



TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Goods and Services Tax)
1st Floor, Commercial Taxes Complex, M.J. Road, Nampally,
Hyderabad 500 001

AAAR.COM/11/2022

Dated: 22.11.2022

Order-in-Appeal No. AAAR/13/2022

(Passed under Section 101 (1) of the Telangana Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Telangana Goods and Services Tax Act, 2017 (TGST Act, 2017 or the Act), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the applicant or the appellant has been given an opportunity of being heard.
2. Under Section 103 (1) of the Act, this Advance Ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a) On the applicant who had sought it in respect of any matter referred to in sub-Section (2) of Section 97 for Advance Ruling;
 - (b) On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this Advance Ruling shall be binding unless the law, facts or circumstances supporting the original Advance Ruling have changed.
4. Under Section 104 (1) of the Act, where the Appellate Authority finds that Advance Ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such Advance Ruling has never been made.

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Sub: AAAR – Reference application in respect of M/s. Magnetic Infotech Pvt Ltd, Plot No.08, Krishna Nagar Colony, Kakaguda Village, Wellington Road, Picket, Hyderabad – 500009 – GST No. 36AACCM2333F1ZV –Orders issued – Reg.

M/s. Magnetic Infotech Pvt Ltd, Plot No.08, Krishna Nagar Colony, Kakaguda Village, Wellington Road, Picket, Secunderabad, Hyderabad, Telangana- 500009 (36AACCM2333F1ZV) had filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules, seeking Advance Ruling on the following :

- a. Whether GST exemption is applicable to applicant in respect of the pre and post Examination services being provided to the Educational Boards and Universities (including Open Universities)?
 - b. If answer to Q.No.1 is affirmative, whether the exemption is available to the applicant in case of the services are provided on sub-contract basis i.e., the applicant provides pre and post examination services to the main contractor who in turn provides the said services to the Educational Boards and Universities (including Open Universities)?
2. M/s. Magnetic Infotech Private Limited (hereinafter referred to as "Applicant") is engaged in providing pre and post examination services to the Educational Boards, Universities and Open Universities (hereinafter referred to as 'Educational Institutions').
3. The applicant has entered into agreements with various educational institutions located in different States such as Board of Secondary Education, Telangana, Board of Intermediate Education, Telangana, Board of Secondary Education, Andhra Pradesh, Board of Intermediate Education, Andhra Pradesh, Osmania University, Hyderabad, JNTU, Hyderabad, Dr. BR Ambedkar Open University, Hyderabad, Swamy Ramanand Teerth Marathwada University, Nanded, Maharashtra and Yeshwantrao Chavan Maharashtra Open University, Nasik, Maharashtra. Copies of the agreements entered by the applicant with State Education Boards and Universities (including open universities) are enclosed as Annexure - III.
4. The scope of work in respect of the services being provided to the educational institutions by the applicant can be divided into the following three categories.
- i. Data processing for conduct of examination
 - ii. Results Preparation
 - iii. Generation and printing of statistical data and reports in the prescribed proformas as required by the educational institutions.
5. The aforesaid three categories of services include processing of examination results which involves collection of examination forms from students and processing, generation of checklist which are sent to the corresponding education institutions for verification and error correction, then the checklist corrections are updated to make it error free data, generation of hall tickets/admit cards, photo attendance sheets which are sent to the examination centers. Processing the nominal roll data, generation of OMR sheets for obtaining marks, conducting of the examinations with nominal roll data and student information.

6. Post-examination services include getting the marks awarded from the evaluation centers capturing the data and summarizing it, purifying it. Processing the examination results by applying all the rules and generating the result sheet, tabulation of result and declaration of result, then issuing the marks memos to the students. The same procedure is followed for the supplementary exams to be conducted for the failed candidates.

ISSUES REQUIRING ADVANCE RULING:

7. The applicant submitted the following questions for Advance Ruling and their interpretation on the questions as under:

- a. Whether GST exemption is available to the applicant in respect of the pre and post Examination services being provided to the Educational Boards and Universities (including Open Universities)?
- b. If answer to Q. No.1 is affirmative, whether the exemption is available to the applicant in case the services are provided on sub-contract basis i.e. the applicant provides pre and post examination services to the main contractor who in turn provide the said services to the Educational Boards & Universities (including Open Universities)?.

8. After due process of law, the lower authority i.e. Telangana State Authority for Advance Ruling, has issued the impugned order, wherein the Members of the Authority have expressed different opinions on the second question / issue raised by the applicant. And accordingly, the lower authority has referred the issue for a decision to this authority. The divergent opinions expressed by both the members of the lower authority are as under:

8.1. The views expressed by Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax), on the issues raised by the applicant.

Questions	Ruling
1. Whether GST exemption is applicable to applicant in respect of the pre and post Examination services being provided to the Educational Boards and Universities (including Open Universities)?	Yes
2. If answer to Q.No.1 is affirmative, whether the exemption is available to the applicant in case of the services are provided on sub-contract basis i.e., the applicant provides pre and post examination services to the main contractor who in turn provides the said services to the Educational Boards and Universities (including Open Universities)?	Yes

8.2. It was opined by the above Member that in view of provisions contained under Sl.No. 66(b) of the Notification No. 12/2017-Central Tax (Rate), dt. 28-06-2017, as amended, the service relating to admission to or conduct of examination is exempt when provided to such educational institution, therefore, as a service itself is exempt, this exemption can be claimed by any taxable person including a sub-contractor.

8.3. The views expressed by Shri B. Raghu Kiran, Additional Commissioner, Central Tax on the issues raised by the applicant are as given below:

8.4. The service relating to admission to or conduct of examination is exempt when provided to such educational institution. The said entry specifies that the services are required to be supplied to educational institution. Nevertheless, where the privity of contract is between the applicant (as a sub-contractor) and a main contractor, in such cases, the main-contractor does not fall under the definition of ‘educational institution’ and therefore, such supply is not covered under entry 66(b) of Not. No. 12/2017-CT (R) dated 28-06-2017 as amended. As such, the benefit of exemption is not available to the sub-contractor who supplies service to main contractor even though service to ultimately rendered to education institution.

8.5. In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. Whether GST exemption is applicable to applicant in respect of the pre and post Examination services being provided to the Educational Boards and Universities (including Open Universities)?	Yes
2. If answer to Q.No.1 is affirmative, whether the exemption is available to the applicant in case of the services are provided on sub-contract basis i.e., the applicant provides pre and post examination services to the main contractor who in turn provides the said services to the Educational Boards and Universities (including Open Universities)?	No

9. Since there was no uniform opinion arrived by the Members of the Authority for Advance Ruling in respect of Question No. 2 raised by applicant representing Central Tax and State Tax and they have expressed two different views on the issue raised by the applicant on the applicability of GST as sub-contractor or the application filed by M/s Magnetic Infotech Pvt Ltd, the same has been referred to the Appellate Authority for Advance Ruling for the state of Telangana in terms of Section 98(5) of the CGST/TGST Act, 2017 for hearing and decision on the question No. 2 on which Advance Ruling is sought.

10. In view of the above, the present reference is before this authority. This authority has gone through the records of the case, submissions made by the applicant before the lower authority.

PERSONAL HEARING

11. S/Shri Jagannadh and Vijay N Rao, Advocates appeared for the personal hearing held on 2.11.2022 and reiterated the submissions made before the lower authority and requested to consider the same.

DISCUSSIONS & FINDINGS

12. The issue referred to this authority is whether the exemption is available to the applicant in case of the services provided on sub-contract basis i.e. the applicant provides pre and post examination services to the main contractor who in turn provides the said services to the educational boards and universities (including open universities).

13. For ease of reference, the relevant extract of Notification No. 12/2017-CT(R), dt. 28-06-2017 is reproduced hereunder:

Sl. No.	Chapter, Section or Heading	Description of Services
(1)	(2)	(3)
66	Heading 9992 or Heading 9963	<p>Services provided –</p> <p>(a) by an education institution to its students, faculty and staff;</p> <p>(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;</p> <p>(b) to an educational institution, by way of,-</p> <p>(i) transportation of students, faculty and staff;</p> <p>(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</p> <p>(iii) security or cleaning or house- keeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution;</p> <p>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.</p>

14. From the above what can be deciphered is that the exemption is available when services are provided to an educational institution, by way of ... Services relating to admission to, or conduct of examination by, such institution. In other words, the exemption would be available when the services are provided “to” an educational institution for services relating to admission to, or conduct of examination by, such institution.


15. In the above backdrop, the question / ruling sought by the applicant is to be decided. The applicant sought ruling about whether the exemption is available to them in case of the services provided on sub contract basis i.e. the applicant provides pre and post examination services to the main contractor who in turn provides the said services to the Educational Boards and Universities (including Open Universities). However, since in the present case the main contractor to whom the applicant is to provide services as sub-contractor is not an educational institution, though the services are allegedly being provided to the Educational Boards and Universities by the main contractor, the exemption contained in the impugned notification is not available to the applicant. When exemption contained in a notification is to be claimed, an applicant is to satisfy the conditions prescribed therein. The wordings of any notification have to be strictly read to allow or deny any exemption.

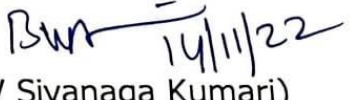
16. In view of the above, the following orders are passed by this authority.

ORDER

The applicant, M/s Magnetic Infotech Private Ltd., as a sub contractor, is not eligible to claim exemption as available under Notification No. 12/2017-(R), dt. 28.6.2017.

The subject appeal is disposed accordingly.


(Neetu Prasad)
Commissioner
State Tax,
Telangana State


(B V Sivanaga Kumari)
Chief Commissioner
Central Tax
Hyderabad Zone

To:

M/s Magnetic Infotech Pvt Ltd,
Plot No.08, Krishna Nagar Colony,
Kakaguda Village, Wellington Road,
Picket, Secunderabad, Hyderabad,
Telangana- 500009.
(36AACCM2333F1ZV)

Copy submitted to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.
2. The Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for information and for forwarding copies of the order to the concerned / jurisdictional officer of Central tax.
3. The Commissioner of State Tax, Telangana State – for information and for forwarding copies of the order to the concerned / jurisdictional officer of State tax.