

 सत्यमेव जयते	APPELLATE AUTHORITY FOR ADVANCE RULING, RAJASTHAN GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR - 302005 (RAJASTHAN) Email : aaarjpr@gmail.com	
---	---	---

Before the AAAR comprising of:

1. Sh. Mahendra Ranga, Member (Central Tax)
2. Dr. Ravi Kumar Surpur, Member (State Tax)

ORDER NO. RAJ/AAAR/ 10/2023-24 DATED 20.02.2024

Name and address of the Appellant	Board of Secondary Education, Jaipur Road, Ajmer, Rajasthan
GSTIN/ UID of the Appellant	08AAAGB0002J2Z3
Issues under Appeal	Classification of goods or services or both
Date of Personal Hearing	13.02.2024
Present for the Appellant	Shri Praful Gupta, CA
Details of Appeals	Appeal No. RAJ/AAAR/APP/03/2022-23 against Advance Ruling No. RAJ/AAR/2022-23/09 dated 17.06.2022

(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same barring a few exceptions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to corresponding provisions of Rajasthan GST Act, 2017.

The present appeal has been filed under Section 100 of the Central Goods & Service Tax Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan Goods & Services Tax Act, 2017 (hereinafter also referred to as 'the RGST Act') by the Appellant on the portal on 15.07.2022 against AAR, Rajasthan Ruling Order No. RAJ/AAR/2022-23/09 dated 17.06.2022. According to the Appellant, the AAR Order was communicated to them through GST portal on 24.06.2022.



BRIEF FACTS OF THE CASE

The Appellant, **Board of Secondary Education (GSTIN – 08AAAGB0002J2Z3)** Road, Ajmer, a government authority, Jaipur are engaged in supplying services to students in relation to conducting examination. The appellant receive various services from suppliers namely:-

- Services of providing printing of Answer Sheets, Question papers, OMR sheets, Graphs, Certificates, Mark-sheets etc.
- Services provided by way of online examination form filling.
- Service provided by way of annual maintenance of the computers exclusively used for examination purposes.
- Service of operator provided by supplier for operating computer system.
- Services provided by way of processing of result through marks allotted in examination.

2. The Appellant sought Ruling from the Authority for Advance Ruling, Rajasthan as to whether the above services provided by the suppliers to the Board of Secondary Education in relation to conducting examination can be treated as exempted under the provisions of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 read with explanation in paragraph 3 clause (iv) and read with Circular No. 151/07/2021-GST dated 17th June, 2021.

3. The Appellant contended that Section 11(1) read with Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017, Notification No. 9/2017 IT (Rate) dated 25th June 2017 read with Circular No. 151/07/2021 GST dated 17th June, 2021, respectively exempts the Supply of Services from Intrastate GST or Interstate GST as leviable u/s 9(1)/5(1) of the said Act. As per S.No. 66 (SAC/Chapter: Heading 9992)-

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
66	Heading 9992	Services provided - (a) by an educational institution to its students, faculty and staff; (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; up to higher secondary: Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre- school education and education	NIL	NIL



		up to higher secondary school or equivalent		
--	--	---	--	--

4. The Appellant further submitted that Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 was amended through Notification No. 2/2018- Central Tax (Rate) dated 25th January, 2018 vide which,

In the said notification,

(b) Against serial number 66, in the entry in column (3)-

(ii) in item (b)

(A) in sub-item (iv), the words“ up to higher secondary” were omitted;

(B) after sub-item(iv),the following sub-item were inserted, namely:- “(v) supply of online educational journals or periodicals.”;

(C) in the proviso, for the word, brackets and letter“ entry(b)”,the words, brackets and letters“ sub-items (i), (ii) and (iii) of item (b)” were substituted;

(D) after the proviso, the following proviso was inserted, “Provided further that nothing contained in sub-item(v) of item (b) shall apply to an institution providing services by way of-

(i) pre-school education and education up to higher secondary school or equivalent;

or

(ii) education as a part of an approved vocational education course.

The Notification No. 12/2017-Central Tax (Rate) dated the 28th June 2017 was subsequently amended by Notification No. 14/2018-Central tax (Rate) dated 26th July 2018 as under:-

In the said notification

(ii) in paragraph 3, in the Explanation, after clause (iii), the following clause shall be inserted, namely: -

“(iv) For removal of doubts, it is clarified that **the Central and State Educational Boards shall be treated as Educational Institution** for the limited purpose of providing services by way of conduct of examination to the students.”

5. The Authority for Advance Ruling, Rajasthan found that the Appellant are the recipient of various services. The Authority opined that as per Section 95 of the CGST Act, 2017, the Authority shall decide on matters or on questions specified in sub-Section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the Applicant.

6. The AAR, Rajasthan held that Section 95 of the CGST Act, 2017 allows the authority only to decide on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant i.e. in the subject case this application can be entertained only if the supply of goods or services or both being undertaken or proposed to be undertaken by the Appellant themselves. In the instant case, the supplies of services are being undertaken or proposed to be undertaken not by the Appellant but by various supplier(s) to the Appellant. These suppliers are distinct persons as per the provisions of the GST Act.



7. The AAR found that the Appellant are not a supplier in the instant case. As per the contracts, the Appellant are recipient of services supplied by various suppliers. Therefore, the AAR, Rajasthan held that they cannot entertain the subject application; hence, without going into the merits of the case, they rejected the application of the Appellant seeking ruling on questions stated hereinabove being not maintainable.

GROUND OF APPEAL

8. Being aggrieved against the Order of Advance Ruling dated 17.06.2022, the Appellant filed appeal on the following grounds :

- (i) That the Authority for Advance Ruling has erred in law in dismissing the application of the Appellant on the sole technical ground that the applicant (now Appellant) are not a supplier of the good or services.
- (ii) That the Authority for Advance Ruling have failed to take into consideration meaning of applicant under the definition of advance ruling under Section 95 of CGST Act, 2017 in Para 6 of Findings, Analysis & Conclusion.
- (iii) That an Applicant can be made by any person registered or desirous of obtaining registration under this act. Furthermore, person defined under Section 2(84) (g) of the CGST Act, 2017 includes any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of Section 2 of the Companies Act, 2013. Therefore, Board of Secondary Education comes under the definition of person.
- (iv) That Authority for Advance Ruling in Para 7 of Findings, Analysis, and Conclusion has erred in law in considering the meaning of supplier.
- (v) That as per Section 2(93) of the CGST Act, 2017 the definition of the recipient of supply of goods or services or both, means—
 - Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - Where no consideration is payable for the supply of a service, the person to whom the service is rendered and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;
 - Furthermore, as per Section 2(102) 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.

Therefore, Board of Secondary Education are supplying services to



students so it falls within the ambit of supply of services as given above.

- (vi) That in Section 95 of the CGST Act, 2017, the legislature in its wisdom has used the word in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. This definition does not make any distinction between the supplier of the goods or services or both or the recipient of goods or services or both. The recipient of the goods or services or both is also supplier of the goods or services or both so the narrow interpretation defeats the purpose of deciding the questions meant for imposition of CGST and SGST.
- (vii) That RBSE are an Educational Institution as explained in Notification No.- 14/2018- Central Tax (Rate) dated 26.07.2018 read with paragraph 3 explanation of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, who receive above mentioned services in Question 14 of Form GST ARA-01 as per their own specifications for conducting examinations. The supplier charges GST on the supply which at the end is payable and borne by the Appellant as per the normal mechanism followed in GST. The Appellant fall under the definition of Educational Institution by virtue of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 which clearly exempts services provided to an Educational Institution in relation to conduct of examination. Further, the earlier Notification of exemption upto higher secondary school or equivalent has been superseded by Notification No. 02/2018 Central Tax (Rate) dated 25th January, 2018. Further, Notification NO. 14/2018- Central Tax (Rate) dated 26.07.2018 amended the Notification No. 12/2017-CT(R) dated 28.06.2017 and added clarification in paragraph 3 in explanation after clause (iii) i.e “(iv) For removal of doubts, it is clarified that **the Central and State Educational Boards shall be treated as Educational Institution** for the limited purpose of providing services by way of conduct of examination to the students”.

PERSONAL HEARING

9. Personal hearing in the matter was held on 13.02.2024, which was attended by Sh. Praful Gupta, CA & authorized representative of the appellant. He supplied written submissions dated 13.02.2024. He relied upon the judgment of the Hon'ble High Court, Calcutta in the matter of M/s Anmol Industries Ltd. v/s West Bengal Authority for Advance Ruling, Goods and Service Tax delivered in April 2023. He averred that the instant case is squarely covered by the above judgment. He further stated that the Authority for Advance Ruling of J & K have also decided a similar matter in October 2019 (before issuance of the High Court Order), accordingly he sought Advance Ruling in the matter.

10. It is observed that the additional submissions dated 13.02.2024 contain following supplemental submissions:-

- a. That the Learned Authority for Advance Ruling failed to take into consideration ratio of the judgement delivered in the matter of Writ Petition No. 630 of 2023 with I.A. No. CAN 1 of 2023, decided on 21-4-2023 in the High Court at Calcutta in the case of M/s Anmol Industries Ltd. Versus West Bengal Authority for Advance Ruling, Goods and Service Tax. It was held by the Hon'ble High Court that



Definition of "applicant" under Section 95(c) of Central Goods and Services Tax Act, 2017 is quite broad and includes any person registered or desirous of obtaining registration under Act ibid - Appellants were registered under the Act and therefore met the laid down criterion - Section 97 of Act ibid sets out procedure for making an application for advance ruling, and question on which ruling is sought must fall within scope of section 97(2) - In the instant case, appellants had sought a ruling on applicability of an exemption notification under Act, which fell within scope of section 97(2)(b) - Therefore, appellants were eligible to make an application for advance ruling and AAR's ruling was to be set aside - Matter was to be remanded [Sections 95 and 97 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017] [paras 3 and 6].

- b. That in the case of the Appellant also Learned Authority for Advance Ruling erred in law by rejecting the application solely on the ground that they are recipient of service and do not fall under the definition of Applicant as can be understood from the Hon'ble High Court of Calcutta Judgement that definition of Applicant is quite broad. Therefore, the Appellant requested to take above Judgment into consideration and pass order accordingly.
- c. That the Authority for Advance Ruling- Jammu & Kashmir for Jammu & Kashmir State Board of School Education having Order No. 01/2019/GST-ARA of 2019 accepted the application from State Board of School Education J&K which was filed on the basis of asking question as recipient of services. The Questions which were raised by the State Board of School Education J&K are also the same questions on which RBSE (the Appellant) had sought Advance Ruling. Therefore, the Appellant have requested to take above AAR of J&K into consideration and pass order accordingly.
- d. That the impugned Order passed by the Authority for Advance Ruling, Rajasthan is bad in law and deserves to be quashed.

DISCUSSION AND FINDINGS

11. We have carefully considered the material evidence available on record including the oral submissions made by the authorized representative of the appellant at the time of personal hearing held on 13.02.2024.
12. We observe that the Appellant had sought Ruling before the Authority for Advance Ruling, Rajasthan as to whether the services provided by various suppliers to the Board of Secondary Education in relation to conducting examination can be treated as exempted under the provisions of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 read with explanation in paragraph 3 clause (iv) and read with Circular No. 151/07/2021-GST dated 17.06.2021.
13. The Authority for Advance Ruling, Rajasthan held that Section 95 of CGST Act, 2017 lays down that the Authority shall decide on matters or on questions specified in sub-Section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the Appellant. In this case, the supply of services is being undertaken or proposed to be undertaken by various supplier(s) (to be rendered to the Appellant). The Appellant was held to be a recipient



of the services and the suppliers are distinct persons as per the provisions of the GST Act. Therefore, the subject application was not entertained by the AAR, Rajasthan without going into the merits of the case.

14. The Appellant have argued that the AAR have misconstrued the meaning of the word applicant and that their interpretation of "applicant" being only a supplier & not a recipient, is quite narrow which defeats the purpose of seeking the Ruling for imposition of the GST.

15. We observe that during the personal hearing held on 13.02.2024, the authorized representative of the Appellant has reiterated the grounds of appeal furnished by them earlier and have additionally relied upon:-

- i) The judgment dated 21.04.2023 of Hon'ble High Court, Calcutta in the case of M/s Anmol Industries Ltd. Versus West Bengal Authority for Advance Ruling, Goods and Service Tax and
- ii) The Order No. 01/2019/GST-ARA of 2019 dated 15.10.2019 passed by the Authority for Advance Ruling- Jammu & Kashmir wherein the Ruling was sought by Jammu & Kashmir State Board of School Education as a service recipient.

16. We note that in the case of M/s Anmol Industries Ltd. versus West Bengal Authority for Advance Ruling, Goods and Services Tax, the Hon'ble High Court, Calcutta held that :

- The said term "Applicant" has been defined in the most widest possible manner to include any person registered or desirous of obtaining a registration under the Act.
- In the present case, there is no dispute that the appellant is registered under GST Law. Further, the application filed by the appellant falls under clause (b) of Section 97(2) as the appellant seeks ruling on applicability of exemption notification.
- Reliance was placed in the case of M/s. Gayatri Projects Limited & anr. V/s. The Assistant Commissioner of State Tax, Durgapur Charge & Ors. in M.A.T. No.2027 of 2022 dated 05.01.2023, where this court held that appellants being the registered person under the law (GST Act) would fall within the definition of 'applicant', even though the appellant therein were not parties to the proceedings before the AAR.
- In the present case, the appellant fulfils the eligibility to seek advance ruling.
- Accordingly, the court set aside the ruling of AAR and remanded back the matter to AAR to decide the application on merits and in accordance with the law.

17. We observe that AAR Rajasthan have not taken note of the above judgement of the Hon'ble High Court as the judgement had not been pronounced at the relevant point of time.

18. We feel that it will be in the fitness of things if the Authority for Advance Ruling consider the ratio of the judgement & pass a ruling thereafter. We leave it open to the Authority for Advance Ruling to consider applicability of the judgement as per settled principles of jurisprudence.



19. In view of the above discussions, we pass the following order :

ORDER

The Ruling of AAR, Rajasthan dated 17.06. 2022. is set aside and the matter is remanded back to the AAR to decide the application afresh after considering the judgement dated 21.04.2023 of Hon'ble High Court , Calcutta delivered in the case M/s Anmol Industries Ltd. Versus West Bengal Authority for Advance Ruling, Goods and Service Tax .



(Mahendra Ranga)
Member (Central Tax)

(Mahendra Ranga)
Member, AAAR (Central Tax)



(Dr. Ravi Kumar Surpur)
Member (State Tax)

(Dr. Ravi Kumar Surpur)
Member, AAAR (State Tax)

SPEED POST

To
M/s BOARD OF SECONDARY EDUCATION RAJASTHAN,
C/o Shri Praful Gupta, CA
Praful Gupta & Associates
A-214, Janki Villa, HBU Nagar,
Behind Mittal Hospital, Ajmer - 305004

F. No. IV (16)03/AAAR/RAJ/2022-23/ 488

Date. 21.02.2024

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Jaipur
4. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
5. Deputy/Assistant Commissioner, Division-J, Ajmer, CGST Commissionerate Jaipur, Central Revenue Building, Opp. District & Sessions Court, Jaipur Road, Ajmer - 305001
6. Assistant Commissioner, Circle – B Ajmer, Ward- I, Ajmer Zone, Kar Bhawan, Commercial Taxes Department (State GST), Todar Mal MArg, Opp. CBSE Board Office, Ajmer - 305901
7. M/s BOARD OF SECONDARY EDUCATION RAJASTHAN, Secondary Board of Education, Jaipur Road, Ajmer, Rajasthan, 305001
8. The web-manager - www.gstcouncil.gov.in
9. Guard File.