

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) **Shri. Rajiv Magoo, Joint Commissioner of Central Tax, (Member)**
(2) **Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)**

GSTIN Number, if any/ User-id		URD
Legal Name of Applicant		M/s. Maharashtra State Dental Council
Registered Address/Address provided while obtaining user id	211, Anand Complex, 2 nd Floor, 189 – Sane Guruji Marg, Arthur Road Naka, Chinchpokli (West), Mumbai-400011	
Details of application		GST-ARA, Application No. 125 Dated 16.03.2020
Concerned officer		Commissioner of State Tax, Maharashtra State Mumbai.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	The Dentists Act, 1948 to regulate the profession of dentistry, whereas it is expedient to make provision for the regulation of the profession of dentistry and for that purpose to constitute Maharashtra State Dental Councils.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act (vii) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of the term.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below

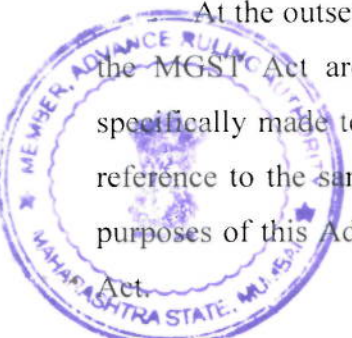


PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **M/s. Maharashtra State Dental Council** the applicant, seeking an advance ruling in respect of the following questions.

- Q-1 Whether online tendering to be considered as Supply of Goods or Supply of Service?**
- Q-2 Whether offline tendering to be considered as Supply of Goods or Supply of Services.**
- Q-3 Under which tariff head the Online Tendering should get taxed.**
- Q-4 Under which tariff head the Offline Tendering should get taxed.**
- Q-5 If tendering is service then whether it will be considered as administrative services or specific Service.**
- Q-6 Whether the activities conducted by the Maharashtra State Dental Council are the "Registration Activities and their related activities laid down in the Act" exempted under the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended and consequently, the receipt of the Registering Fees paid under Rule 73 of the Bombay Dentists Rules, 1951 by the Prospective Dental Practitioners to the Council is exempted from the levy of Goods and Services tax.**



At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

- 2.1 The Dentists Act, 1948 regulates the profession of dentistry, whereas it is expedient to make provision for the regulation of the profession of dentistry and for that purpose to constitute Maharashtra State Dental Councils to provide help, assistance and guidance for the benefit and welfare to the Dental Practitioner who were registered with this council.
- 2.2 Complaints are also lodged about the unethical behavior, self-glorification, advertisement of the lay press etc. making the enquiry of the Dental Practitioners, against whom the complaints are lodged, as one of the important function of the Maharashtra State Dental Council (the applicant).
- 2.3 Applicant is not a profit making institution and the income earned by way of fees is used for the maintenance of this council and the income and expenditure is audited by the office of Chief Auditor, Local Fund Account, Maharashtra State.

2.4 The first and foremost function of the applicant is to give registration to Dental graduates. Preserving and pursuing Code of Ethics at all levels is also an important function of the applicant. Based on the above functions various complaints are lodged with the applicant, by aggrieved persons about negligence, misbehavior, extravagant charges, failure to give adequate Dental services, etc.

2.5 The fees payable under Chapter IV of the Dentists Act, 1948 shall be as follows, namely:-

“73 The Fees payable under chapter IV of the Act shall be as follows, namely :-				
Sr. No.	Provision	Dentists	Dental Hygienist	Dental Mechanics
1		Rs.	Rs.	Rs.
2	For the first registration in the Register Under sections 34, 37, 38.	1500	500	500
3	Renewal fee under Sub-section (1) of section 39.	500	200	200
4	For entry of any additional qualification Under Section 40.	500	Nil	Nil
5	For restoration of name in the Register Under section 42.	1500	500	500
6	For issue of a Duplicate certificate Under Section 44.	1000	500	500
7	Additional fee for Restoration of name in the register removed for non-payment of Renewal fee, in addition to renewal fee for the year or years, during which the name remained removed under proviso to sub-rule (3) of rule 65 (per year)	100	100	100
8	For certified copy of each entry in the Register under Rule 68.	500	500	500
9	For Registration of a change of name under Rule 69.	500	500	500



2.6 Every aspect of applicant's activity is controlled and processed by the Government through its organ, namely, Dental Act, 1948 as well as Bombay Dentists Rules, 1951.

2.7 In exercise of the powers conferred by sub-section (1) of section 32 of the Dentists Act, 1948. (XVI of 1948). The Government of Bombay constituted a Registration Tribunal consisting of

three persons for the purpose of preparing the register of Dentists under the Act and to appoint the Registrar, Bombay Medical Council, as Registrar and Secretary of the said Tribunal.

- 2.8 The Maharashtra State Dental Council is constituted by an act of parliament 'The Dentists Act, 1948' (XVI of 1948) with a view to regulate the dental profession and dental ethics thereto – which came into existence in September, 1951 in the State of Bombay. The Council elects from themselves the President, Vice-President and the members of the Executive Committee. The elected President and the Vice President are the Ex-Officio Chairman and Vice Chairman of the Executive Committee. The Executive Committee is the governing body of this Council, which deals with all procedural, financial and day-to-day activities and affairs of the Council. The Maharashtra State Dental Council was also for maintaining uniform standards of dental profession in the State.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional officer has not made any submissions.

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 08.06.2021. The applicant was represented by Smt. Shilpa Parab, Registrar and Authorized Representative who requested for admission of their application. Jurisdictional Officer was absent.

- 4.2 The application was admitted and called for final hearing on 22.06.2021. The applicant was represented by Smt. Shilpa Parab, Registrar and Authorized Representative, who made oral and written submissions. Jurisdictional Officer was absent.

05. DISCUSSIONS AND FINDINGS:

- 5.1 We have perused the records on file and gone through the facts of the case and the submissions made by the applicant.
- 5.2 The first five questions raised by the applicant are in respect of online/offline tendering process. The applicant has not provided any details of the tendering process and as to how and why tendering is resorted to, etc. However in view of the limited submissions made by the applicant, we take up each any every question raised by them, as under:-
- 5.3 **Question No.1 :-Whether online tending to be considered as Supply of Goods or Supply of Service?**

5.3.1 It appears that in the subject case, in respect of online tendering, requirement for procurement of goods or services will be raised online. Probably, the entire process related to tendering (application, payment of fees, submission of technical & financial bid, etc) will be done online (using computer & internet).

5.3.2 Goods are defined under Section 2(56) of the CGST Act, 2017 and as per the said section *“‘goods’ means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.”*

5.3.3 As per the Business Dictionary, online tendering is “an internet based process wherein the complete tendering process; from advertising to receiving and submitting tender-related information are done online. This enables firms to be more efficient as paper-based transactions are reduced or eliminated, facilitating for a more speedy exchange of information. In common parlance also it is understood to be a process to procure goods or services where the entire process is online.

5.3.4 As per Section 2(12) of the CGST Act, 2017, “services”, means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

5.3.5 From the above it is clear that Online Tendering does not satisfy the definition of ‘goods’. Further we find that the IGST Act has defined Online Information and Data Access or Retrieval Services to include different services, for the sake of better understanding we may now refer to Online Information and Data Access Services mentioned in Section 2 (17) of the IGST Act which is reproduced as under:-

“online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-

- (i) advertising on the internet;*
- (ii) providing cloud services;*

(iii)provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv)providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi)digital data storage; and

(vii)online gaming

5.3.6 In the present case at hand, we find that the provisions of e-tender, which is intangible has to be delivered through telecommunication network or internet. Thus, the intention of the legislature is very clear, to treat such activities as supply of services.

5.4 **Question No.2 :-Whether offline tendering to be considered as Supply of Goods or Supply of Services.**

5.4.1 In the case of offline tendering, the requirement for procurement of goods or services will be raised by manual process i.e. manual tender. Generally the process is that, firstly the applicant who wishes to supply the goods or services or both, may need to purchase Tender Form from the office of the applicant. Thereafter all the process related to tendering like, application, payment of fees, submission of technical & financial bid, etc., are generally done by manually by way of submission of hard copies.

5.4.2 We find that the difference between online and offline tendering is only that in the case of the former, the tender forms are sold on line and in the case of the latter, the tender forms are sold as printed matter. In offline tendering too, there are intangible products such as application, payment of fees, submission of bids, etc. These services are difficult to be identified individually. In both cases i.e offline and online tendering, forms are sold, collected from the applicant, processed and finally after the entire process of documentation, verification of the applicant's position to perform the contract, tenders are allotted to a particular person to the exclusion of others. In the process, processing fees and other deposits may also be collected from the various persons who are willing to fulfill their requirement for procurement of goods or services.

5.4.3 The definition of the term 'service' as per the CGST Act, is an inclusive definition and is wide. As per Section 2(12) of the CGST Act, 2017, "services" means anything other than goods, money and securities but includes activities relating to the use of money or its

conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

- 5.4.4 From the above it is clear that Offline Tendering does not satisfy the definition of 'goods', in its entirety. The definition of 'services' as mentioned in the Business Dictionary: "Intangible products such as accounting, banking, cleaning, consultancy, education, insurance, expertise, medical treatment, or transportation". Sometimes services are difficult to identify because they are closely associated with a goods; such as the combination of a diagnosis with the administration of a medicine. No transfer of possession or ownership takes place when services are sold. Hence offline tendering, in our opinion will also be considered as rendering of services.

5.5 **Question No. 3 :- Under which tariff head the Online Tendering should get taxed..**

- 5.5.1 The GST Tariff for services comprises of Chapter 99, Headings 9954 to 9999. It is seen that online tendering is not specifically mentioned in any of the Headings and therefore it is felt that the appropriate Heading in this case would be Heading 9997 since the said heading covers "other services (washing, cleaning; and **other miscellaneous services including services nowhere else specified**). Since Online Tendering as a service is not specified anywhere, the same should get taxed under Service Heading 9997.

5.6.1 **Question No. 4:-Under which tariff head the Online Tendering should get taxed.**

- 5.6.2 As per the discussions made in respect of Q. No. 2 above, we have already found that the process of offline tendering is also a supply of services. The GST Tariff for services comprises of Chapter 99 Headings 9954 to 9999. It is seen that offline tendering is not specifically mentioned in any of the Headings and therefore it is felt that the appropriate Heading in this case would be Heading 9997 since the said heading covers "other services (washing, cleaning; and **other miscellaneous services including services nowhere else specified**). Since Offline Tendering as a service is not specified anywhere, the same should get taxed under Service Heading 9997.

5.7.1 **Question No. 5:-If tendering is service then whether it will be considered as administrative services or specific Service.**

- 5.7.2 This specific question does not fall under the clauses mentioned in Section (97) (2) of the CGST Act. However we have already held the both, online and offline services are

classifiable under Service Heading 9997 as other miscellaneous services including services nowhere else specified).

5.8.1 Question No. 6:- Whether the activities conducted by the Maharashtra State Dental Council are the "Registration Activities and their related activities laid down in the Act" exempted under the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended and consequently, the receipt of the Registering Fees paid under Rule 73 of the Bombay Dentists Rules, 1951 by the Prospective Dental Practitioners to the Council is exempted from the levy of Goods and Services tax.

5.8.2 Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts the intra-State supply of services of description as specified in column (3) of the Table mentioned therein from payment of GST. The services, mentioned in the subject application, as rendered by the applicant does not specifically find mention in the said notification. Hence, in our view the activities of the applicant are not exempted under the said notification and consequently, the receipt of the Registering Fees by the applicant is not exempted from the levy of Goods and Services tax.

06. In view of the above discussions, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 125/2019-20/B- 30

Mumbai, dt. 13.07.2021

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- Whether online tendering to be considered as Supply of Goods or Supply of Service?

Answer:- Online tendering will be considered as Supply of Services.

Question 2:- Whether offline tendering to be considered as Supply of Goods or Supply of services?

Answer:- Offline tendering in its entirety involving sale of form, payment of tender fees and submission of bids etc. will be considered as Supply of Services.

Question 3:- Under which tariff head the Online Tendering should get taxed?

Answer:- Online Tendering should get taxed under services heading 9997.

Question 4:- Under which tariff head the Offline Tendering should get taxed?

Answer:- Offline Tendering should get taxed under services heading 9997.

Question 5:- If tendering is service then whether it will be considered as administrative services or specific Service?

Answer:- In view of the discussions made above tendering will be considered as 'miscellaneous services including services nowhere else specified'.

Question 6:- Whether the activities conducted by the Maharashtra State Dental Council are the "Registration Activities and their related activities laid down in the Act" exempted under the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended and consequently, the receipt of the Registering Fees paid under Rule 73 of the Bombay Dentists Rules, 1951 by the Prospective Dental Practitioners to the Council is exempted from the levy of Goods and Services tax.

Answer:- Answer is in the negative.



PLACE - Mumbai

DATE - 13.07.2021


RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The Concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.