

THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING
OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW,
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

BEFORE THE BENCH OF

(1) Shri V.K. SAXENA, MEMBER

(2) Shri D.P. AHUJA, MEMBER

ORDER NO. MP/AAAR/01/2019/02

DATE : 02.02.2019

Name and address of the appellant	INDIAN INSTITUTE OF MANAGEMENT PRABANDH SHIKHAR, RAU-PITHAMPUR ROAD INDORE(M.P.)-453556
GSTIN or User ID	23AAAJI0057R1Z3
Advance Ruling Order against which Appeal is filed	14/2018/A.A.R./R-28/37 dated 10-08-2018

PROCEEDINGS

(under section 101 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh 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 MPGST 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 MPGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MPGST Act"] by Indian Institute of Management (hereinafter referred to as the "Appellant") against the Advance Ruling No. 14/2018/A.A.R./R-28/37 dated 10.08.2018.

The appeal was filed without depositing the requisite fees, hence a notice dated 26-11-2018 was issued to the appellant to deposit the requisite fees. Appellant replied that there was no functionality available on the GSTN portal wherein the assessee could appropriate the amount already available in his cash ledger towards fees for appeal. Further on dated 04-01-2019 appellant informed that the fee amount by filing of form DRC-03 on online portal has been appropriated. Appellant has appropriated Rs. 20,000/- towards appeal.

The appellant also submitted that the issue of taxability or otherwise of the Executive Post Graduate Programme (EPGP) course, which is the matter in the impugned appeal has been clarified in favor of the applicant. Following documents are referred -





- (a) Minutes of 31st GST Council meeting on 22.12.2018
- (b) Notification no. 28/2018-Central Tax (Rate), 31.12.2018
- (c) Circular No. 82/01/2019, dated 01-01-2019

BRIEF FACTS OF THE CASE

1. Indian Institute of Management Indore (referred as "Appellant" for brevity) is one of the nineteen Indian Institute of Managements set up to provide high quality management education in India. Appellant was established in 1996 by Government of India as a registered Society under Madhya Pradesh Societies Registration Act, 1973 and is governed by a Board of Governors (BoG).
2. Appellant is providing various types of courses, some of which are explicitly exempted under GST by virtue of entry no. 67 of Notification 12/2017 - Central Tax (Rate) dated 28-Jun-2018 with no specific exemption to fees towards other courses including Executive Post Graduate Programme (EPGP).
3. The Executive Post Graduate Programme in Management (EPGP) is an intensive one-year full time academic programme of IIM Indore. It consists of a fully developed curriculum of core & elective courses which is approved by the academic council of the Institute. Participants who meet the academic requirement are awarded Executive Post Graduate Diploma at the annual convocation of the Institute alongwith other degree & diploma programmes. It is a diploma course specially designed to enhance knowledge, skills and capabilities essential for managing and leading organizations, the programme combines skill building with exploration of good management practices.
4. Notification No. 11/2017-Central Tax (Rate) dated 28-Jun-2018 provides for CGST rate of tax on intra-supply CGST rate with similar rate in SGST, thereby effective rate being 18% (9%+9%)



5. Further notification no. 12/2017-Central Tax (Rate) dated 28-Jun-2018 provides for exemption from CGST on intra-state supply as follows :

Services provided by educational Institutions

Sl. No.	Chapter, Section, Heading, Group of Service Code (Tariff)	Description of Services	Rate (percent.)	Condition
(1)	(2)	(3)	(4)	(5)
66	Heading 9992	<p>Services provided -</p> <p>by and educational institution to its students, faculty and staff ;</p> <p>to an educational institution, by way of, -</p> <p>(i) transportation of students, faculty and staff;</p> <p>(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</p> <p>(iii) security or cleaning or house-keeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary ;</p> <p>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 up to higher secondary school or equivalent.</p>	Nil	Nil

Services provided by Indian Institute of Management

67	Heading 9992	<p>Services provided by the Indian Institutes of management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme :-</p> <p>(a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;</p>	Nil	Nil
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		(b) fellow programme in Management; (c) five year integrated programme in Management.		
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6. That notification no. 12/2017-Central Tax (Rate) defines "educational institution"

as follows :

2. Definitions. - For the purposes of this notification, unless the context otherwise requires,-

(y) "**educational institution**" means an institution providing services by way of,-

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

(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;(emphasis supplied)

7. Indian Institutes of Management Act, 2017 ("IIM Act" for brevity) is promulgated w.e.f. 31-Jan-2018. As per section 7 of IIM Act, powers and functions of Institute include the following :

"(f) to grant degrees, diplomas and other academic distinctions or titles and to institute and award fellowships, scholarships, prizes and medals, honorary awards and other distinctions;"

8. In light of above facts, Appellant filed an advance ruling application regarding exemption of EPGP course under entry no. 66 of notification no. 12/2017-CT(Rate), as a result of enactment of IIM Act, 2017 and thereby forming a viewpoint that it will be covered under -

"Services provided by an education institution which inter alia provides education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force" (refer aforesaid para 6).

9. Personal hearing was granted to Appellant on 05-07-2018, thereafter the learned Authority for Advance Ruling (AAR for brevity) pronounced ruling vide Order No. 14/2018/A.A.R./R-28/37 dated 10-08-2018 stating that EPGP course conducted by Appellant shall be chargeable to GST, irrespective of enactment of IIM Act, 2017.

f.

GROUND OF APPEAL

1. The advance ruling issued by learned AAR is arbitrary and devoid of merit and substance and passed without appreciation of facts of the case.
2. The learned AAR failed to acknowledge that Appellant is empowered to grant degrees, diplomas and other academic distinctions or titles by virtue of section 7(f) of IIM Act, 2017 promulgated w.e.f. 31-Jan-2018. [recognized by law]
3. The learned AAR failed to :
 - a. Consider that after enactment of IIM Act, 2017, Appellant is squarely covered under definition of educational institution and
 - b. Conclude status of Appellant under definition of 'educational institution' to fall under the ambit of Entry No. 66. (para 5.4 of advance ruling referred)
4. The learned AAR misconstrued the exemption entry (ie) 66 and 67 to the extent that once Appellant qualifies to be an 'educational institutions' entry 67 will not apply. (para 5.5 of advance ruling referred)
5. The learned AAR has further erred in applying principle of strict interpretation' (sic), as 'rule of strict construction' can be applied only when there is ambiguity in interpretation, which is not in the instant case.
6. The learned AAR failed to appreciate that :
 - a. Before enactment of IIM Act, 2017, there was only a single exemption for Appellant in entry no. 67 of Notification No. 12/2017-CT(Rate) and education services provided by IIM were not covered under general exemption provided in entry no. 66.
 - b. However, post enactment of IIM Act, 2017, Appellant clearly falls within the parameters of exemption clause 66 u/n 12/2017-CT(Rate) read with definition to the notification.
7. As per language of notification no. 12/2017(CTR), Appellant is clearly covered under the aegis of "educational institution" as post enactment of IIM Act, 2017, the qualification conferred by it is recognized by the law in force, namely IIM Act, 2017.

PRAYER

In view of the foregoing, the prayer made by the Appellant was as under -

- a. To set aside/modified the impugned advance ruling passed by the authority for advance ruling.



b. Grant a personal hearing

c. Pass any such further or other order (s) as may be deemed fit and proper in facts and circumstances of the case.

DISCUSSION AND FINDINGS

1. We have gone through the records in detail and have taken into consideration all the submissions made by the Appellant. The short point for determination is whether the course Executive Post Graduate Programme in Management (EPGP), after enactment of IIM Act, 2017 notified w.e.f. 31-01-2018 is exempted from GST.

2. The AAR in his order dated 10-08-2018 has decided that Executive Post Graduate Programme in Management (EPGP) will not be eligible for exemption from GST as the same has been categorically excluded from exemption under entry no. 67 to the notification no. 12/2017-Central Tax (Rate) and corresponding notification under MPGST ACT, 2017. The AAR also clarified that the Executive Post Graduate Programme in Management (EPGP) conducted by the applicant shall be chargeable to GST, irrespective of enactment of IIM Act, 2017.

3. Government of India, Ministry of Finance, Department of Revenue, Tax Research Unit has issued Circular no. 82/01/2019-GST dated 01-01-2019 regarding applicability of GST on various programmes conducted by the Indian Institute of Managements (IIMs).

4. For the sake of clarity, we reproduce the relevant portions of the circular which have a bearing on the issue at hand.

4.1 The Indian Institutes of Management Act, 2018 came into force on 31st January, 2018. According to provisions of the IIM Act, all the IIMs listed in the schedule to the IIM Act are "institutions of national importance". They are empowered to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of student, and (iii) specify the academic content of programmes. Therefore, With effect from 31st January, 2018, all the IIMs are "educational institutions" as defined under notification no. 12/2017-Central Tax (Rate) dated, 28-06-2017 as they provide education a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

4.2 At present, Indian Institutes of Managements are providing various long duration programs (one year or more) for which they award diploma/degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Therefore, it is clarified that services provided by Indian Institutes of Managements to their students- in all such long duration programs (one year or more) are exempt from levy of GST. As per information received from IIM Ahmedabad, annexure 1 to this circular provides a sample list of programmes which are of long duration (one year or more), recognized by law and are exempt from GST.



4.3 For the period from 1st July, 2017 to 30th January, 2018, IIMs were not covered by the definition of educational institutions as given in notification No. 12/2107 Central Tax (Rate) dated 28-06-2017. Thus, they were not entitled to exemption under Sl. No. 66 of the said notification. However, there was specific exemption to following three programs of IIMs under Sl.No. 67 of notification No. 12/2017- Central Tax (Rate):-

(i) two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management.

(ii) fellow programme in Management,

(iii) five years integrated programme in Management.

Therefore, for the period from 1st July, 2017 to 30th January, 2018, GST exemption would be available only to three long duration programs specified above.

4.4 It is further, clarified that with effect from 31st January, 2018, all IIMs have become eligible for exemption benefit under Sl. No. 66 of notification No. 12/2017-Central Tax (Rate) dated 28-06-2017. As such, specific exemption granted to IIMs vide Sl. No. 67 has become redundant. The same has been deleted vide notification No. 28/2018-Central Tax (Rate) dated, 31st December, 2018 w.e.f. January 2019.

4.5 For the period from 31st January, 2018 to 31st December, 2018, two exemptions, i.e. under Sl. No. 66 and under Sl. No. 67 of notification No. 12/2017-Central Tax (Rate), dated 28-06-2017 are available to the IIMs. The legal position in such situation has been clarified by Hon'ble Supreme Court in many cases that if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him. Therefore, from 31st January, 2018 to 31st December, 2018, IIMs can avail exemption either under Sl. No. 66 or Sl. No. 67 of the said notification for the eligible programmes.

4.6 Indian Institutes of Managements also provide various short duration/short term programs for which they award participation certificate to the executives/professional as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of Indian Institutes of Management. Services provided by IIMs as an educational institution to such participants is not exempt from GST. Such short duration executive programs attract standard rate of GST@18% (CGST 9%+SGST 9%). As per information received from IIM Ahmedabad, annexure 2 to this circular provides a sample list of programmes which are short duration executive development programs, available for participants other than students and are not exempt from GST.

f.



4.7 Following summary table may be referred to while determining eligibility of various programs conducted by Indian Institutes of managements for exemption from GST.

Sl. No.	Periods	Programmes offered by Indian Institutes of Management	Whether exempt from GST
(1)	(2)	(3)	(4)
1	1 st July, 2017 to 30 th January, 2018	i. two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management, ii. fellow programme in Management, iii. five years integrated programme in Management	Exempt from GST
		i. One-year Post Graduate Programs for Executives. ii. Any programs other than those mentioned at Sl. No. 67 of notification No. 12/2017-Central Tax (Rate), dated 28-06-2017. iii. All short duration executive development programs or need based specially designed programs (less than one year)	Not exempt from GST
2	31 st January, 2018 onwards	All long duration programs (one year or more) conferring degree/diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one-year Post Graduate Programs for executives.	Exempt from GST
		All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law.	Not exempt from GST

4.8 Anneuxre 1 : (Programmes exempt under GST Law)

The IIM- Ahmedabad refers such persons as their students who attend long duration programmes offered by the Institute for which diplomas/degrees are awarded by the

Institute. These programmes are awarded based on the recommendation by the Board of Governors as per the power vested in them under the IIM Act, 2017. Such programmes are :

1. Post-Graduate Programme (PGP) - 2-year program
2. Post-Graduate Programme in Food and Agri-Business Management (PGP-FABM)-2-year program.
3. Fellow Programme in Management (FPM) - 4 to 5-year program
4. Post-Graduate programme in Management for executives (PGPX) - 12 months (1 year) full time program
5. ePost-Graduate Programme (ePGP)-2-year online program.

This list is an example of long duration programs recognised under IIM Act, 2017 offered by IIM Ahmedabad. Similar programs offered by other IIMs of India may kindly be referred by IIMs and tax authorities during assessment.

4.9 Annexure 2 : Programmes not exempt under GST Law

The executives/professional doing short term courses (less than one year) are considered as "participants" of the programmes of the IIM Ahmedabad.

1. Armed Forces Programme
2. Faculty Development Programme
3. Executive Education
 - a. Customized Executive Programmes
 - b. Open Enrolment Programme

This list is an example of short duration executive development programs offered by IIM Ahmedabad which are available to participants. Similar programs offered by other IIMs of India may kindly be referred by IIMs and tax authorities during assessment.

5. Thus from the above provisions of the circular, it is crystal clear that from 31st January, 2018 onwards all long duration programs (one year or more) conferring degree/diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one-year Post Graduate Programs for executives, are exempt from GST.

In view of the above discussion and findings, we pass the following order :-

ORDER

The Executive Post Graduate Programme in Management (EPGP) which is an intensive one year full time academic programme of IIM Indore, is a diploma course specially designed to enhance knowledge, skills and capabilities essential for managing and leading organizations.

Participants who meet the academic requirement are awarded Executive Post Graduate Diploma at the annual convocation of the institute alongwith other degree and diploma programmes. In the light of circular no. 82/01/2019-GST from 31st January, 2018 onwards, the one year full time Executive Post Graduate Programme in Management (EPGP) of IIM Indore is exempt from GST.



V.K. Saxena
(Member)

Madhya Pradesh Appellate Authority



D.P. Ahuja
(Member)

Madhya Pradesh Appellate Authority

No. 01/2018/A.A.A.R./..02.

Indore, dated ..2../02/2019

Copy to :-

1. The Appellant
2. The AAR, Madhya Pradesh
3. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal,
4. The Commissioner of State Tax, Madhya Pradesh,
5. The Commissioner, CGST and Central Excise, Indore
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