

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



ADVANCE RULING NO. GUJ/GAAR/R/09/2021
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/43)

Date: 20.01.2021

Name and address of the applicant	:	M/s. Unlimited Unnati pvt.ltd., 33, New York Tower-A, 3 rd floor, S.G. Road, Thaltej, Ahmedabad, Gujarat-380054.
GSTIN of the applicant	:	24AABCU0054G1ZT
Date of application	:	28.09.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	23.12.2020(Through Online Hearing)
Present for the applicant	:	Shri Kalpesh Chaudhary, C.A.

BRIEF FACTS

The applicant M/s. Unlimited Unnati pvt.ltd., 33, New York Tower-A, 3rd floor, S.G. Road, Thaltej, Ahmedabad, Gujarat-380054 is conducting a training programme called 'Exploring Potential & Achieving Dreams' popularly known as ePaD for Indian clients so far. The applicant has stated that they are planning to provide the same training to persons located out of India also; that it will be purely on Digital media and there is no physical movement of either of the party i.e. the supplier or recipient; that they provide service for improvement for experience of life and on positiveness so that their service is covered under Service Code 999293 i.e. commercial training and coaching services.

2. The applicant has stated that they are providing service to foreign client by way of digital means i.e. by way of Zoom Application and that these foreign clients can use their instruction on the same meeting id and password and also they are making payment to the bank account of the applicant in foreign convertible exchange; that they are collecting full course fees at the time of registration of participant; that the training programme is called 'Exploring Potential and Achieving Dreams' popularly known as ePaD for Indian clients which will be purely on digital media and there is no physical movement of either the supplier or the recipient. The applicant has also stated that they are planning to appoint one person for marketing their services in their respective country and they also plan to pay commission to such person based on fixed percentage as mutually agreed between both of them; that the person will arrange participants for their service and all the participants will make payment directly to the bank account of the applicant in foreign convertible exchange and thereafter, they will make payment on monthly basis to such person as a commission after collection of fees from the participant chosen course by reference for him or her. The applicant has asked the following questions seeking Advance Ruling on the same:

- 1. Whether our service provided to recipient of foreign country will be considered as export and zero rated supply?*

2. Commission paid to foreign agent who is non resident of India and he does not have any permanent establishment or business connection in India then what is liability of GST on such commission payable to foreign agent related to service provided out of India?

3. The applicant has submitted his interpretation of GST Laws for export of service as under:

(i) Section 2(6) of the IGST Act , 2017 reads as under:

“export of services” means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

(ii) 999293-Commercial training and coaching services:-

This service code includes any training or coaching provided by any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

(iii) Section 13(2) of the IGST Act. For Place of Supply(applicable to import and export of Service):-

The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services.

(iv) Section 13(5) of the IGST Act:-

The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

3.1 The applicant has submitted that as per their opinion, their service is not falling under Section 13(5) of the IGST Act as they are not holding any event, conference, fair, exhibition or similar events so service provided by them through online mode will be export of service. The applicant have stated that in this case, place of supply will be the place of recipient of service i.e. foreign country and this service will be considered as export of service, hence this supply will be considered as zero rated supply and IGST will not be payable on this transaction.

4. Thereafter, in pursuance of the personal hearing held on 23.12.2020, the applicant has provided a detailed submission on the nature of services/brief about their activities provided by them in Annexure-B which was received in this office on 05.01.2021. The applicant has submitted that their mission is the expansion of unlimited power which remains idle in every human being and the motto of their organization is as follows:

Idea

Human Potential Is Unlimited

Every human is on a journey of evolution to be a super-human. Every human is unique & brimming with potential. Most people either are unaware of their potential or don't know how to explore it.

Vision

Make a Difference to Life Touched

Unnati is committed to touch millions of lives to make a difference.

Mission

Exploring Potential * Achieving Dreams

We believe the purpose of life is evolution of the 'Self' to higher level of consciousness and adding value of other.

Values

Commitment

Keep commitment at all costs. If you can't keep it, change & revise your commitment.

Dedication

Work wholeheartedly. Think what you can give first rather than what you can get. Don't take and give, give and take.

Passion

Love what you do and do what you love. Explore your potential by learning new skills, attitudes and habits continuously.

Attitude

Beat Your Best-Always

Continuous Improvement

Continuous improvement is the key to become world class. Beating your best will demand to come out of your Comfort Zone continuous.

Seminar

Multiply

Conducted Through: Facilitative workshop, Idea presentation, Idea Discussion & Sharing.

Covers: Understanding self & introduction to Sutras for enhancing Quality of Life & Business Performance.

Duration: Full day (5-6 hours)

Workshop

Success Blueprint

Success blueprint conducted through: Facilitative group process-ideation, brainstorming, engagement & disclosure.

Covers: Identifying specific goals / end states, realizing the challenges & creating solutions to overcome those challenges for achievement of the desired goals/end states.

Duration: Full day (5-6 hours)

5. The applicant has stated that in continuation of above mentioned motto, they are providing the following courses to the participant on online mode by using ZOHO application.:

Programs

ePad (Leadership Development)

Transformation through self-mastery and leadership development. Epad is delivered through a participative group facilitative process. It involves understanding the 'Self' through Spiritual and Scientific Lens. (12 half day weekly sessions.)

ePos (per) (Leadership Excellence)

1 on 1 personal coaching session for leadership excellence. (25 weekly 2 hours sessions)

ePad BIZ (Business Excellence)

Conceptual know how and practice of financial management, People management, Sales and Marketing management and Operations management (25 half day weekly sessions)

ePos (Org) (Organizational Excellence and Orbit Shift)

Extensive process of organizational development for growth using multidimensional coaching.(1 year program)

I Can I Will (Exploring Potential)

Covering basic principles and exploration of potential and converting dreams into reality.(6 half day sessions)

I Can I Will (Leadership in Action)

Leadership Camp for young minds. (1 week in outdoor settings)

I Can I Will (Team Building)

Participative in house program for building a strong and understanding team member.(7 half day weekly sessions | 2 nights /3 days in outdoor setting)

6. The applicant has stated that they are providing all the above services to people in India and now they want to expand their profession and provide service to persons across the globe. The applicant wants to know whether any GST Liability comes in to the picture on providing services through ZOHO application to persons belonging out of India.

DISCUSSION & FINDINGS:

7. We have considered the submissions made by the applicant in their application for advance ruling, additional submissions submitted by them (received in this office on 05.01.2021) as well as the arguments/discussions made by their representative Shri Kalpesh Chaudhary at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

8. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to similar provisions of the GGST Act. However, since the present application submitted by the applicant deals with supply of services to clients located outside India, we will be required to make references to the IGST Act, 2017 as well as the Notifications of Integrated Tax(Rate) issued under the said Act.

9. On going through the submission of the applicant, we find that there are two issues involved as detailed hereunder:

- (i) The applicant is providing service to foreign client by way of digital means i.e. by way of Zoom Application for which these foreign clients can use their instruction on the same meeting id and password. The training programme is called 'Exploring Potential and Achieving Dreams' popularly known as ePaD for Indian clients which will be purely on digital media and there is no physical movement of either the supplier or the recipient. The applicant is collecting full course fees at the time of registration of participant and these foreign clients are making payment to the bank account of the applicant in foreign convertible exchange.
- (ii) The applicant is planning to appoint one person for marketing their services in their respective country who will arrange participants for their service and all the participants will make payment directly to the bank account of the applicant in foreign convertible exchange and thereafter, the applicant will make payment on monthly basis to such person as a commission at a fixed percentage **as mutually agreed between both of them** after collection of fees from the participant chosen by his/her

reference. The applicant has asked the following questions seeking Advance Ruling on the same:

1. *Whether our service provided to recipient of foreign country will be considered as export and zero rated supply?*
2. *Commission paid to foreign agent who is non resident of India and he does not have any permanent establishment or business connection in India then what is liability of GST on such commission payable to foreign agent related to service provided out of India?*

10. We will discuss both the aforementioned questions one by one, but before doing so, we would like to state here that during the course of personal hearing held on 23.12.2020, the representative of the applicant was asked to submit copies of the agreement/contract in respect of the aforementioned activities carried out/services provided by the applicant as stated at (i) and (ii) of para-9 above. However, no copies of such contract/agreement have been submitted by the applicant so far. The applicant, vide their submission given by them in pursuance of the personal hearing (received in this office on 05.01.2021) have submitted a brief note on the motto of their organization as well as the various courses/programmes conducted by them. In this regard, we have to emphasise here that in absence of the contract/agreement and without going through the conditions/provisions of the contract/ agreement made by the applicant in the above matter, it will not be possible for us to determine the nature of services provided or the liability of GST on commission payable to foreign agent related to service provided out of India and would therefore, not be in a position to give a decision in the said matter. Further, looking to the nature of questions raised by the applicant seeking Advance Ruling on the same, we find it prudent to refer to the definition of 'Advance Ruling' as provided under Section 95(a) of the CGST Act, 2017 and thereafter go through the provisions of Section 97 of the CGST Act, 2017. Definition of 'Advance Ruling' as per Section 95(a) of the said Act reads as under:

"95(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;"

Section 97 of the CGST Act, 2017 reads as under:

"97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."*

11. From the above, we find that the provisions for seeking Advance Ruling made under the Act is limited to the activities conducted by the applicant only and is for the purpose of clarifying issues with regard to clauses (a) to (g) of sub-section(2) of Section 97 of the CGST Act, 2017 mentioned above. On going through the above provisions and comparing the same to the issue in hand, we find that the both the questions raised by the applicant do not fall within any of the clauses of (a) to (g) of Sub-section(2) of Section 97 of the said Act, i.e.

they do not fall within the ambit of Section 97(2) of the said Act as both the questions are related to export of service which would also require the determination of place of supply of services which is not under the scope of jurisdiction of the Advance Ruling Authorities. In this context, we would like to refer to the following orders of the Maharashtra Appellate Authority for Advance Ruling:

- (i) Case of M/s.Asahi Kasei India pvt.ltd.{ Order No. MAH/AAAR/SS-RJ/01/2019-20, dated 19-6-2019 in Appeal No. MAH/GST-AAAR-01/2019-20} wherein it was held that the Advance Ruling Authority had clearly transcended its scope and jurisdiction by deciding upon question related to export of services which also involved determination of place of supply which was outside the scope of jurisdiction of the Authority for Advance Ruling and accordingly modified the ruling of the Advance Ruling Authority vide the above order.
- (ii) Case of M/s.Micro Instruments{Order No. MAH/AAAR/SS-RJ/26/2018-19, dated 22-3-2019 in Appeal No. MAH/GST-AAAR-26/2018-19 wherein assessee was providing services of procuring orders from customers in India for procurement of advanced laboratory instruments from its German principal. It was held as under:

“39. Coming to the present case, we observe that to determine which levy, whether export, or CGST or IGST, will be imposed on said supply of ‘intermediary services’ of the appellant, we will have to determine place of supply. Then only we can determine the nature of levy, as to whether the same qualifies as an export. We are of the view that as per the law we do not have jurisdiction to determine the place of supply of services, or goods or both, and accordingly no ruling can be passed by the Advance Ruling Authority. This rationale also holds true in case of the second question asked by the appellant i.e. whether the said supply should be treated as ‘intra-state supply’ under Section 8(1) of the IGST Act read with Section 2(65) of the CGST Act.

40. In view of the above rationale, the Advance Ruling Authority should not have passed any ruling on the above mentioned two questions asked by the Appellant. Since the Advance Ruling Authority have passed the ruling in the instant case by transcending its jurisdiction, we quash the impugned ruling passed by the Advance Ruling Authority.”

12. On going through the above orders, we find they are squarely applicable to the issue in hand. We, therefore, conclude that both the aforementioned questions raised by the appellant are outside the ambit of the provisions of 97(2) of the CGST Act, 2017. We also don't find it necessary to go into the details of the issue in hand or to the questions raised by the applicant seeking Advance Ruling. We, therefore, refrain from providing any answer to the aforementioned questions on the following grounds: (i) Both the questions are outside the ambit of the provisions of Section 97(2) of the CGST Act, 2017. (ii) Non-submission of copies of the contract/agreement in respect of the services provided/to be provided by the applicant on the issues discussed hereinabove.

13. In light of the above circumstances, we rule, as under –

RULING

Question-1: Whether our service provided to recipient of foreign country will be considered as export and zero rated supply?

Answer: No answer is provided to the applicant M/s. Unlimited Unnati pvt.ltd., 33, New York Tower-A, 3rd floor, S.G. Road, Thaltej, Ahmedabad on the following grounds: (i) The question is outside the ambit of the provisions of Section 97(2) of the CGST Act, 2017. (ii) Non-submission of copies of the contract/agreement in respect of the services provided/to be provided by the applicant on the issue discussed hereinabove.

Question-2: Commission paid to foreign agent who is non resident of India and he does not have any permanent establishment or business connection in India then what is liability of GST on such commission payable to foreign agent related to service provided out of India?

Answer: No answer is provided to the applicant on the following grounds: (i) The question is outside the ambit of the provisions of Section 97(2) of the CGST Act, 2017. (ii) Non-submission of copies of the contract/agreement in respect of the services provided/to be provided by the applicant on the issue discussed hereinabove.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 20.01.2021.