

GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/38/2020
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/06)

Date: 03.07.2020

Name and address of the applicant	:	M/s Nirma University, Sarkhej Gandhinagar Highway, Charodi, Ahmedabad, Gujarat-382481
GSTIN of the applicant	:	24AAATT6829N1ZY
Date of application	:	22.01.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) Applicability of a notification issued under the provisions of the Act. (e) determination of liability to pay tax on any goods or services or both. (f) Whether applicant is required to be registered.
Date of Personal Hearing	:	18.06.2020 (through Video Conferencing)
Present for the applicant	:	Shri Hardik Shah

BRIEF FACTS:

The applicant stated that **M/s Nirma University, Sarkhej Gandhinagar Highway, Charodi, Ahmedabad, Gujarat-382481** is a University set up under a special Act passed by the Gujarat State Legislative Assembly and is registered with GST vide GSTIN 24AAATT6829N1ZY. A copy of the Act which lays down the constitution and entrusted functions of Nirma is enclosed.

2. The applicant is established with the objectives of developing the knowledge of science and technology, dental, medial, paramedical, physiotherapy, pharmacy, commerce, management, education and humanities for the advancement of mankind. It aims at establishing close linkage with the industry to make teaching, research and training at the university relevant to the needs of the economy at national and global level.

3. The applicant is empowered to create centres of excellence for providing knowledge, education, training and research facilities of high order in specific fields which would advance education. The relevant extract of Section 4 of the Nirma University Act has been reproduced herein below, for ready reference:

(ii) to create centres of excellence for providing knowledge, education, training and research facilities of high order in specific fields of science, technical, dental, medial, paramedical, physiotherapy, pharmacy, commerce, management, education and humanities and other related professional education as per its current status and such other manner as develop in future, including continuing education and distance learning;

4. During the normal course of its operations, the applicant procures several inputs and input services. At times, it requires the assistance of an advocate and accordingly, procures legal services including but not limited to representational services from individual advocates, including senior advocates. These services form an important input service for the applicant.

5. The GST regime envisages two types of supplies which are covered under RCM. The first type depends upon the nature of supplies, which are covered u/s 9(3) of the CGST Act, 2017 ('CGST Act'). Section 9(3) includes the supplies of both goods and services. The second type being purchases made from unregistered suppliers which covered u/s 9(4) of the CGST Act.

6. The List of Services requiring discharge of GST under RCM u/s 9(3), *inter- alia* includes the following services:

- Services supplied by an individual advocate, including a senior advocate by way of representational services to any business entity located in the taxable territory;
- Services supplied by an arbitral Tribunal to a business entity.

7. However, the said services have been subsequently exempted vide Notification No.02/2018-Central Tax (Rate) dated 25th January, 2018 for the specified person which *inter alia* include 'governmental authority'.

8. Besides above, the Government have brought into effect the provisions pertaining to TDS under GST, w. e. f. 1st October, 2018 wherein specified persons would be required to obtain registration as a Deductor under GST and accordingly, deduct tax at source at specified rates from payments made to supplier where total value of the contact exceeds Rs.2.5 Lakhs.

9. In view of this, the applicant wishes to have clarity on certain aspects related to exemption, registration liability.

Points for Advance Ruling

10. Based on above facts of the case, the applicant wishes to have clarity for following questions:

Part A- Whether Nirma would be eligible for claiming benefit of the exemption for legal services as provided in Sr. No.45 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017, as amended from time to time in respect of procurement of legal services?

Part B- Whether services provided by Nirma are exempted under S. No. 4 of Notification No.12/2017-Central Tax (Rate)?

Part C- Whether Nirma is required to be registered as a Deductor under GST as per the provision of Section 24 of the CGST Act?

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of aforesaid question(s):

11. As can be seen from the Nirma University Act, the applicant would like to submit that they are set up by an Act passed by the Gujarat State Legislative Assembly and has been set up with the objectives of teaching, research and training at the university relevant to the needs of the economy at national and global level. During the Normal course of its operations, the University procures several input services including legal services.

12. The applicant refers to Notification No.13/2017-Central Tax (Rate) dated 28th June, 2017, which requires GST to be discharged under reverse charge mechanism in case of specific services. The list of services *inter-alia* includes:

- Services supplied by an individual advocate, including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to business entity.
- Services supplied by an arbitral tribunal to a business entity.

13. Considering the wide definition of the term ‘business’, the applicant is of the view that they would be considered as a business entity from GST prospective. Accordingly, legal services received by them would be subject to tax under reverse charge mechanism.

14. However, it is important to note that Notification No.2/2018-Central Tax (Rate) dated 25.01.2018 amended the Notification No.12/2017-Central Tax (Rate) dated 26.06.2017 and, thereby, legal services provided to a Central Government, State Government, Union Territory, local authority, **Governmental Authority** or Government entity were exempted.

15. It is apparent that the applicant is not Central Government, State Government, Union Territory, local authority or Government entity. However, considering the fact that the applicant is set up by way of a separate Act, it would be relevant to analysis whether the applicant falls within the definition of ‘**Governmental Authority**’, as defined in the GST Law. The definition of ‘**Governmental Authority**’, as given under Section 2(16) of the IGST Act, 2017, has been reproduced hereunder for ready reference:

“governmental Authority” means an authority or a board or any other body,-

- (i) **set up by an Act of Parliament or a State Legislature; or**
- (ii) *established by any Government,*

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution;”

16. From perusal of the above definition, a question may arise to whether the condition of holding of ninety percent and to carry out function mentioned under Article 243W is applicable to the body set up by an Act of Parliament.

17. The applicant would like to submit that the words used in the definition is ‘**or**’ between (i) and (ii). This means that the condition of 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W would be applicable to body which is established by the Government. This means that the board/body set up by an Act of Parliament or State Legislature is independent and is not bound by above condition. Once, the Organization is set up by an Act of Parliament or State Legislature, the same would become ‘Governmental Authority’ from GST prospective.

18. Further, the applicant submitted that inference can be drawn from the

fact that line item (i) is followed by “;” whereas the line item (ii) is followed by “,”. This is indicative and suggestive to the interpretation that line item (i) is independent and line item (ii) should be read with the following condition. While interpreting this punctuation, full Bench of the Punjab and Haryana High Court in **Rajindra Singh v. Kultar Singh [AIR 1980 P&H 1: ILR (1979) 2 P&H 486 (FB)]** held as follows:

“After the words ‘administration of justice’ in Entry 3, there is a semicolon and this punctuation cannot be discarded as being inappropriate. The punctuation has been put up with a definite object of making this topic as distinct and not having relation only to the topic that follows thereafter.”

19. To buttress above point, the applicant would like to further submit that the definition of the ‘Governmental Authority’ was similar in the erstwhile service tax legislation and during erstwhile regime. Hon’ble Patna High Court had on occasion to deal with the similar issue in the case of **Shapoorji Pagoonji & Company Ltd Vs CCE, Patna (2016-TIOL-556-HC-PATNA-ST]**. In that decision, the Court held that the condition attached to the definition viz. participation of government by way of 90% or more of equity and control to carry out the functions of municipality under Article 243W of the Constitution, is relevant only for the board established by the Government. The Court further held that the authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to the condition of 90% or more of equity and control to carry out the functions of municipality under Article 243W of the Constitution.

20. In view of this, the applicant believes that when the body is set up by an Act of Parliament will be classified as a ‘Governmental Authority’ for GST perspective and conditions of 90% of control and functions of Article 243W would not be applicable. Accordingly, the applicant believes that it qualifies as a governmental authority based on the undisputed fact that they are set up by an Act passed by State Legislature. Consequently, the Applicant would be eligible for the exemption and it would not be required to discharge any tax liability on procurement of legal services under reverse charge mechanism.

21. On the contrary, in a recent ruling passed by the Delhi Authority for Advance Ruling (Order No. 07/DAAR/2018 dated October 05, 2018) in respect of an application preferred by M/s NBCC (India) Limited, a detailed discussion took place on the definition of governmental authority. While interpreting the definition of governmental authority as provided in Explanation to Clause (16) of Section 2 of the IGST Act, 2017, the Authorities have contended that a **“governmental authority” must be set up or established specifically to**

carry out any function entrusted to a municipality under Article 243W of the Constitution. It is apparent that the Authorities have considered it mandatory for a governmental authority to have been set up/established for the purpose of carrying out functions listed down in Article 243W of the Constitution of India.

22. In light of the above contradictions, the Applicant wishes to know whether they can merit the classification of “Governmental Authority” for the purpose of GST legislation and accordingly, claim benefit of the exemption notification in respect of procurement of legal services.

PRT-B Discussion on whether services provided by Nirma University would be exempted under Sr. No.4 of the exemption Notification:

23. As discussed above, the Applicant would like to submit that the Applicant aims at disseminating, creating, preserving knowledge and understanding and making arrangements for training in **higher education including professional education and allied fields.**

24. The applicant wishes to understand if such service of providing higher education provided by them would qualify for exemption under Sr. No. 4 of the exemption notification.

25. From perusal of Article 243W, the applicant understands that one of the function entrusted to municipality is promotion of education aspects. Entire list of activities contained in Article 243W is provided in Annexure D. The relevant provision of Article is reproduced hereunder:

“13. Promotion of cultural, educational and aesthetic aspects.”

26. From review of above, the applicant submitted that the scope of function is very much wide and is not limited to one or two activities relating to education. In fact, the Constitution neither specifies nor restricts the scope of education covered by Article 243W. Accordingly, any function for promotion of education aspect should be covered within provisions of this Article. It should cover conferment of degree, diplomas or grant certificates, or other academic titles to students. Provision of higher education to students should also be covered in Article 243W.

27. It is imperative to note that there are several colleges and institutions established by the Municipalities that confer higher education to aspiring students. For illustrative purposes, Smt. Nathiba Hargovandas Lakhmichand

Municipal Medical College, is a Municipal Medical College located in Ahmedabad affiliated with the Gujarat University. Similarly, Lokmanya Tilak Municipal Medical College and Hospital is a Civic-Government run Hospital, providing medical education in the city of Mumbai. The very fact that these colleges have been set up by a Municipality and they offer higher education provides necessary clarity that the provision of higher education is covered in the scope of Article 243W of the Constitution which defines the functions of Municipalities.

28. Apart from above, the applicant would like to submit that even Nirma University Act specifically empowers the Applicant to create centres of excellence for providing knowledge, education, training and research facilities. The Governing Act has empowered Nirma to carry out necessary activities for advancement of education. Relevant extract of the Nirma University Act, 2003 is reproduced hereunder:

- (i) *to develop training facilities and to make arrangements for training in higher education including professional education and allied fields; to provide for interrelationship for national and global participation in the field of science and technology, dental, medical, paramedical, physiotherapy, pharmacy, commerce, management, education, humanities and its allied fields;*
- (ii) *to create centres of excellence for providing knowledge, education, training and research facilities of high order in specific fields of science, technical, dental, medical, paramedical, physiotherapy, pharmacy, commerce, management, education and humanities and other related professional education as per its current status and such other manner as develop in future, including continuing education and distance learning;*

29. As a reason of this authority, the Applicant provides education, training and research facilities to students. The educational institutions has been incorporated for the welfare of mankind in accordance with statutory authority given by the law. The University is open to all irrespective of sex, religion, class, creed or opinion. Relevant extract is provided herein under:

5(1) No person shall be excluded from any office of the University or from membership of any of its authorities or from admission to any degree, diploma or other academic distinction or course of study on the sole ground of sex, race, creed, caste, class, place of birth, religious belief or political or other opinion.

30. Having said that, the Applicant would like to submit that incorporation of education institute and provision of various related services for offering training in higher education can be construed to be activities in relation with promotion of education.

31. Additionally, the Applicant would like to submit that the term 'in relation

to' used in above exemption is very much wide enough to cover every kind of services provided in respect of functions as per Article 243W.

32. The Applicant wishes to rely on judgement of **State Waqf Board Vs, Abdul Azeer sahib** as reported in **AIR 1968 Mad 79**, wherein it was held that “*in relation to*” are words of comprehensiveness which might both have a direct significant as well as an indirect significance, depending on the context. They are not words of restrictive content and ought not to be so construed.”

33. Further, the Applicant wishes to draw attention to another judgement of **Doypack System (P) Ltd. Vs. UOI** as reported in **1988 (36) ELT 201 (S.C.)** wherein it was held that, “*The expression “in relation to” (so also “pertaining to”), is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context.*”

34. Considering above, the applicant submitted that the term ‘in relation to’ is wide enough to cover the educational services provided by the applicant for promotion of education and education institution as intended and prescribed in exemption notification.

35. On conjoint reading of above, the applicant wishes to know whether the services provided for carrying out their statutory functions as Governmental Authority would enjoy the exemption from payment of GST as per exemption notification.

PART-C: Discussion on whether Nirma University is liable to registered as a Deductor under GST:

36. The applicant submitted that under GST regime TDS provisions have been made effective from October 01, 2018. From a combined perusal of Section 51 of the CGST Act, 2017 read with Notification No. 50/2018-Central Tax dated 13.09.2018, the list of persons required to deduct TDS inter-alia includes:

(a) *an authority or a board or any other body,-*

(i) ***set up by an Act of Parliament or a State Legislature; or***

(ii) *established by any Government,*

with fifty-one per cent. or more participation by way of equity or control, to carry out any function;

37. Considering the fact that Nirma University has been set up by a passing a separate Act, the line item extracted needs to be examined in detail. From review of the above mentioned line item, a question may arise as to whether the condition of *fifty-one per cent. or more participation by way of equity or control, to carry out any function*, is applicable to the body set up by an Act of Parliament.

38. As discussed earlier, usage of word 'or' between (i) and (ii) coupled with the fact that clause (i) is followed by “;” unlike the clause (ii) is followed by means that the condition of *fifty-one per cent. or more participation by way of equity or control, to carry out any function*, would be applicable to the body which is established by the Government. This means that the board/ body set up by an Act of Parliament or State legislature is independent and is not bound by above condition.

39. However, recently, a circular is issued vide reference No. 76/50/2018-GST dated 31st December, 2018 wherein the clarity is provided on similar aspect or legal interpretation. Accordingly, to Circular, it has been clarified that the long line written in clause (a) in Notification No.50/2018-Central Tax dated 13.09.2018 is applicable to both the items (i) and (ii) of clause (a) of the said Notification.

40. In other words, the provisions of Section 51 of the CGST Act, are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty-one per cent. or more participation by way of equity or control, is with the Government.

41. On conjoint reading of above, the Applicant wishes to know whether the University is liable to be registered as a Deductor under GST.

42. At the time of personal hearing held through Video Conferencing on 18.06.2020, the Authorised Representative of the applicant, Shri Hardik Shah reiterated the facts as stated in the Application.

DISCUSSION & FINDINGS:

.43 We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the question/issue on which advance rulings have been sought for by the applicant, relevant facts having bearing on the questions/

issues raised and the applicant's understanding/interpretation of law in respect of the issue. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act 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 the same provisions under the GGST Act.

44. We note that Nirma University is a private University and set up by a special Act (i.e. the Nirma University Act, 2003) passed by the Gujarat State Legislative Assembly. It has been set up with the objectives of teaching, research and training at the university. It is run by the registered trust viz. the Nirma Education and Research Foundation, Ahmedabad. It is a body corporate registered with GST vide GSTIN 24AAATT6829N1ZY.

45. The applicant sought for advance rulings in respect of following questions?

Question-1: Whether Nirma would be eligible for claiming benefit of the exemption for legal services as provided in Sr. No.45 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017, as amended from time to time in respect of procurement of legal services?

Question-2: Whether services provided by Nirma are exempted under S. No. 4 of Notification No.12/2017-Central Tax (Rate)?

Question-3: Whether Nirma is required to be registered as a Deductor under GST as per the provision of Section 24 of the CGST Act?

46. Now, we first take up the 1st question, whether Nirma would be eligible for claiming benefit of the exemption for legal services as provided in Sr. No.45 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017, as amended from time to time in respect of procurement of legal services?

46.1 In this regard, the applicant stated that during the normal course of its operations, the University procures several input services including legal services. Considering the wide definition of the term 'business', the applicant is of the view that they would be considered as a business entity from GST prospective. Accordingly, legal services received by them would be subject to tax under reverse charge mechanism.

46.2 The applicant referred to Notification No.13/2017-Central Tax (Rate) dated 28th June, 2017, which requires GST to be discharged under reverse charge mechanism in case of specific services. The list of services *inter-alia* includes:

- *Services supplied by an individual advocate, including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to business entity.*
- *Services supplied by an arbitral tribunal to a business entity.*

46.3 The applicant further pointed out that Notification No.2/2018-Central Tax (Rate) dated 25.01.2018 amended the Notification No.12/2017-Central Tax (Rate) dated 26.06.2017 and, thereby, legal services provided to a Central Government, State Government, Union Territory, local authority, **Governmental Authority** or Government entity were exempted.

46.4 The applicant further submitted that it is apparent that the applicant is not Central Government, State Government, Union Territory, local authority or Government entity. However, considering the fact that the applicant is set up by way of a separate Act, it would be relevant to analysis whether the applicant falls within the definition of '**Governmental Authority**', as defined under Section 2(16) of the IGST Act, 2017.

46.5 The applicant further submitted that when the body is set up by an Act of Parliament will be classified as a 'Governmental Authority' for GST perspective and conditions of 90% of control and functions of Article 243W would not be applicable. Accordingly, the applicant believed that it qualifies as a governmental authority based on the undisputed fact that they are set up by an Act passed by State Legislature. In this regard, they placed reliance upon the decisions of Punjab and Haryana High Court in *the case of Rajindra Singh v. Kultar Singh [AIR 1980 P&H 1: ILR (1979) 2 P&H 486 (FB)]* and the Patna High Court in the case of *Shapoorji Paloonji & Company Ltd Vs CCE, Patna (2016-TIOL-556-HC-PATNA-ST)*. Consequently, the Applicant would be eligible for the exemption and it would not be required to discharge any tax liability on procurement of legal services under reverse charge mechanism.

47. We find that Nirma University was established under a special act passed by the Gujarat State Legislative Assembly. The University Grants Commission (UGC) recognised it under section 2 (f) of the UGC Act. We further note that the

Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 exempts the Intra-state supplies of services including legal services. Further, Notification No.2/2018-Central Tax (Rate) dated 25.01.2018 amended Notification No.12/2017-Central Tax (Rate) dated 26.06.2017 and, thereby, legal services provided to a Central Government, State Government, Union Territory, local authority, **Governmental Authority** or Government entity were exempted. For proper appreciation of the case, relevant portion of the amended Entry of Sr. No. 45 of the said notification is reproduced herein below:

<i>Sr. No.</i>	<i>Chapter, Section, Heading, Group or Service Code (Tariff)</i>	<i>Description of Services</i>	<i>Rate (percent)</i>	<i>Condition</i>
45	Heading 9982 or Heading 9991	<p><i>Services provided by-</i></p> <p><i>(a) an arbitral tribunal to-</i></p> <p><i>(i)-----;</i></p> <p><i>(ii)-----;</i></p> <p><i>(iii) a Central Government, State Government, Union Territory, local authority, Governmental Authority or Government entity.</i></p> <p><i>(b) a Partnership Firm of Advocates or an individual as an advocate other than a Senior advocate, by way of legal services to-</i></p> <p><i>(i)-----;</i></p> <p><i>(ii)-----;</i></p> <p><i>(iii)-----;</i></p> <p><i>(iv) a Central Government, State Government, Union Territory, local authority, Governmental Authority or Government entity.</i></p> <p><i>(c) a Senior advocate by way of legal services to-</i></p> <p><i>(i)-----;</i></p> <p><i>(ii)-----;</i></p> <p><i>(iii) a Central Government, State Government, Union Territory, local authority, Governmental Authority or Government entity.</i></p>	Nil	Nil

Further, the definition of “Legal service” has been provided under entry 2 (zm) of the Notification No.12/2017–Central Tax (Rate) dated 28.06.2017, which is reproduced hereunder:

“Legal service means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority”.

48. We find that admittedly, the applicant is not Central Government, State Government, Union Territory, Local Authority or Government Entity. Now, we proceed to examine, whether the applicant falls under the “*governmental authority*”, as defined under Section 2(16) of the IGST Act, 2017, reproduced hereunder:

“governmental Authority” means an authority or a board or any other body,-

- (i) **set up by an Act of Parliament or a State Legislature; or**
- (ii) *established by any Government,*

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution;”

49. We refer the Circular No. 76/50/2018-GST dated 31st December, 2018, wherein CBEC has provided the clarity on similar aspect or legal interpretation. Relevant portion is reproduced herein below:

Sr. No.	Issue	Clarification
4	<i>Applicability of provisions of Section 51 of the CGST Act (TDS) in the context of Notification No. 50/2018-Central Tax dated 13.09.2018.</i>	<p>1. <i>A doubt has arisen about the applicability of long line mentioned in clause (a) of Notification No. 50/2018-Central Tax dated 13.09.2018.</i></p> <p>2. <i>It is clarified that the long line mentioned in clause (a) in Notification No. 50/2018-Central Tax dated 13.09.2018 is applicable to both the items (i) and (ii) of clause (a) of the said Notification. Thus, an authority or board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with fifty one percent or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source.</i></p> <p>3. <i>In other words, the provisions of Section 51 of the CGST Act, are applicable to only such authority or board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government in which fifty one percent or more participation by way of equity or control, is with the Government.</i></p>

49.1 From the applicant’s submission and the Nirma University Act, 2003, it is amply clear that the applicant is a private university set up with the objectives of teaching, research and training at the university, by an Act passed

by the Gujarat State Legislature, in which Government is having zero percent participation by way of equity or control. Being the similar issue raised by the applicant concerning the legal interpretation as clarified in Circular No. 76/50/2018-GST dated 31st December, 2018, we can state that the applicant does not fall under the “*governmental authority*”, as defined under Section 2(16) of the IGST Act, 2017. We, therefore, conclude that the condition of ‘*with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution*’ would apply to both authorities whether set up by an Act of Parliament or a State Legislature; or established by any Government.

50. In view of the above, we hold that the applicant would not be eligible for claiming benefit of the exemption as provided in Sr. No.45 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017, as amended from time to time, in respect of procurement of legal services (as a recipient).

51. Now, we come to second issue that whether services of higher education provided by the applicant would qualify for exemption provided under S. No. 4 of the exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

52. The applicant is providing the services of higher education in the fields of science and technology, dental, medial, paramedical, physiotherapy, pharmacy, commerce, management, education and humanities for the advancement of mankind. For appreciation of the facts, the entry at S. No. 4 of the exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, is reproduced herein below:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent)	Condition
4	Chapter 99	Services by Central Government, State Government, Union Territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution.	Nil	Nil

53. On perusal of above entry, it amply clear that this entry exemptsservices by Central Government, State Government, Union Territory, local authority or

governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution. As already held in foregoing para, the applicant is not a Central Government, State Government, Union Territory, Local Authority or Governmental Authority. Further, we find that higher education is nowhere specified as an activity in relation to any function entrusted to a municipality under Article 243W of the Constitution.

54. In view of the above, we, therefore, hold that the higher education services provided by the applicant would not qualify for exemption provided under S. No. 4 of the exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

55. We further note that Nirma University was established under a special act passed by the Gujarat State Legislative Assembly and the University Grants Commission (UGC) recognised it under section 2 (f) of the UGC Act. As they are providing higher education services, it is relevant to examine entry at Sr. No. 66 of the exemption Sl. No. 66 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, which exempts:

“Services provided-

(a) by an educational institution to its students, faculty and staff;-----”

55.1 Thus, the services provided by an educational institution to students, faculty and staff are exempt. The term “*Educational Institution*” is defined in para 2(y) of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, which reads as under:

(y) an “educational institution” means an institute 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;*

55.2 Within the term “educational institution”, sub clause (ii) covers institutions providing services by way of **education as a part of a Curriculum**

for obtaining a qualification recognised by any law for the time being in force. This is an area where doubts have been persisted as to what would be meaning of “*education as a part of a Curriculum for obtaining a qualification recognised by any law*”. In this regard, we refer to GST E flyer_40_Education Service wherein the Explanation given in the Education Guide of 2012 was referred to understand the meaning of the term which reads as under:

“What is the meaning of “education as a part of a Curriculum for obtaining a qualification recognised by any law”?”

It means that only such educational services are in the negative list as are related to delivery of education as “a part of the law”. It is important to understand that to be in the negative list, the service should be delivered as a part of curriculum. Conduct of degree courses by Colleges, Universities or Institutions which leads grant of qualifications recognised by law would be covered. Training given by Private Coaching Institutes would not be covered as such training does not lead to grant of a recognized qualification.

Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognised by law of a foreign country covered in the negative list entry?

No. To be covered in the negative list a course should be recognized by an Indian Law.”

55.3 In view of the above, we hold that only the services of higher education delivered as a part of curriculum by conducting degree courses by the applicant university, which leads grant of qualifications recognised by law, are entitled to avail exemption provided under Sl. No. 66 of the exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

56. Now, we take up the last question is that whether the applicant is required to be registered as a ‘Deductor’ under GST as per the provision of Section 24 of the CGST Act, 2017.

56.1 In this regard, we proceed to examine provisions of CGST Act, 2017, which mandates certain notified classes of assessee to deduct TDS under GST and to follow the relevant procedures. Section 51 of the CGST Act read with Notification No.50/2018-Central Tax dated 13.09.2018 mandates certain persons to undertake TDS deduction. We draw attention towards Sub-section (1) of Section 51 of the CGST Act, 2017, which reads as under:

“Section 51: Tax Deduction at Source:

(1) Not with standing anything contrary containing in this Act, the Government may mandate,

- (a) department or establishment of Central Govt. or State Govt.; or
- (b) local authority; or
- (c) Govt. Agencies or **other specified persons**

are required to deduct TDS @ 2% (IGST 2%, or CGST 1% + SGST 1%) from the payment made or credited to supplier, for supply of taxable goods or services or both, where the total value of such supply under a contract is more than Rs.2.50 lacs.”

Further, Notification No. 33/2017-Central Tax dated 15th September, 2017 was issued specifying persons under clauses (a) and (b) of sub-section (1) of section 51 of the said Act and other persons specified therein required to deduct TDS u/s 51. Above **Notification No.33/2017 dated 15.09.2017** was superseded by Notification **No. 50/2018-Central Tax dated 13.09.2018**, which provides that TDS provisions u/s 51 will be applicable **w.e.f 01.10.2018** and provides **other specified persons** as below:

(a) an authority or a board or any other body, –

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with fifty-one per cent. or more participation by way of equity or control, to carry out any function;

(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) public sector undertakings (PSUs).

56.2 The issue before us to decide is whether the applicant falls under any of the categories of the persons mandated to undertake TDS deduction under Section 51 of the CGST Act, 2017 on consideration of aforesaid relevant amendments.

56.3 As mentioned in foregoing paras that the applicant entity was formed as a private university set up by the Nirma University Act passed by the Gujarat State Legislature, in which **Government is having zero percent participation by way of equity or control.**

56.4 Further, admittedly, the applicant does not fall under (i) a department or establishment of Central Govt. or State Govt., or (ii) a local authority; or (iii) Govt. Agencies, or other specified persons viz. (iv) *Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);* or (v) *public sector undertakings (PSUs).*

57. Now, we proceed to examine the category of **other specified persons**, as below:

“(a) an authority or a board or any other body, –

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with fifty-one per cent. or more participation by way of equity or control, to carry out any function;”

57.1 The applicant has contended that the board/ body set up by an act of Parliament or State Legislature is independent and is not bound by the condition of ‘*fifty-one per cent. or more participation by way of equity or control, to carry out any function*’.

57.2 In this regard, we refer the Circular No.76/50/2018-GST dated 31st December, 2018 wherein CBEC has provided the clarity on similar aspect or legal interpretation. Relevant portion is reproduced herein below:

Sr. No.	Issue	Clarification
4	Applicability of provisions of Section 51 of the CGST Act (TDS) in the context of Notification No. 50/2018-Central Tax dated 13.09.2018.	<ol style="list-style-type: none"> 1. A doubt has arisen about the applicability of long line mentioned in clause (a) of Notification No. 50/2018-Central Tax dated 13.09.2018. 2. It is clarified that the long line mentioned in clause (a) in Notification No. 50/2018-Central Tax dated 13.09.2018 is applicable to both the items (1) and (ii) of clause (a) of the said Notification. Thus, an authority or board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with fifty one percent or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source. 3. In other words, the provisions of Section 51 of the CGST Act, are applicable to only such authority or board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government in which fifty one percent or more participation by way of equity or control, is with the Government.

57.3 Thus, the CBEC vide aforesaid Circular clarified that the provisions of Section 51 of the CGST Act, are applicable to only such authority or board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government in which fifty one percent or more participation by way of equity or control, is with the Government. It is fact on record that the

Nirma University is set up by the Nirma University Act passed by the Gujarat State Legislature, in which Government is having zero percent participation by way of equity or control. Hence, the applicant does not fall under this category of specified person for the purpose of Section 51 of the CGST Act, 2017.

57.4 In view of the above, we hold that the applicant is not liable to register themselves as a Deductor under GST.

58. In light of the foregoing, we rule as under –

R U L I N G

Question-1: Whether Nirma would be eligible for claiming benefit of the exemption for legal services as provided in Sr. No.45 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017, as amended from time to time in respect of procurement of legal services?

Answer: *Answered in negative.*

*Question-2: Whether services provided by Nirma are exempted under S. No. 4 of **Notification No.12/2017-Central Tax (Rate)?***

Answer: *Answered in negative.*

*Question-3: **Whether Nirma is required to be registered as a Deductor under GST as per the provision of Section 24 of the CGST Act?***

Answer: *Answered in negative.*

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 03.07.2020.