

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore

2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	UNREGISTERED; PAN:
Name and address of the applicant	M/s. Emrald Heights International School Opposite Akashwani, A.B. Road Indore 453331
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a) Classification of any goods or services or both; e) determination of the liability to pay tax on any goods or services or both
Present on behalf of applicant	Shree Vandit Sanghi, CA
Case Number	11/2019
Order dated	20/08/2019
Order Number	13/2019

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s. Emrald Heights International School



(hereinafter referred to as the Applicant) , not registered but desirous of obtaining registration under the Goods & Services Tax.

2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

3.1 Emerald Heights School Samiti is a registered Society(hereinafter referred as "Society") for the promotion of education and registered under M.P. Societies Act 1971 bearing registration No.10981 and is also registered as a Charitable institution under Section 12A of the Income Tax Act' 1961.

3.2 Emerald Heights School Samiti owns and runs The Emerald Heights International School (hereinafter referred as "the School" or "the Applicant") and according to the applicant the Society is not engaged in any other activity and does not derive any other income other than from the School.

3.3 The School is an Educational Institution and *inter-alia*, engaged in the providing world class education to its students upto Higher Secondary only. The School is situated in Indore and affiliated with the "Central Board of Secondary Education (CBSE)".

3.4 The school is not registered with the Goods & Service Tax Department as it is providing education services.

3.5 The school is affiliated and associated with various National and International Organizations which are mainly active to promote education and sports world wide. Amongst various organizations the 'school is also member school of an association namely "Round Square". (hereinafter referred as "Round Square" or "the association"), which according to the applicant is also a charitable organization registered as a "Charity" in England bearing Charity Number 327117

3.6 The Association is an internationally diverse network of 200 like-minded schools in 50 Countries. They connect and collaborate to offer world-class programmes and experiences that develop global competence, character and confidence in the students and brings together a culturally diverse network of schools to develop intercultural understanding in their students. For achieving these goals, the association organizes conferences for students and staff of its member Schools on regular intervals in various parts of the World

3.7 The members of the association organize educative conferences for Students and staff of member schools of association from time to time in line with the philosophy of the association. As the Applicant is a member school of the organisation, they intend to hold one such educational conference/gathering (hereinafter referred to as the "Conference") in Indore, India.

3.8 This global cultural gathering will bring to India students and teachers from up to 200 schools in 50 countries around the world – the majority of them registered charities - to develop their cultural understanding, debate topical issues that sensitise them to the community they are visiting, forge friendships, carry out social service and develop mind, body and soul through a range of culturally immersive experiences including local expeditions, sporting activities, and mindful practices, most especially a daily programme of yoga.



3.9 The Applicant and the Association intend to enter into an agreement (Proposed agreement) for hosting and managing the conference/gathering. The Proposed agreement clearly mentions that the school shall act as Host of the Conference in its own right as Principal and shall not be deemed to be acting as an Agent of the Association.

3.10 As per the Proposed agreement, the applicant is responsible to hold the conference engaging appropriately skilled, trained and experienced personnel and sufficient financial and material resources. This shall include planning the conference, inviting the participants, arranging the accommodation, food etc., organizing and managing the events in the conference etc.

3.11 Consideration for performing the above functions to cover the expenses of the conference would flow from the Round Square member schools (many of such member schools are based outside India) in the form of fee along with the list of individual student and staff attendees to the Applicant. According to the applicant no surplus is expected to be generated from the Conference. Surplus, if any, shall be transferred back to the Association.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority in the application:-

- a. Will the consideration received by the school from the participant school(s) for participation of their students and staff in the conference would be exempted under entry No. 66 or entry No. 1 or entry No. 80 or any other entry of the Notification No.12/2017 – Central Tax (Rate) or will be chargeable to GST under CGST Act, 2017 & MP GST Act, 2017 or IGST Act, 2017?
- b. If not exempted then what would be the appropriate category of the service and the appropriate Tax Rate?
- c. What would be the Place of Supply for such services?
- d. Whether exemption provided to service providers of catering, security, cleaning, house-keeping, transportation etc. to an educational institution upto higher secondary be available to the Service Providers of the Applicant for services related to such conference.
- e. Whether ITC would be eligible of all the input services availed for the purpose of the above conference?

5. CONCERNED OFFICER'S VIEW POINT:

The Concerned Officer Submitted that the services raised under the question is not eligible for exemption. The rate of tax applicable shall be the rate applicable to the respective services. AAR cannot decide the place of services and ITC shall be available according to the provisions of the law.

6. RECORD OF PERSONAL HEARING:

Shree Vandit Sanghi, CA of the applicant for personal hearing .He reiterated submissions already made in the application. The Applicant in support of his argument stated that -



- A. (i) Services provided by an educational institution to its students, faculty and staff are exempt under the GST Law.

In this context, the entry 66 of the Notification No.12/2017 – Central Tax (Rate), which has been exempted from the GST, reads as under: -

“Services provided -

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

(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;

Provided ”

For the purposes of the above entry, the educational institution has been defined under the clause 2(y) of the Notification No. 12/2017- Central Tax (Rate), as under

“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; ”

(ii) As per the above exemption entry, the services provided by any educational institution to its students, faculty and staff are exempt from GST. Also, services provided to an educational institution for transportation of students, catering and some other specified services are exempt from GST.

The Applicant further stated that in the present context, there is no doubt in the fact that the applicant is an educational institution for the purposes of the above exemption entry as they are providing education upto Senior Secondary level to the students.

The Applicant further submitted that being an educational institution, the applicant is entitled to the exemptions from the GST for its functions covered under entry 66 of the Notification 12/2017-Central Tax (Rate). One of such functions is – provision of services to its students, faculty and staff.

In the present case, the applicant would be organizing a conference for the students over a period of six-seven days during the time period from 16th September 2019 to 13th October 2019. The attendees of the conference would include students and teachers of the applicant school as well as the students and teachers from different



schools who are member of the 'Round Square'. The objective of the conference is to bring to India students and teachers from up to 200 schools in 50 countries around the world – the majority of them registered charities -to allow for the students' leadership and creativity while ensuring the individual development of every pupil including academic, Physical, cultural and spiritual aspects in a global perspective and also to develop their cultural understanding, debate topical issues that sensitise them to the community they are visiting, forge friendships, carry out social service and develop mind, body and soul through a range of culturally immersive experiences including local expeditions, sporting activities, and mindful practices, most especially a daily programme of yoga.

Accordingly, the services under the agreement are practically the services to be provided by an educational institution to the students, and hence, merit exemption under the entry 66 to the Notification No.12/2017-CT(Rate).

(iii) The services of educative conference to be provided by the Applicant to the students would merit consideration under the service category of 'education services'.

- B.** (i) Services by an entity registered under section 12AA of the Income Tax Act by way of Charitable activities are exempt under the GST Law.

The applicant argued that in this context, the entry 1 of the Notification No.12/2017 – Central Tax (Rate), which has been exempted from the GST, reads as under: -

Services by an entity registered under section 12AA of the Income Tax Act by way of Charitable activities.

"charitable activities" means activities relating to –

(i).....

(ii) *advancement of religion, spirituality or yoga*

(ii) The applicant submitted that being a 12AA registered educational institution, the applicant is entitled to the exemptions from the GST for its functions covered under entry 1 of the Notification 12/2017-Central Tax (Rate). One of such functions is – *advancement of religion, spirituality or yoga,*

In the present case, the applicant would be organizing a conference for the students over a period of six-seven days during the time period from 16th September 2019 to 13th October 2019. The attendees of the conference would include students and teachers of the applicant school as well as the students and teachers from different schools who are member of the 'Round Square'. The objective of the conference is to bring to India students and teachers from up to 200 schools in 50 countries around the world – the majority of them registered charities -to allow for the students' leadership and creativity while ensuring the individual development of every pupil including academic, Physical, cultural and spiritual aspects in a global perspective and also to develop their cultural understanding, debate topical issues that sensitise them to the community they are visiting, forge friendships, carry out social service and develop mind, body and soul through a range of culturally immersive experiences including local expeditions, sporting activities, and mindful practices, most especially a daily programme of yoga.



(iii) Accordingly, the services under the agreement are practically the exempted services to be provided by 12AA registered educational institution, and hence, merit exemption under the entry 1 to the Notification No.12/2017-CT(Rate).

- C. (i) Services by way of training or coaching in recreational activities relating to –
 (a) Arts or culture or
 (b) Sports by charitable entities Registered under section 12AA of the Income Tax Act.

are exempt under the GST Law.

In this context entry 80 of the Notification No.12/2017 – Central Tax (Rate), which has been exempted from the GST, reads as under: -

Services by way of training or coaching in recreational activities relating to –

(a) Arts or culture or

(b) Sports by charitable entities Registered under section 12AA of the Income Tax Act.

(ii) The applicant argued that being a 12AA registered educational institution, the applicant is entitled to the exemptions from the GST for its functions covered under entry 80 of the Notification 12/2017-Central Tax (Rate). One of such functions is activities resulting in training relating to Arts, Culture and Sports.

In the present case, the applicant would be organizing a conference for the students over a period of six-seven days during the time period from 16th September 2019 to 13th October 2019. The attendees of the conference would include students and teachers of the applicant school as well as the students and teachers from different schools who are member of the 'Round Square'. The objective of the conference is to bring to India students and teachers from up to 200 schools in 50 countries around the world – the majority of them registered charities -to allow for the students' leadership and creativity while ensuring the individual development of every pupil including academic, Physical, cultural and spiritual aspects in a global perspective and also to develop their cultural understanding, debate topical issues that sensitise them to the community they are visiting, forge friendships, carry out social service and develop mind, body and soul through a range of culturally immersive experiences including local expeditions, sporting activities, and mindful practices, most especially a daily programme of yoga.

(iii) Accordingly, the services under the agreement include that resulting to training in recreational activities relating to Arts, culture and Sports and hence, being registered u/s 12AA of the Income tax act merit exemption under the entry 80 to the Notification No.12/2017-CT(Rate).

- D. As for the services to be procured by the Applicant for the purposes of the conference, the services by way of transportation to the students, faculty and staff; catering, and security or cleaning or house-keeping are exempt under entry 66 of the Notification No. 12/2017-Central Tax (Rate), as the services would be received by the applicant who is an educational institution. Accordingly, any such services received by the Applicant for the purposes of the conference would merit exemption from GST.

- E. The participants in the conference would be from within India as well as from outside India. Therefore, the two-respective provisions for ascertaining the place of supply in the present case would be clause (5) of section 13 of the Integrated Goods & Services Tax Act, 2017 and clause (6) of Section 12 of the Integrated Goods & Services Tax Act, 2017.



- i. Clause (5) of section 13 which applies in case of attendees from international schools (cross-border)

"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."

- ii. Clause (6) of section 12 which applies in case of attendees from domestic schools (with in India)

"The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located."

In both the above cases, the place of supply would be the place of event, i.e. the State of Madhya Pradesh.

In the backdrop of the above facts and the legal position as understood by us, we place our questions regarding taxability of the education services of conference to be provided by the Applicant under the agreement before the Advance Ruling authority of the State of Madhya Pradesh.

7. DISCUSSIONS AND FINDINGS:

7.1 We find that the question before us broadly pertains to classification of the service question, input tax rebate and the rate of duty applicable on supply of such service. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) and therefore we admit the application for consideration.

7.1 We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

7.2 The first question on which the Applicant seeks an Advance Ruling is - Will the consideration received by the school from the participant school(s) for participation of their students and staff in the conference would be exempted under Entry No. 66 or Entry No. 1 or Entry No. 80 of the Notification No. 12/2017-Central Tax (Rate) :

7.3 After going through the provisions of Act/Rules/notification it is clear that Supply of all services to an Educational Institution are not exempt. Only the specified services are exempt. For example, even the entrance examinations conducted by an Educational Institution will not be exempt, if there is no specific clause for its exemption.

7.4 Similarly, supply of services pertaining to transportation of students, faculty and staff is exempt only because of eligibility of an Educational Institution for exemption for educational services for pre-school education and education up to higher secondary school or equivalent.

7.5 supply of such services to an Educational Institution for any other purpose, say for education beyond higher secondary level, shall not be exempt.

7.6 Now let us see the exemption to such services in different entries of Notification No. 12/2017-Central Tax (Rate). dt. 28.6.17.

Entry 1 is pertaining to Services by an entity registered u/s 12AA of the Income-tax Act, 1961 by way of charitable activities. This clause is not applicable to the



proposed activities to be carried on by the applicant, as the School is not an entity registered u/s 12AA of I.T. Act for charitable activities.

Clause (a) of Entry 80 is not applicable to the proposed activities to be carried on by the applicant, as the said clause is applicable to services by way of training or coaching in recreational activities relating to arts or culture.

The activities of holding educational conference / gathering of students, faculty and staff of other Schools, can not be said to be training or coaching in recreational activities relating to arts or culture.

Clause (b) of Entry 80 is also not applicable, as the said clause is applicable to services by way of training or coaching in recreational activities relating to sports by charitable entities registered u/s 12AA of I.T. Act.

7.7 Now there remains entry 66.

- Clause (a) of Entry 66 is pertaining to services provided by an educational institution to its students, faculty and staff.

The activities of holding educational conference / gathering of students, faculty and staff of other Schools, can not be treated as services provided by an educational institution to its students, faculty and staff;

- Clause (aa) of Entry 66 is pertaining to conduct of entrance examination. Therefore, this clause is not applicable to the activities of holding educational conference / gathering of students and staff of other Schools;

- Clause (b)(i) of Entry 66 is pertaining to transportation of students, faculty and staff. This clause is not applicable to holding of educational conference / gathering of students and staff of other Schools. This is also because such other Schools may or may not be providing educational services for pre-school education or education up to higher secondary school or equivalent.

- Clause (b)(ii) of Entry 66 is pertaining to the services provided to an educational institution by way of catering. This clause shall not be applicable to catering services provided to an educational institution for holding of educational conference / gathering of students and staff of other Schools, because the activities of organising an educational conference / gathering of students and staff of other Schools, itself is not eligible for exemption in any of the Entries of Notification No. 12/2017-Central Tax (Rate).

It can not be contended that supply of catering services to an educational institution should be exempt from tax, even if such catering services are for organizing an educational conference / gathering of students and staff of other Schools, otherwise, the supply of catering services to an educational institution for any other non-exempted activities would also become eligible for exemption, which can not be the intention of the Legislature.

- Same principle will apply for deciding the eligibility for exemption to security or cleaning or house-keeping services performed in such educational institution. If such services are for security or cleaning or house-keeping of the premises of the educational institution, then the same shall be exempt, otherwise the same shall not be



exempt from tax. If the educational conference / gathering of students and staff of other Schools is at some other place, then the same shall not be exempt from tax.

7.8. The second question raised by the applicant reads as follow -

If not exempted then what would be the appropriate category of the service and the appropriate Tax Rate ?

7.9 The authority is of opinion that various services provided for organizing an educational conference / gathering of students and staff of other Schools, shall be liable to tax at the rate applicable to the respective services. For example, the catering services shall be liable to tax @ 5% (2.5% + 2.5%) without eligibility for Input tax credit. Similarly, the services of security or cleaning or house-keeping services shall be liable to tax @ 18%.

7.9 The third question raised by the applicant reads as follow -

What would be the Place of Supply for such services?

7.10 According to the provisions of the Act to decide the Place of supply is beyond the jurisdiction of AAR.

7.11 The fourth question raised by the applicant reads as follow-

Whether exemption provided to service providers of catering, security, cleaning, house-keeping, transportation etc. to an educational institution up to higher secondary be available to the Service Providers of the Applicant for services related to such conference?

7.12. Authority is of the opinion that Exemption provided to service providers of catering, security, cleaning, house-keeping, transportation etc. to an educational institution up to higher secondary shall not be available for services provided for such conference.

7.13 The fifth question raised by the applicant reads as follow-

Whether ITC would be eligible of all the input services availed for the purpose of the above conference ?

7.14 On this question the provision of the act very clear that no ITC shall be available on food and catering, as rate is 5% without ITC. ITC in respect of other services shall be available as per provisions of the GST Act and the Rules.

RULING

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

A. The consideration received by the school from the participant school(s) for participation of their students and staff in the impugned conference would not be exempted under entry No. 66 or entry No. 1 or entry No. 80 or any other entry of the Notification No.12/2017 – Central Tax (Rate) or will be chargeable to GST under CGST Act, 2017 & MP GST Act, 2017 or IGST Act, 2017? and concurrent notifications issued by the State Tax authorities.



B. The authority is of opinion that various services provided for organizing the impugned conference / gathering of students and staff of other Schools, shall be liable to tax at the rate applicable to the respective services.

C. To decide the place of supply is beyond the jurisdiction of AAR.

D. Authority is of the opinion that Exemption provided to service providers of catering, security, cleaning, house-keeping, transportation etc. to an educational institution up to higher secondary shall not be available for services provided for the impugned conference for which the applicant has asked for ruling.

E. On the fifth question raised by the applicant, the authority is of opinion that the provision of the act very clear that no ITC shall be available on food and catering, as rate is 5% without ITC. ITC in respect of other services shall be available as per provisions of the GST Act and the Rules.

8.2 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

Sd/-
RAJIV AGRAWAL
(MEMBER)

Sd/-
MANOJ KUMAR CHOUBEY
(MEMBER)

Copy to:- NO. 11/2019/A.A.R/R-28/28

INDORE dt. 20/08/2019

1. Applicant
2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

सत्यप्रतिलिपि

Handwritten signature

