus, it is evident that application was maintainable and answerable on merits. In regards to the agreement with LG, appellant contends that it is continued further, and AAR should have decided the question from

business perspective and not as an individual supply. However, we are not in agreement with the appellant's view because liability to pay GST arises on the consideration with reference to particular supply. However, to answer the question, agreement copy of Interplex is sufficient as it is sample / specimen copy and representative one. Hence, discussion hereunder is based on merits.

6.3 In the context of the Appellant's role as a NEEM Facilitator and their agreement with the industry partner, let us examine the provisions of the Rule 33 of the CGST Rules, 2017 relating to definition and conditions of pure agent.

"Rule 33 of CGST Rules 2017: Value of supply of services in case of pure agent

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) 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.*

Illustration- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees.

6.4 On perusal of the said rule, it has been noticed that the rule has been divided in three parts. **The first part** contains conditions towards the amount incurred by a person in the capacity of Pure Agent on behalf of his recipient.

The second part contains terms to understand the expression "Pure Agent".

Third part is explaining an illustration regarding understanding the concept of transaction done by the Pure Agent.

6.5 To qualify mere receiving payment under the cover of reimbursement of "Stipend amount and other expenses incurred by the Appellant in accordance with AICTE (NEEM) Regulations to ensure wealth, safety and health of NEEM Trainees" from NEEM Trainer as a payment received by a pure agent, all parameters prescribed in conditions and meaning stated u/r 33 of the CGST Rules are required to be fulfilled. Therefore, the terms and conditions as stipulated under rule 33 are analyzed as under:

6.5.1 Rule 33(i) – Authorisation – At the time of payment the person would have been authorized by his recipient to make such payment. If the payment is made first and authorization is received after making the payment, then such terms shall not be satisfied. Alternatively, the terms of the agreement do not stipulate authorization by the NEEM Trainer (recipient) for payments to NEEM Trainees (supplier). In fact, clauses of the agreement as well as the NEEM Regulations, don't stipulate that payment of stipend is payable by NEEM Trainer to Neem Trainees, in clear and unequivocal terms. Further, appellants appeal petition also confirms that payment of stipend is payable by NEEM Facilitator to NEEM Trainee. However, its opposite is stated in additional submission received on 15th March 2023.

6.5.2 Rule 33(ii) – Invoicing – The second condition is that no separate invoice be issued against the amount incurred on behalf of the recipient. The amount incurred shall be separately indicated in the regular invoice issued by the Pure Agent to the Recipient. It is observed from the copies of the tax invoices submitted that regular invoicing is made along with tax amount on the entire value. Thus, the condition prescribed under this clause is also not fulfilled by the NEEM Facilitator.

6.5.3 Rule 33(iii) – Additional Supply – The third condition stipulates that nature of supply procured by the Pure Agent from the third party as a Pure Agent of the recipient are in addition to the services, he (Pure Agent) supplies on his own. In this case, appellant's supply of providing trainees to the industry is only one supply and their sourcing, administrative work, insuring them is an incidental work and not as another supply. In other words, to comply with the condition of this clause, supply by the appellant in the capacity of pure agent should be additional supply. On the contrary, in this case, provision of NEEM Trainees is a dominant part of business and activities like NEEM Trainee sourcing, etc are allied and dependent works. Therefore, other than deployment of trainees as per the NEEM Regulations, no other service is supplied by the Appellant. Thus, on this count also, the appellant is not fulfilling the prescribed conditions in rule 33. In fact there won't be any service if the dominant service of provision of trainees is removed. Additional supply may not be necessary for fulfilling the main dominant supply. However, in the present case, the provision of NEEM

Trainees cannot be treated as additional supply because, as stated above, its absence makes the remaining transaction unenforceable.

6.6 Explanation to Rule 33 for meaning of "Pure Agent"

6.6.1 (a) **Contractual Agreement** – Both parties (Pure Agent and Recipient of the Pure Agent) shall have agreed to that the Pure Agent shall incur expenditure during supply of goods or services or both on behalf of the recipient. In this case, there was an agreement between Facilitator and Trainer that payment will be made after invoice is made to the industry partner (Trainer) including details of stipend, thereupon stipend will be paid to trainees. Thus, agreement clauses and NEEM regulations do not fulfill the first criteria to enable Facilitator as a pure agent. It could not be proved that the expenses were incurred by the Applicants in the capacity of the Pure Agent.

6.6.2 (b) **Title on goods or services** – The Pure Agent never 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. In this case, the appellant is becoming the owner of services of provision of trainees. He is sourcing the NEEM Trainees, signing contracts with Trainees. In the event of any mishap, the appellant is liable for compensation to the Trainees. Thus, regulation and nature of services makes the Facilitator an owner of services.

6.6.3 (c) **No interest of the Pure Agent on such goods or services so procured** – It must be born in mind that without interest of the Facilitator in sourcing Trainees and making them available to the industry, there won't be any supply of Trainees to the industry. Moreover, the appellant is licensed by AICTE as a Facilitator for the very purpose of training NEEM Trainees at the industry premises.

6.6.4 (d) **Amount to be Received** – The Pure Agent shall receive actual amount incurred by him. No profit part shall be added to such recoverable amount from the recipient.

6.7 In this case, despite giving enough opportunity, the appellant is neither able to establish that appellant was fulfilling conditions of "pure agent". Appellant was not found to be duly authorized at the time of making payment of stipend on the behalf of the NEEM trainer/the recipient. There is only one supply of deployment of NEEM Trainees, whereas, administration of Trainees is ancillary work of deployment of NEEM Trainee, entire working is as per NEEM Regulation. The terms of the agreement make it clear that the expenditure of payment of stipend to the NEEM Trainees was on his own and not on the behalf of the NEEM Trainer. The appellant, as per NEEM Regulations, has the sole responsibility to engage NEEM Trainees and supply them to Trainer under separate agreements.

6.8 As per Annexure B, GST of Rs 2389/- is calculated @ 18% on the total billing amount of Rs 13271/- per head per month. Breakup of 13271/- is - Stipend of Rs. 12271/- with other benefits of Rs 280/- (WC Policy, uniform, safety shoes charges) and appellant's management fees of Rs 720/-. This shows that GST is pre-decided to be collected, as per the agreement, on the gross value including on stipend.

6.9 A perusal of sample invoices attached (Tax Invoice No SADEL000055/1920 DT 25.11.2019 for Nov 2019 raised on LGEIPL for Rs 113024 + IGST of Rs 20344.32 and Tax Invoice No SAKAR000107/1920 DT 26.11.2019 for 21.10.2019-20.11.2019 raised on IEIPL for Rs 539907 + IGST of Rs 97183.26) shows that GST is separately collected on entire billed amount by the appellant from both Trainers.

6.10 As per terms of para 3 and para 5.1 (xiii) of the agreement with LG, stipend will be paid by company / NEEM Trainer to the appellant and by the appellant to the NEEM Trainees, respectively. Whereas, as per para 8(a) of the agreement with Interplex, payment of stipend will be made by company / NEEM Trainer to the appellant and as per para 8(b), stipend will be paid by the appellant to the NEEM Trainees. Further, as per para 8 of the Interplex agreement, the Trainer shall pay to the appellant amount as per applicable SOW enclosed to the agreement, which is inclusive of 18% GST on the entire consideration (including stipend).

6.11 Moreover, it is the Appellant who is obligated under the NEEM Regulations to pay the stipend to the trainees. Regulation 15 of the NEEM Regulations as well as the terms of the contract entered into with the NEEM Trainee stipulate that it is the Appellant who will pay the stipend to the trainee.

6.12 In additional submissions made on 15th March 2023, however, appellant made following important but contrary submissions, devoid of any basis and not substantiated by any evidential document:

The appellant pointed out that as per the agreement entered between the NEEM Facilitator and NEEM Trainer, it is clearly mentioned that the liability to pay stipend to the NEEM Trainee is that of the NEEM Trainer.

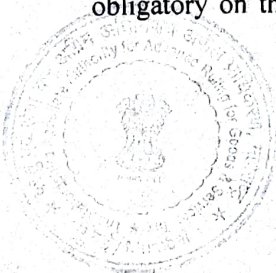
He stressed that NEEM Facilitator would never be in position of adding any mark-up to the stipend payable to the NEEM Trainee as it is pegged with the Minimum wages prescribed by the Government.

6.13 Agreement clauses regarding stipend does not show that the Company (NEEM Trainer) has authorized the Appellant (NEEM Facilitator) to make the payment of stipend to the trainees as its 'pure agent' and neither does the Company own the payment of stipend to the trainees as its liability. The agreement merely states that the reimbursement of stipend received from the Company is a consideration paid for deployment of trainees, which is the service supplied by the Appellant. In order to satisfy the 1st condition of Rule 33, it is essential to prove that the Company (NEEM Trainer) is obligated to pay stipend to the trainees and that it has authorized the Appellant to make the payment to the trainees on behalf of the Company. We do not find any such authorization in the agreement. In fact, the obligations of the parties as mentioned in 5.1 (xiii) and 8 of the respective agreement clearly states that the company (NEEM Trainer) shall pay stipend to the appellant for the trainees engaged by Company which shall be at par with the prescribed minimum wages payable for unskilled category

under Shops & Establishment Act. ..." This makes it clear that it is the Appellant who is obligated to pay the stipend to the trainees. Since the trainee has registered with the Appellant/NEEM Facilitator, it is the responsibility of the Appellant to deploy the trainee in a suitable industry to undergo training at the industry for a specific period and pay the stipend during the training period. The discussion cited above makes it ample clear that it is the appellant, who is directly responsible to pay stipend to the NEEM Trainees and there is no authorisation by the NEEM Trainer to pat stipend on the behalf of the Trainer. We therefore, find that the Appellant fails to satisfy condition (i) of Rule 33.

6.14 We also find that Appellant fails to satisfy the 3rd condition of Rule 33 i.e. '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.' We find from the agreement with the industry partner that, other than deployment of trainees as per the NEEM Regulations, no other service is supplied by the Appellant. All the charges billed by the Appellant on the Company are only in connection with the deployment of trainees for training under NEEM Regulations. Even the stipend paid to the Appellant, albeit for the sole purpose of disbursing to the trainees, is only a consideration paid to the Appellant for the deployment of the trainees. This is made clear by Para 3 of the Agreement (between appellant and LG) relating to Stipend which states thus: "In consideration of dedicated deployment of the Trainees to the Company in accordance with this Agreement, the Company shall pay a monthly stipend ("Stipend") to CLR Skills, to be utilized by CLR Skills solely for the purpose of paying the Trainees in accordance with the NEEM Regulations, which shall be equal to or greater than the prescribed minimum wages for unskilled category under applicable law and employee compensation insurance premium on or before the 7th day of each calendar month. For the avoidance of doubt it is clarified that the Stipend payable shall be a single consolidated amount and shall not be subject to further withholding tax, namely Tax Deducted at Source or any other statutory deductions or payments, except for income tax if applicable." ... "All payments under this agreement shall be made to CLR Skills in the Bank Account as detailed in Annexure A". Similar payment clauses are also seen in agreement with Interplex. Therefore, we find that even on this count, the Appellant does not qualify as a pure agent.

6.15 Further, we find that the activity of deploying trainees to the Company to undergo training is undertaken by the Appellant in his own interest as a NEEM Facilitator. While the NEEM Regulations make provisions for the NEEM Facilitator to partner with Companies/Industries to provide the training, it makes the Facilitator responsible for payment of stipend and for issue of the training completion certificate. The Regulations do not cast any responsibility on the Company or the Industry who is providing the practical training. It is the responsibility of the Facilitator to furnish data of the trainees to AICTE. We also find that being registered with AICTE as a NEEM Facilitator, it is obligatory on the part of the Appellant to deploy all the trainees registered with him to suitable



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industries to undergo practical on-the-job training and to pay them the monthly stipend failing which the Appellant faces the risk of having his NEEM Facilitator registration revoked. No doubt the terms of the agreement with the Company specify that the stipend amount paid to the Appellant is to be utilized only for the purpose of paying the trainees, but this does not make the Appellant a pure agent of the Company since the NEEM Regulations does not require the Company/Industry to pay a stipend to the trainees. Therefore, the Appellant does not satisfy clause (c) of the definition of 'pure agent' as given in the explanation to Rule 33.

6.16 The Appellant had drawn our attention to the Maharashtra Authority for Advance Ruling given in the case of Yashswi Academy for Skills. Attention has also been invited to the ruling given by the Karnataka Authority for Advance Ruling in the case of Cadmaxx Solutions Education Trust. In these AARs, it has been held that the stipend amount required to be paid by the trainer to the trainee, which is paid through the applicant (a NEEM Facilitator) is not taxable in the hands of the applicant since the applicant is only acting as a pure agent. We have gone through the said rulings and find that in these cases, the Authorities have not examined the case in the light of provisions contained in rule 33 and the NEEM Regulations, 2017. Therefore, these rulings are of no assistance in the present case.

6.17 The appellant also cited AAR in the case of Asiatic Clinical Research and further supported by the decision of the Hon'ble Tribunal in the case of Rolex Logistics Pvt. Ltd. v/s. Commissioner of Service Tax, Bangalore [2009 (13) S.T.R. 147 (Tri.-Bang.)], wherein, the Hon'ble Tribunal has held that reimbursement of payments made on behalf of service recipient are not includible in the value of service provided by the service provider. The facts of cited cases are different from case under appeal. Hence, these case laws are also not of any assistance to the appellant.

6.18 The Appellant, in additional submission made, cited the decision of the Hon'ble Tribunal in the case of Kiran Gems Pvt. Ltd. and case of the Hon'ble Bombay High Court in the case of Shri Krishna Chaitanya Enterprises. Facts contained in both cases are different from the facts pertaining to present case. Hence, ratio of these case laws is squarely not applicable in this case.

6.19 Moreover, Karnataka Appellate Authority for Advance Ruling in similarly placed case with identical facts in the case of Teamlease Education Foundation have taken view that stipend is taxable consideration for supply of deployment of NEEM Trainees (Kar-AAAR order dated 6.7.2022).

6.20 In view of extensive discussion surrounding the question posed to and answered by the Authority of Advance Ruling, we find on merits that the appellant do not fulfil the conditions and clauses of meaning of "pure agent" prescribed under rule 33 of the CGST Rules, 2017. Hence, the appellant is not allowable to claim deduction of the reimbursement of amount of stipends and other expenses received from the NEEM Trainer from the value of supply.


6.21 In view of discussion in foregoing paragraphs, we pass following order.

ORDER

The order No. GST-ARA-122/2019-20/B-54 dated 27.04.2022 passed by the Maharashtra Authority for Advance Ruling is upheld with some modification. It is held that the reimbursement amount received by the Appellant from NEEM Trainer towards "Stipend and other expenses incurred by the Applicant in accordance with AICTE (NEEM) Regulations to ensure wealth, safety and health of NEEM Trainees" is not in the capacity of pure agent. In the result the appeal filed by the M/S Beep Skills Foundation (erstwhile M/s Beep Skills Foundation or M/s CLR Skills Training Foundation) against impugned MAH-AAR order is rejected.


(RAJEEV KUMAR MITAL)
MEMBER




(Dr. D. K. SRINIVAS)
MEMBER

Copy to:

1. Appellant
2. AAR, Maharashtra
3. Pr. Chief Commissioner, C&CE, Mumbai Zone
4. Commissioner of State Tax, Maharashtra State
5. Deputy Commissioner of State Tax
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