

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING**

**AT 14, BELIAGHATA ROAD, KOLKATA-700015**

**Before:**

**Mr. A.P.S Suri, Member**

**Ms. Smaraki Mahapatra, Member**

In the matter of

Appeal Case No. 05/WBAAAR/APPEAL/2019 dated 29.03.2019

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by M/s Sarj Educational Centre, Santiniketan Complex, Jyoti Nagar, 2<sup>nd</sup> Mile, Sevoke Road. Siliguri, District: Jalpaiguri, Pin-734001 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. 42/WBAAR/2018-19 dated 26.02.2019.

Present for the Appellant: Sri Alope Kumar Ghosh, Advocate

Present for the Respondent: None

Matter heard on: 17.06.2019

Date of Order: 25.06.2019

1. This Appeal has been filed by the M/s Sarj Educational Centre (hereinafter referred to as "the Appellant") on 29.03.2019 against Advance Ruling Order No. 42/WBAAR/2018-19 dated 26.02.2019, pronounced by the West Bengal Authority for Advance Ruling in the matter of M/s. Sarj Educational Centre.
2. The Appellant is stated to be the owner of a private boarding house and is providing services of lodging and food exclusively to the students of St. Michael's School, a secondary school run by a Charitable Society, namely the Sunshine Educational Society. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act") on the following question:

- (i) Whether or not services provided by the Appellant to the students of lodging and supply of food is a composite supply within the meaning of Section 2(30) of the GST Act.
  - (ii) Whether supply of such service is eligible for exemption under Sl. No. 14 of Notification No. 12/2017-CT (Rate) dated 28/06/2017 (hereinafter referred to as the 'Exemption Notification').
  - (iii) The rate of tax applicable for the combination of services provided, if it is not considered a composite supply.
3. The West Bengal Authority for Advance Ruling (hereinafter referred to as the 'WBAAR') has passed an advance ruling by an order dated 26.02.2019, wherein it has been pronounced *inter alia* that the Appellant is offering several individual services in two different combinations to the recipients, depending upon their need for lodging facility. None of the combinations of services being offered is a composite supply, as defined under Section 2(30) of the GST Act but are mixed supplies within the meaning of Section 2(74) of the GST Act and therefore taxable in accordance with Section 8(b) of the GST Act. The services being mixed supplies, value of the entire combination of services offered by the Appellant is taxable at the applicable rate.
4. The has filed the instant Appeal against the above Advance Ruling with the prayer to set aside the impugned Advance Ruling passed by the WBAAR on the following grounds:
  - (a) The WBAAR erred in its observation by not treating the Appellant to be an educational institution within the meaning of clause 2(y) of the Exemption Notification as it is providing primary and secondary education through remedial classes to the boarding students.
  - (b) The Appellant has *inter alia* contended that the WBAAR has failed to appreciate the nature of services provided towards "Boarding Fees" and "Lodging Fees". The natures of these two different services are unique in character and so cannot be treated at par. The WBAAR should have appreciated the true purport and meaning of the terms "Boarding" and "Lodging". The difference is that Boarding denotes food along with other amenities whereas Lodging denotes only accommodation. Thus, the WBAAR has erred in distinguishing the nature of services and proceeded in imposing tax on food at specified rate.
  - (c) The principle activity of the Appellant is to provide Boarding Service and also Lodging Service and in each case the charge is less than Rs.1000/- per day. Since consolidated amount is realised from the students no part of the same can be artificially segregated so as to bring the same within the ambit of tax.
  - (d) The WBAAR should have considered the fact that since the petitioner is not a reseller of electricity nor has any license under Section 12 of the Electricity Act, the petitioner cannot sell or supply electricity besides the purpose for which the

utility has been provided by the concerned Authority. In fact, the petitioner is collecting on pro-rata basis a reimbursement of such charges from the Boarders.

5. During the course of the hearing, the Appellant have submitted some additional points to their grounds of Appeal as listed below:

(i) Considering itself as an educational institution, the Appellant further stated that the term education is very much allied with the term educational institution since in common parlance an educational institution is an institution wherefrom the students are entitled to get education.

(ii) The Appellant referred to the observation of the Hon'ble Supreme Court in the case of Sole Trustee Loka Shikshana Trust vs. Commissioner of Income Tax - 1976 SCR (1) 461. The Hon'ble Apex Court, while deciding an issue under Income Tax Act, observed that, "Education is the process of training and developing the knowledge, skill mind, and character of students by formal schooling." Further, one of the most comprehensive definition in this regard is found in the Noise Pollution (Regulation and Control) Rules 2000, which defined the term educational institution as under :

*"Educational institution" means a school, seminary, college, university, professional academies training institutes of other Educational establishment and includes not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instructions including those essential to mental, moral and physical development."*

Since the Appellant has all the infrastructure as stated above for providing education to the students and boarders, it can safely be said that the Appellant is engaged in running an educational institution for providing primary and secondary education support to the students and accordingly covered under the terms and conditions as set out under serial no 66 of the Exemption Notification. The Appellant further stated that the WBAAR misinterpreted the entire term and erred in not treating the applicant as an educational institution.

(iii) While providing boarding services the charges are realised in a consolidated manner, the value of food and other like services rendered cannot be artificially segregated and if so done, the entire legislative intention would be defeated. There is also no mechanism under GST laws to segregate the components from such consolidated charges. Since the Appellant provides a number of services in a composite manner, if anyone of the said services is taken out from the said bundle of services, the entire nature of service shall be affected. Hence, bundle of two or more supplies even if one of them is exempted, may continue to cover under the ambit of "Composite supply" as long as they are naturally bundled and one of them is the principal supply. The Appellant also contends that from the plain reading of section 2(30) of the GST Act, it is amply clear that "Composite

Supply” means the taxable supply of goods and /or services that are bundled due to natural requirement and one of such supply is principal supply. This view also finds support from Circular No. 32/O6/2018-GST dated 12.02.2018, wherein it has been clarified by the Department of Revenue, Tax Research Unit, Ministry of Finance that the food supplied to the in-patients, as advised by the doctor/ nutritionists is a part of composite supply and not separately taxable. The same principle has been applied by Hon’ble Authority for Advance Ruling, Kerala in the case of M/s. Ernakulam Medical Centre Pvt. Ltd vide Advance Ruling No. KER/16/2018 dated 19.09.2018, to hold that supply of medicines and allied items like food supplied to the in-patients as advised by the doctor/ nutritionists is a part of composite supply and not separately taxable.

(iv) The Appellant has also cited Order of the Authority For Advance Rulings, Chhattisgarhin the case of Ramnath Bhimsen Charitable Trust wherein it has been held that, "Where applicant is running a girls hostel and it provides accommodation to girls in hostel against a charge of Rs.6,000/Rs.7,000 per month per boarder and it also provides to occupant ancillary services such as food, parking facility, hot water facility, guest rooms and temple without any extra charges, activities undertaken by applicant would fall under Heading No. 9963 and exempted from payment of GST."

6. During the course of the hearing the Appellant reiterated the points as stated in Grounds of Appeal. Further it is also pointed out that for the day boarders food is not provided.
7. The matter has been carefully examined and the Appellant’s written and oral submissions made before us have been duly considered.
8. It is observed that the Appellant had filed Appeal against the order of the WBAAR based on two aspects, firstly that it should be considered as an educational institution within the meaning of clause 2(y) of the Exemption Notification and secondly the services provided by them to the boarder students should be considered as a ‘composite service’ wherein the principal supply of service is the boarding facility which is coupled with other ancillary services like food, house-keeping, laundry, medical assistance, etc.
9. For the sake of clarity clause 2(y) of the Exemption Notification is reproduced below:  
“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 recognised by any law for the time being in force;
  - (iii) education as a part of an approved vocational education course.

The Appellant is not affiliated to any board/university and does not provide any kind of approved or recognized education in terms of meaning of clause 2(y) of the Exemption Notification. Moreover, the Appellant, M/s. Sarj Educational Centre, in terms of clause 02.1 of the Memorandum of Understanding dated 01.04.2006 with St Michael's School raises bills directly on the individual students and realizes the consideration directly from them. In the instant case, the Appellant is claiming that it is an educational institution by itself, which appears to be erroneous in view of the clause 05 of the Memorandum of Understanding dated 01.04.2006 where it is specifically mentioned that the Appellant has to impart remedial classes to the week students at the instruction of the parents of the boarders /day boarders. In other words, the activity undertaken by the Appellant i.e., impart remedial classes, has nothing to do with activities undertaken by St Michael's School. Hence, the Appellant is having independent and separate identity. Therefore, the instant case is squarely different from the case of Ramnath Bhimsen Charitable Trust as cited by the appellant. The Appellant, M/s. Sarj Educational Centre, clearly does not come under the definition of "Educational Institution" as envisaged in clause 2(y) of the Exemption Notification and thus serial no 66 of the Exemption Notification is not applicable.

10. Regarding the second issue, it is to be said that "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 as defined under Section 2(30) of the GST Act. Therefore, the definition implies that a supply of goods and/or services will be treated as composite supply if it fulfils the following three criteria:
  - (a) Supply of two or more goods and services together.
  - (b) Goods or services are naturally bundled, i.e. they are provided together in the normal course of business.
  - (c) They cannot be separated.
  
11. Whereas, according to Section 2(74) of the GST Act, "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. Therefore, supply of goods and/or services will be treated as mixed supply if it fulfils the following two criteria:
  - (a) It is a combination of two or more goods or services supplied at a single price.
  - (b) Each of these items can be supplied separately and is not dependent on any other.

In the instant case, the Applicant is engaged in supplying food, laundry service, housekeeping service, etc. which are not naturally bundled with the lodging service. All these components are independent of each other and can be supplied separately. It is also evident from the submission of the Appellant that they also provide lodging service without providing food and Day Boarders do not avail laundry services. Therefore, none of the Services are bundled together in a natural way and there appears to be no principal Service.

12. The Advance Ruling Authority has gone through the matter in detailed way and passed a well reasoned speaking Order and hence, there is no reason to interfere with the Order.

In view of above discussion we find no infirmity in the ruling pronounced by the West Bengal Authority for Advance Ruling.

The appeal thus fails and stands disposed accordingly.

Send a copy of this order to the Appellant and the Respondent for information.

(Smaraki Mahapatra)  
Member  
West Bengal Appellate Authority  
for Advance Ruling

(A.P.S Suri)  
Member  
West Bengal Appellate Authority  
for Advance Ruling