

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/18 /2018-19

Date- 04.02.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AABCI2106HIZO
Legal Name of Appellant	IL&FS Education and Technology Services Ltd.
Registered Address/Address provided while obtaining user id	3 rd Floor, C D Quadrant, The ILFS Financial Center, Bandra, Kurla Complex, Bandra East, Mumbai City, Maharashtra.
Details of appeal	Appeal No. MAH/GST-AAAR-16/2018-19 dated 06.11.2018 against Advance Ruling No GST-ARA-48/2017-18/B-55 dated 25.06.2018
Concerned officer	Assistant Commissioner(D-904), State Tax, Nodal Division -5

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 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"] by M/s. IL&FS Education and Technology Services Ltd. (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-48/2017-18/B-55 dated 25.06.2018.

BRIEF FACTS OF THE CASE

- A. IL&FS Education and Technology Services Ltd. ("**Appellant**") is a public limited company incorporated in India and registered under the Companies Act, 1956. The Appellant having GSTIN 27AABCI2106HIZO is registered in Mumbai, Maharashtra and falls within the jurisdiction of Mumbai Nodal Division-5, Maharashtra. The Appellant is the social infrastructure arm of IL&FS group and is engaged in the key areas of

education, skill development, healthcare and cluster development for long term and sustainable impact.

- B. Inter alia, the Appellant is working with various State or Union Territory Governments to promote computer training among the students and teachers of the government and government aided higher secondary schools under the Information and Communication Technology ('ICT') @ School Project (hereinafter referred to as "**ICT Project**").
- C. Information and Computer Technology (**ICT**) is universally acknowledged as an important tool for improving the quality of education. Realizing the importance of ICT and the vital role that it plays in educational sector, the Government of India framed nationwide policy viz. National Policy on Education, 1986 (as modified in 1992) (hereinafter referred to as the old policy), which stressed the need to employ information technology to improve the quality of education. Also, a number of different schemes such as Computer Literacy and Studies in School (CLASS) and Educational Technology (ET) were introduced under the old policy to promote computer literacy in India.
- D. Subsequently, the Ministry of Human Resource and Development, Government of India, revised its old policy keeping in view past experience, the feedback which had been received and changing needs. Thus, a nationwide Information and Communication Technology in Schools ('**ICT in Schools**') Scheme was introduced to replace the existing ET and CLASS schemes. Thereafter, in the year 2012, Department of School Education and Literacy framed nationwide guidelines under National Policy on ICT in School (hereinafter referred to as the new policy) for implementation of ICT in School Scheme.
- E. ICT in Schools visions to transform all the Government and Government aided schools into smart schools, where each school should have a computer lab and students are provided with premier computer training. In addition to computer training, ICT in Schools also provide for encouragement of usage of digital medium to impart education in other subjects and to create capability in terms of teaching staff enabling the schools to fully implement ICT in Schools.
- F. As discussed above, this new policy framed by the Central Government endeavors to provide guidelines to assist the States in optimizing the use of ICT in school education within a national policy framework. As per the guidelines in the new policy, the Central Government provides that for effective implementation of ICT Projects, the State or Union Territory Governments may consider entry of private partners in various aspects of the ICT Projects by adopting the Build, Own, Operate and Transfer (BOOT) model to avoid out of date/obsolete equipment in schools. Thus, the new policy lays emphasis on the Public-Private Partnership (PPP) in the implementation of ICT Projects.

- G. It is to be noted that 'ICT in Schools' scheme is a collaborative venture between the Central and the State or Union Territory Governments which actively solicits the partnership between the Governments for the effective implementation of ICT Projects. Under this scheme, the State Government or Union Territory Government shall be responsible for defining norms, standards, guidelines and framework to facilitate and monitor the implementation of the scheme in an effective manner. Thus, primary responsibility of implementing ICT Projects is on the State or Union Territory Governments.
- H. However, while framing the policy, standards, norms, etc. for implementation of ICT Projects, the State or Union Territory Governments would be guided by the national level policy framed by the Ministry of Human Resource and Development, Government of India. This is to ensure uniform and high standards, optimum utilization and cost-effective implementation of ICT Projects. Thus, the State and Union Territory Governments have to implement ICT Projects in accordance with the guidelines issued by the Central Government in this regard.
- I. As the State or Union Territory Government is required to implement ICT Projects in accordance with the guidelines issued by the Central Government, almost all states have been following the PPP model by sourcing out the ICT Project work to the private parties under the BOOT model (as suggested by the Central Government).
- J. Thus, as a matter of fact, throughout the nation, the States are adopting the BOOT model to implement ICT Project in schools. In fact, the Appellant is also implementing such ICT Projects on BOOT model basis in various states viz. Odisha, Maharashtra, West Bengal, etc.
- K. The present application concerns one such ICT project being implemented by the Appellant in the State of Maharashtra. The Director of Education (Secondary and Higher Secondary), Maharashtra State (hereinafter referred to as DE(S&HS)) had invited tender vide tender notice no. 11 on e-tendering sub-portal of Directorate of Primary Education to implement ICT project in 5000 government secondary and higher secondary schools in ten identified regions in the State of Maharashtra.
- L. The said tender was for the supply of computer hardware, software and connected accessories along with the site preparation (i.e. vinyl flooring, furniture and fixtures, electrical fittings, power backup facilities, LAN, etc.), maintenance of equipment and provision of computer training services for 5 years in 5000 schools divided in 10 zones on the BOOT Model basis.
- M. The Appellant was selected vide Letter of Award accepted on March 26, 2013 to execute the contract in 3 zones i.e. 1590 schools. Accordingly, the Appellant entered into an agreement with DE(S&HS) on 13th November, 2013 (hereinafter referred to as "the agreement").

- N. In terms of the agreement, DE(S&HS) would arrange the necessary minimum constructed rooms/space in each school for setting up computer labs and the Appellant would carry out the necessary work viz, flooring, furniture and fixtures, etc. for preparing each site to be used as an ICT lab.
- O. Further, as per the specifications laid down in the Annexure-I and Annexure-IA to the agreement and the decision of the technical committee, the Appellant would procure the requisite number of IT equipment i.e. Computers, Printers, Scanners, etc. The equipment so procured would be installed and commissioned by the Appellant in the ICT lab prepared in schools. All these activities i.e. site preparation; installation and commission are to be completed by the Appellant in the time prescribed in the agreement i.e, within 120 days from the date of handing over of the sites by DE(S&HS).
- P. Once the labs are ready, the Appellant shall operate the same for imparting computer training. For this, the Appellant is required to provide one teacher, having specified qualifications and experience, to each school. The teachers so appointed would utilize the available ICT infrastructure (i.e. the ICT lab so created by the Appellant) for imparting computer training to the students in accordance with the curriculum developed in this regard by the Director, Pune, as per Annexure-III to the agreement.
- Q. Annually, the appointed teacher shall also impart necessary training to at least 5 school teachers including the headmaster/headmistress of the school in computer aided learning and computer education with the usage of available ICT infrastructure. Further, the appellant shall impart technical training to the subject teachers for a period of ten days per year for normal operation, installing and use of textbook based educational software, computer education software, additional educational software, school management software, common software applications.
- R. Moreover, it is also the responsibility of the Appellant to maintain and upkeep the ICT labs in proper working conditions for the entire contract period at its own cost. For this, the Appellant would have to provide requisite manpower to carry out the necessary repairs as and when required within the time limit prescribed in the agreement. Besides this, the Appellant would also appoint a help desk which will serve as a single point of contact for all ICT related incidents and service requests. Further, the Appellant shall also provide 1 District coordinator for each district and 1 Project manager, for a region, for project management & monitoring which would coordinate with the Government of Maharashtra.
- S. In terms of the agreement, all the above-mentioned activities are to be carried out for a total consideration of Rs. 284,61,00,000/- (Rupees Two hundred and eighty-four crores sixty-one lakhs only) which would be payable in installments (throughout the period of contract) on completion of the activities as detailed in Para 7.1 of the agreement.

- T. After the expiry of the contract period (i.e. 5 years), the entire infrastructure (supplied and installed) will be transferred to DE(S&HS) at a nominal value of Re. 1/-
- U. The Appellant had filed an application for advance ruling on 28.03.2018 (hereinafter referred to as “**application**”) on the issue of determination of applicability of Entry No. 72 of Notification No. 12/2017- CT (Rate), to the services provided by the Appellant under the ICT project. Therein, the Appellant explained that the activities undertaken by the Appellant under ICT project would be covered under the scope of Entry No. 72 of Notification No. 12/2017- CT (Rate), for the reasons furnished herein below:
- the services are provided under the training programme;
 - the services are provided to the Government of State of Maharashtra; and
 - the entire expenditure is borne by the Central Government and the State Government of Maharashtra.
- thereby, satisfying the three pre-requisites of Entry No. 72 of Notification No. 12/2017- CT (Rate).
- V. The Ld. AAR vide the impugned ruling, have held that supplies of goods and services by the Appellant to DE (S&HS) will not qualify for exemption in terms of Entry No. 72 of Notification No. 12/2017- C.T. (Rate). Further, supplies undertaken by the Appellant are in the nature of artificially-bundled, composite supply, and the training provided is not predominant supply, thereby resulting in non-fulfilment of pre-requisites of Entry No. 72 of the Notification No.12/2017- C.T. (Rate).
- W. Aggrieved by the impugned ruling, the appellant is filing the present appeal, *inter alia*, on the following grounds which are without prejudice to each other.

GROUND OF APPEAL

1. For quick reference, Entry No. 72 of the Notification No. 12/2017- C.T. (Rate) is reproduced herein below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
72	Heading 9992	Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is	Nil	Nil

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
		<i>borne by the Central Government, State Government, Union territory administration.</i>		

2. The corresponding exemption is provided under Entry No. 72 of Notification No. 12/2017 dated 29.06.2017 issued under Maharashtra Goods and Services Tax Act, 2017.
3. On perusal of the above extracted entry, it is clear that NIL rate under the said entry would be leviable to:
 - a. all the education services (falling under Heading 9992);
 - b. provided under any training programme;
 - c. to the Central Government, State Government or Union Territory administration; and
 - d. the total expenditure of such training programme is borne by the Central Government, State Government or Union territory administration.
4. As mentioned at para 10, the impugned order has bifurcated the exemption notification into 4 criteria, however, in order to avoid repetition, the Appellant shall discuss criteria (a) and (b) together.
The Appellant is providing 'services'
5. In the instant matter, the Appellant is carrying out various activities viz. installation, site maintenance, operation, etc. to implement the ICT Project in the government schools and government aided schools in the state of Maharashtra. Further the Appellant is required to procure, supply and install requisite number of IT equipment, i.e. computer hardware, software etc. All this is done to provide computer training to students and teachers of the specified schools during the agreement period.
6. The Appellant submits that the fact that computer training services are being provided by the Appellant is not in doubt nor disputed by the AAR in the impugned ruling. Ld. AAR at para 2 & 3 of page 10 of the impugned ruling has held that in order to avail benefit of Entry no. 72 of Notification No. 12/2017-C.T. (Rate), supply should be services only and not of goods. Ld. AAR quoted para 4.2 and 4.3 of the agreement and observed that the agreement clearly envisages a situation of supply of both goods and services and not services only, because of which benefit under the notification is not available. In this regard, the Appellant submits that there is no sound basis in the impugned order to say, that only services should be provided, and

the findings of Ld. AAR are untenable for the reasons stated in the following paragraphs:

7. 'Supply', in terms of Section 7(1) of the CGST Act, includes all forms of supply of **goods or services or both** such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. The CGST Act envisages two kinds of supplies where one transaction involves supply of goods as well as services, namely, *composite supply* and *mixed supply*:
 - i. 'Composite Supply'- Section 2(30) of the CGST Act defines 'composite supply' to mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;
 - ii. 'Mixed Supply'- Section 2(74) of the CGST Act defines 'mixed supply' to mean two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.
8. The concept of composite supply under GST has been explained by the Department in its e-flier on the topic of '**Composite Supply and Mixed Supply**'¹ to be identical to the concept of naturally bundled services prevailing in the existing service tax regime. As also referred in the flier, the said concept has been explained in the Education Guide² issued by CBEC for the levy of service tax (hereinafter referred to as "**Education Guide**"). The concept of bundled services that were naturally bundled in the ordinary course of business under Service tax law is now known as "composite supply" under GST law. "Bundled service" was defined at para 9.2 of the Education Guide as a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. Such services may or may not be naturally bundled in the ordinary course of business.
9. Under the CGST Act, the concept of composite supply is applicable only when two or more identifiable and taxable supplies of goods or services or both, which are rendered in conjunction with each other, are naturally bundled. It is, therefore, evident that for any two or more supplies to constitute composite supply as per Section 2(30) of the CGST Act, it is necessary that they are naturally bundled. If the two services are not naturally bundled, they cannot be considered as 'composite supply'.
10. The impugned ruling at page 11 holds that the Appellant is rendering composite supply of goods and services, not naturally but artificially bundled. The Appellant

humbly submits that the said finding of the Ld. AAR is not just untenable but is also self-contradictory.

11. As discussed in the preceding paragraphs, under the CGST Act, the concept of composite supply is applicable only when two or more identifiable and taxable supplies of goods or services or both, which are rendered in conjunction with each other, are naturally bundled. A perusal of the definition of 'composite supply' under Section 2(30) of the CGST Act makes it evident that for any two or more supplies to constitute composite supply, it is necessary that they are naturally bundled. It is, thus, legally untenable for a supply to be "composite" and "artificially bundled" at the same time. To this extent, the impugned ruling is legally incorrect and unsustainable.
12. It is also submitted that there is nothing in the impugned ruling to justify the finding as to how the supplies made by the Appellant are artificially bundled. In fact, the said finding in the impugned ruling is based on presumptions and assumptions without looking into and appreciating the actual facts and submissions made by the Appellant. The Appellant had submitted in detail how the supplies made by it are naturally bundled, however, the same has neither been considered, nor do the submissions of the Appellant find any mention in the discussion portion of the impugned ruling.
13. The Appellant humbly submits that for the reasons stated in the following paragraphs, supplies made by it under the ICT project are in fact naturally bundled, composite supplies, with services of computer training being principal supply.
14. The phrase 'naturally bundled in the ordinary course of business' is not defined in the CGST Act. The Education Guide, at para 9.2.4, clarifies that whether services are naturally bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the field of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators, a few of which are listed below –
 - a) The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.
 - b) Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
 - c) The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main

service.

- d) Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –
 - i. There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - ii. The elements are normally advertised as a package.
 - iii. The different elements are not available separately.
- 15. No straight jacket formula has been laid down to determine whether any two services are naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors outlined above. The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether any two or more supplies constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.
- 16. In order to interpret the meaning of the phrase, 'naturally bundled in the ordinary course of business', reference can also be made to the decision given in the case of **House of Lords in Card Protection Plan Ltd v. CCE** reported at **[1999] 2 AC 601** (*Card Protection Case*). The court in that case provided definitive (but not exhaustive) guidance on the approach to be adopted when a transaction is made up of more than one element and it is necessary to decide whether there is one supply or more than one supply. The principles there laid down were as follows:
 - i. where the transaction in question comprises a bundle of features or acts, regard must first be had to all the circumstances in which the transaction took place (paragraph 28);
 - ii. every supply of a service must normally be regarded as distinct and independent (paragraph 29);
 - iii. but a supply, which comprises a single supply from an economic point of view, should not be artificially split (paragraph 29);
 - iv. the essential features of the transaction must be ascertained in order to determine whether the taxable person is to supply the consumer, being a typical consumer, with several distinct principal services or with a single service (paragraph 29);
 - v. there is a single supply where one or more elements are to be regarded as constituting the principal services and one or more elements are to be regarded by way of contrast as ancillary services which share the tax treatment of the principal service (paragraph 30);
 - vi. a service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (paragraph 30);
 - vii. the fact that a single price is charged may be indicative of a single service, but

is not decisive (paragraph 31);

17. The Appellant submits that it fulfills all the criteria enlisted in the education guide and the Card Protection Case:
- a) It has been explained in the facts of the case that the national level policy framed by the Central Government for implementation of the ICT Projects provides that the State Government(s) should preferably follow BOOT model. This suggestion of the Central Government is in fact being followed by the State Governments. Multiple State Governments, as mentioned in facts also, are awarding the contracts for implementing ICT Projects on BOOT model only.
 - b) In all such cases, the private parties are implementing ICT Projects under BOOT Model, wherein, all the activities including supply, installation, commissioning, operation, maintenance, and computer training are to be performed by such private parties. It is a matter of fact that competitors of the Appellant are also providing similar bundle of services to other State Governments under the ICT in school scheme.
 - c) The perspective of recipient of supplies here *i.e.* the Government of Maharashtra or other state governments in other cases, is to receive everything together as a bundle in all the cases. In other words, the state governments want one private party to implement the ICT project in a wholesome manner.
 - d) It is pertinent to note that under such contracts, all activities are to be undertaken by a single vendor and there is no possibility of performance of different activities by different vendors. This practice is being followed by the entire industry since the introduction of the ICT Projects.
 - e) Education and computer training services is the main service and the other goods and infrastructural facility provided are in the nature of incidental or ancillary elements which help in better enjoyment of a main service.
 - f) All the elements are advertised as a package and the Appellant does not provide the different elements separately.
18. Ld. AAR, in the impugned ruling at page 11, has noted that the entire training programme has distinctly separate components with distinct value attributable to each component. In this regard, the Appellant submits that in case of composite supply, a single price is not a mandatory requirement. In fact, a perusal of Section 2(74) of the CGST Act makes it clear that the requirement of a single price is in the case of mixed supply, and not in the case of composite supply. The fact that a separate charge is made for one constituent element of a composite supply does not alter the tax position of that element: whether tax is charged or not, is according to the nature and aggregate value of the supply.

19. As held in the Card Protection Case, the fact that a single price is charged is not decisive. Merely because separate prices for different goods and services is provided, it does not necessarily imply that a supply is not naturally bundled. A single consideration seems appropriate where same price is paid regardless of whether optional extras are taken unpaid. However, in all other cases, the question whether single or separate charges are made for different elements has been regarded as irrelevant.
20. Therefore, it is submitted that the fact, that the agreement has given bifurcation of cost element towards the goods portion and service portion, shall not be any basis to consider the training programme as not naturally bundled.
21. Therefore, in view of the industry practice and the expectation of state governments as recipient of supply, the understanding of the Appellant is, that all the activities performed by the private parties including the Appellant under the BOOT model are naturally bundled.
22. Further, Ld. AAR at para 3 of page 11 of the impugned ruling has held that computer training service is not pre-dominant / principal supply and the contracted supply has many distinct supply components out of which training is a small component. It may be noted that Ld. AAR has not given any reason or basis to say that training is not the principal supply in this case. It is a bald statement made without any discussion factually or legally.
23. In this regard, it is submitted that the supply undertaken by the Appellant in the instant case, is a composite supply, wherein, the principal supply is that of computer training services.
24. Section 2(90) of the CGST Act defines the term 'principal supply' to mean the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.
25. It is submitted that the supply undertaken by the Appellant in the instant case, is a composite supply, wherein, the principal supply is that of computer training services. In this regard, the Appellant places reliance on the following:
 - i. The basic infrastructure is being developed to provide computer training to the students and teachers;
 - ii. The ICT in Schools scheme has been introduced with an aim to promote computer literacy among the students and teachers;
 - iii. BOOT Model achieves the object of imparting computer training and therefore, is preferred over outright purchase of assets;
 - iv. The contract in its entirety is a service contract, goods merely being a part of it;
 - v. Payment of 20% consideration is based on the quality of performance in terms of training by the Appellant;

- vi. The cost of goods element is much less than cost of service element; and
- vii. The Appellant is not providing operation or maintenance services;

Detailed submissions in this regard are made in the following paragraphs.

- 26. As discussed in the preceding paragraphs, it is the understanding of the Appellant that all the activities performed by the private parties under the BOOT model are naturally bundled.
- 27. With the background in mind, as discussed above, the Appellant would like to highlight the fact that the basic idea of the Government of Maharashtra behind outsourcing the ICT project to the Appellant is that the Appellant should provide computer training to specific number of schools in Maharashtra for five years. Further, to be able to impart such computer training, the Appellant is also made responsible for creating the infrastructure in such schools, as required, which will be used by the Appellant for the first five years and thereafter by the respective schools.
- 28. It is pertinent to note that the infrastructure built by the Appellant is used by the teachers appointed by the Appellant to provide computer training to the students as well as to teachers of the government and government aided schools.
- 29. The Appellant humbly submits that the entire infrastructure is being developed for the purpose of imparting computer training which is the ultimate aim for the concerned schools and also for the Maharashtra Government and thus, supply of computer training services to the state of Maharashtra is the principal supply.
- 30. The above argument that the entire infrastructure is developed to provide computer training is also supported by the policies framed by the Central as well as the State Government in this regard.
- 31. The vision and mission statement in the new policy provides that the scheme has been introduced in schools with an aim to promote computer literacy and technologically-aided education among the students as well as teachers.
- 32. Reference is also made to the tender document issued by the Maharashtra Government for implementing ICT Projects. It provides that the whole genesis behind the project is to provide effective and quality education through ICT. This also provides that the Government is planning to set up an ICT enabled teaching environment using projector, computer-based lab for learning and reinforcement in government and government aided schools.
- 33. Besides that, the objectives laid down by the Government of Maharashtra in the tender document clearly provides that this scheme is to establish an enabling learning environment, to enable students to acquire necessary skills, to provide an effective teaching tools to the teachers and to propose an ICT lab for teaching and learning process.

34. On a careful perusal of the new policy issued by the Central Government and the objectives of the scheme laid down by the Government of Maharashtra, it is abundantly clear that the prime object behind this scheme is to promote computer literacy amongst the students and the teachers. Thus, it is evident that the main thrust under this scheme is to impart computer training and to achieve this, the Government is making provisions for ICT lab and other IT infrastructure.
35. It may be argued that in order to achieve the object of providing computer training, the Government may purchase the assets and employ the teachers from the external service provider or engage the available school teachers.
36. However, it is to be noted that the new policy suggests that the State Government(s) may choose the BOOT Model for ICT infrastructure to maximize coverage of the program in schools in the shortest possible time. The Appellant understands that the emphasis on the use of BOOT model for implementation of ICT project is for the following merits of the BOOT model:
- a. The schools covered under this project are technologically backward wherein, even the teachers are not well versed with the computer or technology. Thus, the existing teachers are incapable of imparting computer training.
 - b. The Computer/ICT is a new area which people in the education system are not familiar with, hence, the teachers themselves requires training from those who are experts or more familiar with it.
 - c. Under the BOOT model, the experts in the IT fields are engaged and thus, the schools will get the benefit of the expertise of the private IT vendors.
 - d. It takes a considerable time for the computer learning processes to stabilize and the BOOT model leverages the expertise of IT vendors for the time period enough for smooth transition.
37. Thus, for the above referred merits of the BOOT Model, the Government has encouraged the State Governments to opt it for implementing ICT Projects.
38. It is to be noted that prior to introduction of the new policy, the Government of India had amended its old policy in 2011 by issuing revised guidelines of ICT in Schools (hereinafter referred to as revised guidelines). Under its revised guidelines also, the Government has stressed upon the fact that the 'Outright Purchase Basis' or 'Direct Procurement of Hardware' by the State Governments would be the last resort. Moreover, the State Government(s) opting to implement the ICT Project under the Outright purchase method would be required to give a detailed justification as to why BOOT model is not opted.
39. It has been experienced in the past that the 'Outright Purchase of Assets' helped in creation of assets or infrastructure, but in absence of the qualified teachers or trainers, such infrastructure was never utilized for imparting education and resultantly, the assets have eventually become obsolete. Thus, it failed to achieve the object of imparting computer training to the students and teachers.

40. Therefore, keeping in mind the past experience, BOOT model is preferred and outright purchase of assets is kept as the last resort. The Appellant humbly submits that the above discussion is to bring to the notice of the Hon'ble Appellate Authority of Advance Ruling that the focus under the BOOT model and the present agreement of the Appellant with the State of Maharashtra is primarily on the provision of quality computer training for 5 years and that the creation / supply of infrastructure is only a means to provide quality computer training for 5 years.
41. As held in the Card Protection Case, a service must be regarded as ancillary to a principal service, if it does not constitute for customers an aim in itself. In view of the above, it can be said that provision of goods / creation of infrastructure alone is not an aim in itself for the Government of Maharashtra and that the same will be useful for the schools only if the Appellant is there for initial period to operate them and use them for providing computer training to students and teachers.
42. The Appellant submits that the contract in its entirety is a service contract, goods merely being a part of it. Para 4.1 of the agreement specifically provides that the agreement is for supply of computer education and computer aided learning / education services in specified schools on BOOT basis. A perusal of this clause is the essence of the entire agreement- that the same has been entered into for providing education services. Thus, even if there is an involvement of goods in supply of services, services form principal element of supply. The Appellant wishes to place reliance on the decision of Hon'ble Customs, Excise & Service Tax Appellate Tribunal in the case of **Avadhi Computers Pvt. Ltd. vs. CCE, Mangalore** reported at **2016 (46) STR 429** wherein, it was held that the doctrine of substance prevails over words. Thus, it is clear that at the time of interpreting an agreement, the intent and substance should prevail over the words incorporated therein. In the instant case, it is evident that the Central Government always intended to provide training services to the school students as well as teachers.
43. Para 6.1 of the agreement provides that the Appellant is required to provide computer education services, and at para 6.2 it is mentioned that the equipment is provided for computer education. Further, para 5 of the agreement provides the scheme of implementation of the agreement and the activities to be undertaken on part of the Appellant. It starts with the phrase 'for conducting the education delivery services', which clearly indicates that the main aim is to deliver education services for which various goods have to be supplied and a computer lab to be created. Also, para 8 of the agreement provides that the Appellant is required to provide one faculty member for each school to provide computer education.
44. Para 7.2 of the agreement provides that the Appellant shall receive performance-based payment which shall be 20% of the entire consideration. A schedule of payment is provided at para 7 of the agreement according to which the Appellant would get paid in terms of percentage of students who pass the computer subject. If 70% or more students pass the computer subject, only then will the Appellant get

100% payment, and as the percentage of students passing the subject decreases, payment to the Appellant also decreases. This speaks volumes about the crux of the agreement and establishes that the entire agreement is centred around providing quality computer education services, and not on providing hardware.

45. Para 3 of revised guidelines issued by MHRD provides individual details of each component. It provides that the total capital expenditure (non-recurring) is Rs. 6,40,00,000 and total recurring expenditure during the course of contract period is Rs. 13,50,00,000 (Rs. 2,70,00,000 * 5). While the capital expenditure is merely 32.16%, the total recurring expenditure is 67.83% of the total cost. This clearly establishes the fact that the cost of goods is much less than cost of services, thereby indicating that supply of services is the principal supply
46. It is to be noted that in terms of the agreement, during the period of contract (i.e. 5 years), the operation and maintenance of the entire IT infrastructure equipment is to be carried out by the Appellant on its own cost. It is to be noted that during this period, the ownership of the equipment and infrastructure remains with the Appellant. This can be inferred from the following terms of the contract:
 - a. during the period of contract, the equipment, infrastructure, etc. are to be maintained by the Appellant at its own cost.
 - b. it is the responsibility of the Appellant to obtain necessary insurance for the equipment, infrastructure, etc. Thus, for the entire contract period, the risk remains with the Appellant.
 - c. the ownership of the ICT labs and all other infrastructure will be transferred by the Appellant to the DE(S&HS) at a nominal value of Re. 1/- at the end of the contract period i.e. 5 years.
47. Therefore, the above referred terms of the agreement clearly establish that during the period of contract, the ownership of the equipment and infrastructure lies with the Appellant.
48. As the entire infrastructure is owned by the Appellant, the activities of maintenance or operation of the infrastructure, hardware, software, etc. carried out by the Appellant are with regard to self-owned equipment. Thus, it cannot be said that the Appellant is engaged in the supply of operation or maintenance services in as much as operation or maintenance of self-owned equipment does not amount to supply of services to third party.
49. Reliance in this regard is placed on the decision of **CMS (I) operations and Maintenance Co. Pvt. Ltd. vs. CCE, Pondicherry** reported at 2007 (7) STR 369 (Tri.-Chennai), wherein, the Hon'ble Customs, Excise & Service Tax Appellate Tribunal held that the maintenance or repair services undertaken by CMS cannot be taxed under 'Management, Maintenance or Repair service' inasmuch as the same are undertaken in respect of the self-owned goods and would amount to self-service. This view of the Tribunal was upheld by the Hon'ble Supreme Court in **CCE**,

Pondicherry vs. CMS (I) operations and Maintenance Co. Pvt. Ltd reported at 2017 (4) GSTL J75 (SC).

50. Thus, in view of the above discussion it is clear that the entire infrastructure is owned by the Appellant and the repair and maintenance activities undertaken by the Appellant are in regard to the self-owned equipment. Therefore, there is no supply of maintenance or operation services by the Appellant.
51. In fact, the repair and maintenance of the equipment and infrastructure is performed by the Appellant so that it may continue to provide computer training during the contract period in a smooth manner, without any obstruction.
52. At this juncture, it is also essential to analyse whether all the above referred activities carried out by the Appellant would qualify as supply of services 'under the training program' or not?
53. In order to answer this question, it is pertinent to understand the true nature, scope and extent of the activities undertaken by the Appellant in the implementation of ICT Project under the ICT in Schools scheme.
54. It is pertinent to note that the term '**training**' used in the above referred Entry No. 72 has not been defined in the Notification No. 12/2017- C.T. (Rate). Further, this term is also not defined in the CGST/SGST Act as well as CGST/SGST Rules. It is to be noted that the impugned order has not disputed that the Appellant is providing training services.
55. The Appellant submits that it is a settled principle of law that to understand meaning of any word used in a statute, but not defined therein, reference can be made to the meaning given in a dictionary. Reliance in this regard can be placed on the decision of Hon'ble Apex Court in the case of **C.C. (General), New Delhi vs. Perstorp Electronics Ltd.**, reported at 2005 (186) ELT 532 (SC). The relevant portion of the said decision is as under:

"50. In our opinion, the Counsel is right in submitting that when the expression 'book' is not defined in the Act, natural and ordinary meaning of the said expression must be kept in view."

56. In view of the above, to understand the meaning and scope of the term 'training', the Appellant is relying on the dictionary meaning of the term 'training' as under:

(i) *P. RamanathaAiyar's The Law Lexicon – The Encyclopaedic Law Dictionary*

Train: To make fit by study, exercise and proper guidance.

Training: Training means systematic instructions.

(ii) *Collins Cobuild English Dictionary for Advanced Learners*

Training: Training is the process of learning the skills that you need for a particular job or activity.

(iii) *The New Lexicon Webster's Dictionary*

Train: to make a person or animal efficient in some activity by instruction and repeated practice.

Training: instruction and practice in a particular skill, first aid training.

(iv) *Chambers English Dictionary*

Training: practical education in any profession, art, or handicraft;

(v) *Oxford Dictionary of English, third edition*

Training means the action of teaching a person or animal a particular skill or type of behaviour

57. On a careful perusal of the above referred dictionary meanings, it is evident that in common parlance, training is generally used to refer to practical instruction or learning process. It also means practical guidance given for developing skills or the action of teaching or giving instruction in a particular subject to enhance skills.
58. It is to be noted that under the erstwhile service tax regime, services in the nature of commercial training and coaching provided by commercial training and coaching institutes were taxable and the term 'commercial training and coaching' was also defined under the Finance Act (both under the positive and negative regime). Further, the courts had, at various occasions, interpreted the term 'training' used therein.
59. In this regard, reference is made to the decision of Hon'ble Customs, Excise & Service Tax Appellate Tribunal (Larger Bench) in the case of **Great Lake Institute of Management Ltd. vs. CST, Chennai** reported at **2013 (32) STR 305**. In the said case, the Tribunal interpreted the definition of the term 'commercial training or coaching institute' to include any institute or establishment imparting skills/knowledge/lessons on any subject or field. Relevant extract of the judgment is reproduced below for ready reference:

14. The other facet of the definition, of 'commercial training or coaching centre' in Section 65(27) defines the expression with reference to the nature and objectives of the activity pursued by a commercial training or coaching centre. In this definitional regime, training or coaching for imparting skill, knowledge or lessons on any subject or

field constitutes commercial training or coaching. Though complexly drafted, this part of the definition seeks to define the contours of 'training or coaching' in the very provision and an identical expression employed in Section 65(27) as well. From the legislated definition, training or coaching therefore means imparting skill, knowledge or lessons on any subject or field. Parliament has not restricted the scope of 'training or coaching' as is defined, by super adding any conditions such as in terms of pedagogic methodology, course or training content, syllabus, duration, periodicity, tenure/duration or like conditions. Where legislature cuts with a wide blade, absent a constitutional basis, we discern no scope for introducing restrictions by employing an inappropriate, unwarranted and therefore a counter-majoritarian device, of restrictive interpretation. Where a legislatively mandated definition is available, it is impermissible to look to extra-textual guidance.

(Emphasis Supplied)

60. In the instant case, the Appellant is engaged in imparting computer skills to the students as well as teachers. As far as students are concerned, they are taught computer as a subject wherein, various skills viz. operation of computers, using MS-Office, internet, etc. are given to them. Besides that, even teachers are given skills in regard to computer-aided learning.
61. It is to be noted that the activities of the Appellant are restricted to providing skills to the teachers as well as to the students in a particular subject i.e. computer. Thus, these activities would qualify as training services.
62. Further, in the case of **Great Lake Institute of Management Ltd. (supra)**, the Hon'ble Tribunal also observed that Parliament has not restricted the scope of training or coaching as is defined, by super adding any conditions such as in terms of pedagogic methodology, course or training content, syllabus, duration, periodicity, tenure/duration or like conditions.
63. Similarly, Entry No. 72 of Notification No. 12/2017- C.T. (Rate), also provides that the benefit of NIL rate would be available to all services under a training programme. Notably, the term 'training' used therein, is neither defined nor qualified by adding any conditions viz. content, syllabus, periodicity, etc. Thus, once it is established that the services are in the nature of imparting skills or knowledge, the same would amount to training services for the purpose of Entry No. 72 of Notification No. 12/2017- C.T. (Rate).
64. It is already discussed in detail that the Appellant is engaged in providing computer related skills to the students as well as to the teachers. Thus, it is abundantly clear that the services provided by the Appellant viz. computer related training to the students as well as teachers under ICT Project would squarely fall within the ambit of

the term 'training' used in Entry No. 72 of Notification No. 12/2017- C.T. (Rate), irrespective of the tenure, syllabus, content, etc. of the Project.

65. In view of the above, the Appellant humbly submits that the supply of various elements of goods and training services being supplied by the Appellant under the ICT @ School project are naturally bundled supplied in conjunction, with training services being the principal supply. Therefore, according to the Appellant, the Appellant is rendering composite supply to the Government of Maharashtra wherein, provision of computer training is the principal supply.
66. According to Section 8 of the CGST Act, tax liability on a composite or a mixed supply shall be determined in the following manner, namely:
- i. a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
 - ii. a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.
67. Therefore, if benefit of exemption under notification is available to a supply, which is principal supply in a transaction, then the benefit shall also extend to the ancillary supply, unless specifically excluded under the notification. The following paragraphs provide detailed discussion in this regard.
68. In light of the above, it emerges that in case the other supplies made under the agreement constitute a composite supply, the predominant element being the exempt supply of services to the government, the entire bundle, *i.e.* the composite supply, shall be treated as supply of service and therefore, be exempt from GST.
Without prejudice, no condition absent in the notification can be read into it
69. Entry No. 72, at Column 3 of Notification No. 12/2017- C.T. (Rate), reads as 'Services provided.....' On a plain reading of the entry, it becomes clear that in order to avail benefit of exemption from payment of GST, one must provide 'services'.
70. It is pertinent to note that Entry No. 72 does not provide exemption benefit *exclusively* to services to the extent that if goods are supplied in conjunction with services, exemption shall be denied. It is submitted that addition or super imposition of condition in an exemption notification which does not *prima facie* exist in the said notification has been held to be untenable and illegal in plethora of cases.
71. In case of **Commissioner of Central Excise, Surat-I vs. Favourite Industries** reported at **2012 (278) ELT 145 (S.C.)**, it was held by the Hon'ble Supreme Court that exemption notification has to be interpreted strictly and there should be no addition and subtraction to the language of the notification.
72. It is a settled legal position that non-existing conditions cannot be added in notifications to deny exemption. Larger Bench of the Hon'ble Supreme Court in the case of **Sri Sathya Sai Institute of Higher Medical Sciences vs. Union of India** reported at **2003 (158) E.L.T. 675 (S.C.)**, has held that no courts can impose additional conditions which are not provided for in the exemption notification. It was

observed specifically that grant of an exemption is the prerogative of the legislature and hence it is for the legislature to impose appropriate conditions for availing the benefit of an exemption notification and not other authorities.

73. Reliance is also placed on ***Kohinoor Reclamations vs. C.C.Ex*** reported at **2017 (358) E.L.T. 307 (Tri. - Chan.)**, wherein it was held that when a notification does not specify a particular condition, the same cannot be read into it.
74. Further, in various judicial pronouncements it has been repeatedly held that an assessee shall be entitled to benefit of an exemption notification if he satisfies the eligibility criteria and such benefit cannot be deprived by resorting to an imperative process and by reading any condition into the exemption notification. Following are some judicial decision holding the abovementioned principle:
- i. ***Maheshwari Solvent Extraction Ltd. vs Commr. of C. Ex., Nagpur*** reported at **2014 (299) E.L.T. 116 (Tri. - Mumbai)**
 - ii. ***Commissioner of Customs (Preventive.), Amritsar vs. Malwa Industries Ltd.***, reported at **2009 (235) E.L.T. 214 (S.C.)**
 - iii. ***Commissioner of Central Excise vs. Himalayan Co-op Milk Product Union Ltd.*** reported at **2000 (8) SCC 642**
75. It is undisputed that Notification No. 12/2017-C.T. (Rate) has been made available in respect of services provided to the Central Government, State Government, Union Territory administration. There is nothing in the notification that affords the interpretation that benefit of exemption shall be available in cases where only services are provided, or that benefit of exemption shall not be available in cases where goods along with services are provided.
76. Therefore, basis the abovementioned judicial decisions and a perusal of conditions entailed in Notification No. 12/2017-C.T. (Rate), it may be concluded that the impugned order has erred in denying the Appellant the benefit of exemption basis conditions absent in the notification itself.
77. Further, Ld. AAR at para 3 of page 11 of the impugned ruling, has relied on Para 1 (c) of Schedule II of CGST / SGST Act and held that Appellant's case involves supply of goods and not supply of service. Para 1(c) of Schedule II of the CGST / SGST Act provides as follows:
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.*
- a. In this regard, the Appellant humbly submits that supply under the ICT Project involves supply of goods as well as supply of services, and whilst supply of services is the principal supply, supply of goods is merely an ancillary supply. As submitted above, in case of composite supply, ancillary supply takes the color of principal supply and the tax treatment of principal

supply is applied to ancillary supply. It is to be noted that if at all, Schedule II(1)(c) relates only to the ancillary supply in this case and thus cannot decide the nature / tax treatment of the entire transaction / composite supply. The Appellant understands that discussion of Schedule II(1)(c) is not relevant here. Thus, in the present case, the entire supply (composite supply) is to be treated as the principal supply which is computer training services under the agreement.

- b. Also, Schedule II(1)(c) requires payment of full consideration for title in goods to transfer at a future date. In the present case, the agreement stipulates payment of Re. 1/- which cannot be considered as full consideration. For this reason also, Schedule II(1)(c) does not find application in the present case.

- 78. It is humbly submitted that the decision in the present case is not a reasoned decision against the grounds of application submitted by the Appellant, hence, the impugned ruling is unsustainable and is liable to be set aside.
- 79. Second pre-requisite: Services are provided to the Government of State of Maharashtra
- 80. The second pre-requisite of Entry No. 72 of Notification No. 12/2017- C.T. (Rate) is that the services are to be provided to the Central Government or State Government or Union Territory administration. In the instant case, the agreement pertaining to implementation of ICT Project is entered into between the Appellant and the DE (S&HS).
- 81. It is also apparent from the definition clause of the agreement which provides that director means the Director of Education (Secondary and Higher Secondary), Maharashtra State that is acting on behalf of the Government of Maharashtra as the implementing officer in respect of ICT Project in the State of Maharashtra. Therefore, it is clear that the DE(S&HS) is an implementing authority acting on behalf of the State of Maharashtra for implementation of ICT Project. Thus, the Appellant is providing services to the Government of State of Maharashtra.
- 82. In view of the above, it is abundantly clear that the Appellant is engaged in providing computer training services to the Government of Maharashtra. Therefore, the second pre-requisite of the Entry No. 72 of Notification No. 12/2017- C.T. (Rate) is also fulfilled.
- 83. The Appellant submits that in so far as this pre-requisite is concerned, even the Ld. AAR is in agreement with the Appellant and has given no adverse finding in this regard.
- 84. Third pre-requisite: The entire expenditure is borne by the Central Government and the State Government of Maharashtra
- 85. Further, the third pre-requisite of Entry No. 72 of Notification No. 12/2017- C.T. (Rate) is that the entire expenditure is to be borne by the Central or State Government or the Union Territory administration. As per Para 3.1.3 of the revised

guidelines, the total expenditure on this programme is borne by the Central and State/UT Government in the ratio of 75:25, except for the NER states including Sikkim where the ratio is 90:10.

86. Therefore, the third pre-requisite of the Entry No. 72 of Notification No. 12/2017 is also fulfilled.
87. The Appellant submits that in so far as this pre-requisite is concerned, even the Ld. AAR is in agreement with the Appellant and has given no adverse finding in this regard.

PERSONAL HEARING

88. A personal hearing in the matter was conducted on 16.01.2019, where Shri Kalpesh Shah, appearing on behalf of the Appellant, reiterated their written submissions made before the Appellate Authority at the time of the appeal and Shri Ramesh shendge, Dy. Commissioner argued in the capacity of the Jurisdictional Officer as the respondent in the case.

DISCUSSION AND FINDINGS

89. We have perused the records of the file and have gone through the facts of the case and the oral and written submissions made by the appellant as well as the department's representative. We have also gone through the Advance Ruling Order passed by the AAR.

90. The appellant is a social infrastructure arm of IL & FS Group and is engaged in key areas of educational skill development, health care and cluster development for a long term. The appellant is also working with various State and Union Territory Governments to promote computer training amongst the students and teachers of the Government and Government aided higher secondary schools under the Information and Communication Technology project (hereinafter referred to as ICT project) in accordance with the National Policy of Education. It is seen from the documents produced by the appellant that the National Policy of ICT school was framed in the year 2012 and the aim of the policy is to transform all government and government aided schools into smart schools where each school would have a computer lab and students are provided with computer training. For the effective implementation of the project, the policy allows the State or Union Territory Governments to take on private partners and implement the ICT project by adopting the BOOT- "Build, own, operate and transfer" model. The project also has to be implemented based on the guidelines issued by the Central Government.

91. The impugned appeal concerns one such ICT project being implemented by the appellant in the State of Maharashtra. The appellant filed an application for Advance Ruling on the issue of determination of applicability of Entry No.72 of Notification No.12/2017.

The appellant explained that the activity undertaken by him would be covered by the scope of Entry No.72 of Notification No.12/2017 for the following reasons:-

- a) The services are provided under the training program.
- b) The services are provided to the government of State of Maharashtra.
- c) The entire expenditure are borne by the Central Government and the State Government of Maharashtra.

92. The AAR held that supplies of goods and services by the appellant to Director of Education will not qualify for exemption in terms of Entry No.72 of Notification No.12/2017. Aggrieved by the impugned ruling the appellant has filed the present appeal before us.

93. POINTS ON WHICH THE ADVANCE RULING IS BASED:

- A plain reading of the entry no.72 makes it clear that the entry covers only services provided to the Central Government etc.
- The provisions of the agreement clearly envisage supply of both goods and services and not just services. For the contract to fall under entry no.72, there should be only services rendered and no supply of goods which is not so in the present case.
- The terms and conditions of the contract make it clear that there is also a provision to create necessary infrastructure in school for implementation of the project. Hence the appellant is not just providing supply of services but also providing a composite supply of goods i.e. hardware and networking equipment, printer, scanner, computer equipment and also imparting training on the use of such equipment.
- It is a composite supply of goods and services not naturally but artificially bundled having distinctly separate components with distinct value attributable to each of its components.
- The supply is composite supply of goods and services having distinctly separate components like procurement of hardware and maintenance of the same for 5 years, supply of man power and training to the teachers. The contract is also for the supply of hardware and software along with the site preparation i.e. official flooring, furniture and fixtures, electrical equipment etc. The other part is a small component of the above.
- Regarding the contention of the appellant that there is no consideration for the transfer of the goods in question, it was concluded by the AAR that as per the part 1© of schedule-II of the SGST Act, any transfer of goods under an agreement which stipulates that property shall passed in future date is also a supply of goods.
- The AAR however, agrees with the contention of the appellant that the services are supplied to State Government and therefore one of the condition of the notification is fulfilled.

94. CONTENTIONS OF THE APPELLANT on the above points is given in the grounds of appeal which is not reproduced here for sake of repetition.

95. The facts can be conceptualized in the following manner:-

- The Director of Education invited tender notes on e-tendering to implement the ICT project in 5000 Government and Government aided higher secondary schools in the 10 identified regions in the State of Maharashtra.
- The State tender was for the supply of computer hardware and connected accessories, education software online MIS, teaching faculty and provision of IT education services. The contract under consideration is signed between Director of Education (Secondary and Higher Secondary) Maharashtra State and the appellant.
- The preamble of the agreement states that 'the aim of the agreement is to improve the quality of education in secondary and higher secondary schools of Maharashtra, supply of computer hardware, software and connected accessories, faculty and provision of IT education services in 5000 Government secondary and higher secondary school in the State of Maharashtra on BOOT basis'. The appellant has been selected for the execution of contract in three regions namely Mumbai for 500 schools, Mumbai (OMCGM) for 394 schools and Pune for 696 schools, totaling to 1590 schools for value of 284 crores.
- The contract is for a period of five years from the date of commencement of the classes from Go-Live.
- The minimum requirement of as per Clause No.2.1 of the project proposal is of supplying computer hardware and connected accessories and also providing text based educational software, computer educational software, online management dash board for standard 5th to standard 12th for a contract policy of 5 years. It also involves setting up of computer lab with 10 computers. It further includes provision of hardware, software and necessary infrastructure such as electrification, LAN cabling and fire. All the above are minimum specifications. The second major requirement is procurement, customization and deployment of various software. The software will have to be text book based software for standard 5th to standard 10th. The computer software would be installed in each computer in all the labs in Marathi language. It also includes deployment and maintenance of school management software to admit the administrative aspects of a school.
- Clause 2.3 of the project proposal deals with the training and it incorporates training to at least 5 teachers per school for a period of 10 days for normal operation, installing and use of the text book software, computer education software etc. The teachers' manual is made available to all trainee teachers. It also includes provisions of one full time instructor at each school.
- It is also the responsibility of the appellant to maintain the ICT Lab in proper working condition for the entire contract department at its own cost. The appellant is also

required to appoint a help desk which will serve as a single point of contact for all ICT related instances and service requests.

- As per the payment terms laid down in 7.1 of the agreement, 30% payment will be made on satisfactory commissioning and installation of hardware and delivery and installation of education related software at each school within 120 days from the date of agreement. 5% will be made every semester and the balance 20% payment will be made based on the performance of student in the annual examination of the computer to be conducted by the Government of Maharashtra. (Every year the appellant will be eligible for 4% payment through this mechanism).
- As per point 9 of the agreement, after completion of the contract policy of 5 years, the equipment installed and commissioned would be the property of Director of Education and the contractor shall handover all the hardware and software at the end of 5 years.
- The total consideration is of Rs.2,84,61,00,000/-.

96. A plain reading of the Notification No.72 shows that the benefit of exemption will be given only on the fulfillment of the following three conditions

- i) Services would have to be given under any training program.
- ii) To the Central Government, State Government, Union Territory Administration.
- iii) Where the total expenditure is borne by the Central Government, State Government, Union Territory Administration.

97. In order to be classified under the entry, it will have to be a service. Though the AAR agreed on the point that the supply is to the State Government and the expenditure is borne by the Government, it disagreed with the appellant on the issue of whether the supply is a composite supply and held that the supply is of both goods (computer hardware) and services (training) supplied together and as they are not naturally bundled, it will be a mixed supply.

98. The contention of the appellant in the present appeal is that it is a composite supply as the supply of computer hardware and training are supplied in conjunction and it is naturally bundled.

99. As per Section 2(30) a supply will be a composite supply only when it is naturally bundled. We understand that what the AAR wanted to say that the supply is a composite supply of two items but is not naturally bundled. However, we do not agree with the AAR on this aspect. A supply is a composite supply if it fulfills the following criteria:-

100. The Education Guide, at para 9.2.4, clarifies that whether services are naturally bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the field of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators, a few of which are listed below –

- a. The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.
- b. Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- c. The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.
- d. Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –
 - (i) There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - (ii) The elements are normally advertised as a package.
 - (iii) The different elements are not available separately.
- e. No straight formula has been laid down to determine whether any two services are naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors outlined above.

101. We agree with the appellant that the supply involves both goods and training services and is a composite supply fulfilling the requirements of Section 2(30) of the CGST Act. We see that the Government of India in its nationwide policy called the National Policy on Education, 1986, stressed the need to employ information technology to improve the quality of education. This was the old policy which included schemes like computer literacy and studies in school and educational technology. Subsequently, the HRD Ministry revised its old policy and a new nationwide ICT scheme (Information and Communication Technology in School) was introduced to replace the earlier scheme. Thereafter, in the year 2012, the Department of School Education and Literacy framed guidelines under the National Policy on ICT in school. As quoted earlier, 'the aim of ICT is to transform all government and government aided schools into smart schools where each school shall have a computer lab and students are provided with computer training'. In addition to computer training, ICT also provides for management of use of digital medium to impart education in school. Further as per the guidelines, the State or Union Territory government may consider entry of private partners in the ICT project by adopting the BOOT Model. The appellant has stated that ICT projects are being implemented all over the country in various States.

102. The website of the Ministry of Human Resource Development mhrd.gov.in says the following about the ICT scheme.

..”The Information and Communication Technology (ICT) in schools have been subsumed in the Rashtriya Madhyamik Shiksha Abhiyan (RMSA). Now ICT in Schools is a component of the RMSA. **The Information and Communication Technology (ICT) in Schools was launched in December, 2004 and revised in 2010 to provide opportunities to secondary stage students to mainly build their capacity on ICT skills and make them learn through computer aided learning process. The Scheme is a major catalyst to bridge the digital divide amongst students of various socio economic and other geographical barriers. The Scheme provides support to States/UTs to establish computer labs on sustainable basis*.(****emphasis added***)**

The scheme has essentially four components:-

- The first one is the partnership with State Government and Union Territories Administrations for providing computer aided education to Secondary and Higher Secondary Government and Government aided schools.
- The second is the establishment of smart schools, which shall be technology demonstrators.
- The third component is teacher related interventions, such as provision for engagement of an exclusive teacher, capacity enhancement of all teachers in ICT and a scheme for national ICT award as a means of motivation.
- Fourth one relates to the development of an e-content, mainly through Central Institute of Education Technologies (CIET), six State Institutes of Education Technologies (SIETs) and 5 Regional Institutes of Education (RIEs), as also through outsourcing.”

Thus, what can be seen from the above is that it is a Central Government driven project and the training along with supply of computers is an inherent part of the project and the project is imagined as such. Therefore, a major pre-requisite for a supply to be a composite supply- that the said bundle should be naturally bundled- is satisfied here. The supply of computers along with training is itself envisaged and conceived as such by the Ministry of Human Resorces Development and therefore by its very nature, the supply can be said to be naturally bundled.

103. The fact that the ICT project is being implemented on similar lines in the States is brought out from the following news items on the Net:-

PUDUCHERRY

Computer-based education in government schools in the Union Territory will now get a fillip with the Department of School Education launching the ICT@schools project, a Central scheme after a gap of 10 years.

IL&FS Education and Technology Services Limited has been selected for the supply of computers, education software and other management systems.

This is the second phase of the ICT@schools scheme being implemented by the Centre in partnership with States and Union Territories across the country. The first phase of the scheme was implemented during 2006-07 and covered 25 schools.(Feb 2016)

CHHATTISGARH

The Chhattisgarh government has rolled out an ambitious programme under 'Information and Communication Technology' (ICT) project to provide computer education in a total of 1,900 Government Higher Secondary schools in the State.

The ICT project is already under implementation in a total of 653 schools located in Raipur, Baloda Bazar, Mahasamund, Dhamtari, Gariaband, Bilaspur, Mungeli and Kabirdham districts. On Monday, School Education Minister Brijmohan Agrawal inaugurated an ICT project at Nagar Mata Binni Bai Government Higher Secondary school at Bhatagaon.(Aug, 2013)

MADHYA PRADESH

Madhya Pradesh ICT@Schools Programme: The state announced its tender this year for Computer Education in schools for ICT Hardware, software and manpower for maintenance and training to be installed in its government schools based on build-own-operate and transfer (BOOT) model for five years. The Request For Qualification (RFQ) details out the ICT infrastructure and faculty requirements to be met by the bidder.(Aug, 2008)

KARNATAKA

The Department of Public Instruction, Government of Karnataka and Ministry of Human Resource Development, Government of India, have initiated an ICT programme for all the high schools of the state. This entire programme, including the classroom training, has been outsourced. However, our research suggests that vendors are finding it challenging to impart an ICT based education in the schools. (Oct, 2010)

ODISHA

The ICT@school scheme of E-Vidyalayaprogramme has been started under Odisha MadhyamikSikshya Mission (OMSM) and aims to reach 4,000 government schools in the first phase and an additional 2,000 government schools in the second phase. An amount of around Rs 746 crore has been demarcated for the project. Special training will also be imparted to teachers to help them in using new facilities to their full extent.(Aug, 2014)

104. It is seen by us that the present agreement under consideration is also one such **ICT project**. The contract is for implementation of computer education program and the preamble also states that BOOT Model is envisaged under **ICT school scheme** under public-private partnership. Thus, the agreement is in consonance with the national guidelines on computer aided education. It satisfies the criteria of composite supply in the sense that it is an established scheme or a method of training done as per national policy and having government mandate behind it. The ICT scheme is itself introduced with aim to promote computer literacy. The BOOT Model is implemented as the State Government does not have the wherewithal to purchase computer related assets and conduct the imparting of computer training while maintaining and constantly upgrading the content.

105. Further, the perception of consumers is also important here. The consumer here is the Education Department and it accepts these services in a package. The model implemented by the appellant is being followed all over the country. Therefore, it can also be said that the consumer accepts such services provided as a package. All ICT projects have the participation of private parties under the BOOT Model wherein all the activities including supply, installation, commissioning, operation and computer training are to be performed by such private parties. The competitors of the appellant are also providing similar bundle of services.

106. In all such contracts the activities are undertaken by a single party and performance of different activities by different people is not envisaged. All the elements are advertised as a package and the appellant does not provide different elements separately. We also agree with the appellant that a single price is not a mandatory requirement in case of a composite supply. As per section 2(74) of the CGST Act, the requirement of a single price is in the case of mixed supply and not in the case of composite supply. The fact that the separate charge is made for each constituent elements of composite supply does not alter the tax position.

107. Now that we have agreed that the said supply is a composite supply, it has to be decided as to what constitutes the principal supply. We agree with the appellant that the principal supply is that of computer training services. The agreement in the present case is between ILFS Education and Technology Services Ltd. and the Director of Education. The Preamble to the agreement states that the purpose of the agreement is to **improve the quality of education in Secondary and Higher Secondary School of Maharashtra**. Even if there is an associated supply of computer hardware and software and connected accessories, it is clear from the preamble itself that the intention is of 'education of students'.

108. The website of the appellant shows that the company is primarily in the field of education. The motto of the company is described as follows:-

"ILFS Education and Technology Services Ltd. aspire for quality in education along with Profound Societal Impact. As catalysts, we facilitate education to transform and create a sustainable impact. Education is a passion for us and

not just a business. We improve the quality, reach and delivery of education to the masses using pedagogy and technology. Our partnership with the Government, Educational Institutions and International Agencies ensures maximum reach and hence impact.'

109. The above motto shows that company is in the field of education and its expertise lies in combining education with technology. However, this will not imply that providing technology is the aim of the company – it only makes the imparting of education easier. It is imparting education with transformative solutions. The solutions provided by them in educational institutions involve the supply of technology along with education.

110. We have also gone through the Agreement of the appellant with the Director of Education. Clause 4.0 of the agreement shows that the contract is for 'provision for computer education including equipment for the same'. Clause 4.1 read thus - **"The contractor shall provide computer education** and computer aided learning education services in 1950 schools in 3 identified regions in the State of Maharashtra on BOOT basis. Though clause 5 shows that hardware has to be installed by the contractor, the contractor also provides contents for education which will be as per the syllabus provided by the Director of Pune. Clause 6 of the agreement also shows that the contractor shall provide computer education services. Clause 8 deals with the provision of faculty. The contractor has to provide faculty members to provide computer education and also assign the subject teachers for providing computer education. There would be a one full time instructor in each school, who shall be available for entire duration of the school and impart computer aided learning to at-least 5 school teachers. Clause 8.3 further stresses that technical training will be given to subject teachers for operation, installation and use of text book based educational software, computer education software, additional education software, school management software and common software application. Clause 13 says that the student shall not be charged any fees by the contractor for providing computer education and computer aided learning by the contractor under this contract.

111. Thus, what we see from the reading of the above clauses is that the training provided by the appellant is advanced training or training aided by technology which helps in easy delivery of the contents to the student through visual mediums. The project is nothing but a training project aided by technology. Merely because hardware and software is provided by the appellant, it does not mean that the training to be done is not a principal supply.

112. In view of the above discussion, we pass the following order-

ORDER

We modify the ruling pronounced by the Advance Ruling Authority vide their Order no ARA-48/2017-18/B-55 dated 25.06.2018 and hold that the supplies of goods and services by the appellant to the Director of Education (S & HS) qualifies for exemption in term of Entry No 72 of Notification No 12/2017 – C.T (Rate).



(RAJIV JALOTA)
MEMBER



(SUNGITA SHARMA)
MEMBER

- Copy to-
1. The Appellant
 2. The AAR, Maharashtra
 3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
 4. The Commissioner of State Tax, Maharashtra
 5. The Commissioner CGST, Navi Mumbai.
 6. The Jurisdictional Officer
 7. The Web Manager, WWW.GSTCOUNCIL.GOV.IN
 8. Office copy