


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
--	---

ADVANCE RULING NO. GUJ/GAAR/R/105/2020
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/25)

Date: 05.11.2020

Name and address of the applicant	:	M/s. State Examination Board, Opposite State Government Library, Sector-21, Gandhinagar-382021.
GSTIN of the applicant	:	24AACT9590F1Z6
Date of application	:	03.07.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	<i>(b) Application of a notification issued under the provisions of this Act. (e) Determination of the liability to pay tax on any goods or services or both.</i>
Date of Personal Hearing	:	24.09.2020 (Through Video Conferencing)
Present for the applicant	:	Shri Devam Sheth C.A

BRIEF FACTS

The applicant M/s. State Examination Board is located Opposite State Government Library, Sector-21, Gandhinagar-382021. The applicant has stated that on formation of Gujarat State on 01.05.1960, a department named Education and labour department came into existence and social welfare, labour, prohibition, excise and employment were included in Education Department and later subjects were gradually taken away from the Education and Labour Department on administrative grounds; that since August, 1976, Education Department came into existence as separate secretariat department, which looks after education including primary education, continuous education, literacy education, secondary education, higher education, technical education, pharmacy education.

2. The applicant has submitted that the Policy Structure of Education Department is as under:

- (i) Continuous education and literacy are important programmes.
- (ii) Universelization of primary education for children in age group 6 to 14.
- (iii) Restriction on expansion of secondary and higher education and occupationalisation of secondary education and improvement of secondary and higher education.
- (iv) Concentration of plan and non-plan provisions and best use of investments made in education sector and the purpose of development.
- (v) Improvement in quality of implementation.

3. The applicant has submitted that in view of wide objectives, education department forms policies on education department, forms policies on education, supervises implementation and issues orders in the form of guide lines and orders and thus the Department looks after all matters concerning education. The applicant has stated that the Education Department which is one of the Departments of the Government of Gujarat has its own sub divisions like State Educational Boards namely:

- (a) Gujarat Secondary and Higher Secondary Education Board.
- (b) Gujarat State Technical Examination Board.
- (c) State Examination Board.
- (d) Gujarat State School Textbook Board.
- (e) Gujarat Council of Education Board Research and Training.
- (f) Gujarat Institute of Education Technology.

4. The applicant has submitted that one of the Boards is the State Examination Board (the applicant themselves). The applicant has stated that the State Examination Board was established by the Gujarat Education Department in November, 1966 to administer examinations at the different levels i.e. Primary, Secondary and Higher Secondary level; that this Board was declared 'autonomous' by a Notification No.1099/1081/N dated 26.10.1999 and 24.05.2000 of the Education Department in 1999 and has submitted a copy of the same; that the State Examination Board is registered under Societies Registration Act 1860 and will be applicable to the State of Gujarat and that 13 members of this Board are appointed by the Government of Gujarat; that a detailed copy of Memorandum of Association is submitted; that the details of the 13 members of the Board appointed by the Government of Gujarat are as under:

Sr.No.	Designation	Address	Occupation
01.	Chief Secretary, Government of Gujarat.	Office of Chief Secretary, Government of Gujarat, Block-1, Gandhinagar.	Govt.service.
02.	Addl. Chief Secretary, Education Department, Govt. Of Gujarat.	Addl. Chief Secretary, Education Department, Block-5, 7 th Floor, Sachivalaya, Gandhinagar.	Govt.service.
03.	Commissioner of School.	Commissioner of schools, Block-12, 2 nd Floor, Dr.Jivraj Mehta Bhavan, Gandhinagar.	Govt.service.
04.	Additional Secretary, Education Department, Government of Gujarat.	Addl. Secretary, Education Department, Block-5, 7 th Floor, Sachivalaya, Gandhinagar.	Govt.service.
05.	Deputy Secretary	Deputy Secretary, Education Department, Block-5, 7 th Floor, Sachivalaya, Gandhinagar.	Govt.service.
06.	Chairman S.E.B.	Chairman, State Examination Board, Opposite Government Library, Sector-21, Gandhinagar.	Govt.service.
07.	Director	Director of Primary Education, Block-12, 1 st Floor, Dr.Jivraj Mehta Bhavan, Gandhinagar.	Govt.service.
08.	Director	Director of Gujarat Council of Educational Research and Training, Sector-12, Gandhinagar.	Govt.service.
09.	Director	State Project Director, District Primary Education Programme.	Govt.service.
10.	Director of Examination	Director of Examination, Secondary Education Board, Sector-10, Gandhinagar.	Govt.service.
11.	Director	Director of the Board of School Text Books, Gandhinagar.	Govt.service.
12.	Field Advisor	Field Advisor, N.C.E.R.T., Ahmedabad.	Govt.service.
13.	Secretary	Secretary State Examination Board, Opp. Government Library, Sector-21, Gandhinagar.	Govt.service.

5. The applicant has submitted that the objective of the establishment of the State Examination Board is to arrange and conduct examination, graduate level and post graduate level examinations and awarding different professional Diploma and Certificates for General knowledge, knowledge of different subjects like Sports, Drawing, Architecture of the students studying in the various schools and high schools; that the main functionality to conduct examination for different aspects such as: (1) Jobs (TET, HTAT, TAT(S), TAT(HS), HMAT). (2)

Scholarships (Primary, Secondary, National Talent Search). (3) Services (Department Exam and Panchayat Class III) and (4) Certificates (Drawing, Diploma in Home Science etc.). The applicant has submitted the list of different types of examinations conducted by the State Examination Board as under:

Sr.No.	Exams	Eligibility	Benefits
01.	Diploma in Pre School Education(DPSE) – 2 years course (Old name Pre-primary)	Std.12 th passed	Course for the teacher to appoint in BAL MANDIR (Pre Primary School).
02.	Diploma in Elementary Education (D.El.Ed.)-2 years course (Old name PTC)	Std.12 th passed	Course for the teacher to appoint in Primary school(Std.1 to Std.8)
03.	Art Teacher Diploma(ATD)-2 years course.	Std.12 th passed who have Drawing subject in SSC and HSC.	Course for the drawing teacher to appoint in Primary and Secondary Schools.
04.	Applied Arts 5 years course	Std.12 th passed (who have Drawing subject in SSC and HSC) or ATD.	Course for the drawing lecturers to appoint in ATD colleges or Art colleges or Institutes.
05.	Drawing and Painting 5 years course	Std.12 th passed (who have Drawing subject in SSC and HSC) or ATD.	Course for the drawing lecturers to appoint in ATD colleges or Art colleges or Institutes.
06.	Sculpture 5 years course	Std.12 th passed (who have Drawing subject in SSC and HSC) or ATD.	Course for the drawing lecturers to appoint in ATD colleges or Art colleges or Institutes.
07.	Diploma in Home Science	Std. 12 th passed.	Self-employment.
08.	GCC Type Steno	Std. 10 th passed	GCC Type: Typist for Government office and GCC Steno: Stenographer for Government offices.
09.	Elementary Drawing Grade Exam	Std. 4 th passed	Certificate for drawing skill.
10.	Intermediate Drawing Grade Exam	Std.8 th passed	Certificate for drawing skill.
11.	Primary Scholarship Exam	Pursuing Std.6 th	Scholarship of Rs.750/- per year for Std.6,7 and 8 th .
12.	Secondary Scholarship Exam	Pursuing Std. 9 th	Scholarship of Rs.1000/- per year for Std.9 and 10 th .
13.	National Talent Search Exam Stage-1(NTSE)	Pursuing Std. 10 th	Successful Candidate in Stage-2 exam (conducted by NCERT) shall receive scholarship of Rs.1250/- per month for Std.11 th and Std.12 th , receive scholarship of Rs.2000/- for Under Graduation or Post Graduation & Ph.d by National Council of Education Research and Training, New Delhi.
14.	National Means cum Merit Scholarship-Exam(NMMS-Exam)	Pursuing Std. 8 th	Successful Candidate shall receive scholarship of Rs.1000/- per month for 10 months in a year for 4 years by Ministry of Human Resource Development, New Delhi(for Std.9, 10, 11 and 12 th).
15.	Rashtriya Indian Military College, Dehradun-Entrance Exam(RIMC-Dehradun).	Age between 11 yrs. 6 months to 13 yrs.old (Only male candidate)	Successful Candidate gets admission in Rashtriya India Military College, Dehradun.
16.	Other Department Exam	As per the Recruitment Rules of post for various departments.	1.Forest guard examination for forest department. 2.Clerk for PGVCL. 3.Jail Sipahi for Home Department.

			4.Stenographer for GIDC. 5.Environment officer and Scientific officer for GPCB. 6.CRC, BRC and URC for Education department. 7.School Inspector for Education Department.
17.	Teacher Eligibility Test-1 (TET-1)	12 th Higher Secondary(HSC) + D.El.Ed.	Eligibility test to appoint for the Job of Teacher in Primary school (Std.1 to Std.5).
18.	Teacher Eligibility Test-1 (TET-2)	Graduate + B.Ed/ D.El.Ed.	Eligibility test to appoint for the Job of Teacher in Upper Primary school (Std.6 to Std.8).
19.	Head Teacher Aptitude Test (HTAT)	Graduate + B.Ed/ D.El.Ed + 5 years experience of teaching.	Eligibility test to appoint for the Job of Teacher in Primary and Upper Primary school.
20.	Teacher Aptitude Test (TAT(Sec.))	Graduate + B.Ed.	Aptitude test to appoint for the job of Teacher in Secondary School (Std.9 to Std.10).
21.	Teacher Aptitude Test (TAT(HS))	Graduate + Post Graduate + B.Ed.	Aptitude test to appoint for the job of Teacher in Higher Secondary School (Std.11 to Std.12).
22.	Head Master Aptitude Test (HMAT)	Teacher of Government/Granted School with more than 7 years.	Aptitude test to appoint for the job of Head Master in Grant-in-Aid School.
23.	Departmental Exam(Class III)	In Service Asst.Teacher in Govt.Secondary and Higher Secondary School, Asst. Education Inspector in District Education office, Asst.Education Inspector(Kelavani Nirikshak in District Panchayat)	To be confirmed in the service and for Promotion and Higher Scale.

6. The applicant has submitted his view on interpretation of the law as under:

Claim of Exemption under Entry 5:

Relevant portion of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 reads as under:

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl.No.	Chapter	Description of Service	Rate	Condition
5.	Chapter 99	Services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.	NIL	NIL

Relevant portion of Notification No.12/2017-State Tax(Rate) dated 30.06.2017 reads as under:

No.(GHN-41)GST-2017/S.11(1)(7)-TH:- In exercise of the powers conferred by sub-section (1) of section 11 of the Gujarat Goods and Services Tax Act, 2017 (Guj.25 of 2017), the Government of Gujarat, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the State tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl.No.	Chapter	Description of Service	Rate	Condition
5.	Chapter 99	Services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.	NIL	NIL

7. The applicant has submitted that to claim exemption for the aforesaid entry, it is necessary to provide services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution; that coming to the first dimension to the Exemption Entry which is term services is defined as per Section 2(102) of the CGST Act, 2017 as under:

“(102) “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;”

8. The applicant has stated that by referring to the definition of services, it can be squarely concluded that the activity carried out by the State Examination Board of conducting various types of exams falls under the classification of services; that subsequently, the second dimension to the exemption entry talks about services to be rendered or provided by a Governmental Authority which is defined as per Para 2 of Notification No.12/2017-Central Tax(Rate) as under:

*“(zf) “Governmental Authority” means an authority or a board or any other body, -
(i) set up by an Act of Parliament or a State Legislature; or
(ii) established by any Government,
with 90per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.*

9. The applicant has submitted that as per Section 2(53) of the Gujarat GST Act, 2017, ‘Government’ means the State Government and Government as defined in the CGST Act and respective SGST Acts means Central Government and respective State Governments; that similarly, as per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution; that as per Article 166 of the Constitution, all executive actions of Government of State shall be expressed to be taken in the name of Governor; that, therefore, ‘State Government’ means the Governor or the officers subordinate to him who exercise the executive power of the State vested in the Governor and in the name of the Governor.

10. The applicant has submitted that the President/Chairman of the Governing Body of State Examination Board is established by the State Government i.e. by the Education Department of Government of Gujarat and it is fully controlled by Members of State Examination Board who are appointed through the offices of Government of Gujarat including President of the Governing Board i.e. Education Minister of State of Gujarat; that thereafter, they would refer to the last and third dimension to the exemption entry talks about any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India which is enlisted below:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

11. The applicant has stated that on referring to the aforesaid schedule, the services provided by State Examination Board are in relation of discharge of functions covered under Sr.No.17(Education, including primary and secondary schools) and therefore, looking to all dimensions, the applicant is eligible to claim exemption benefit under Entry 5 of Notification No.12/2017-Central Tax Rate.

12. The applicant has referred to Entry No.66 of Notification No.12/2017-Central Tax(Rate) which reads as under:

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl.No.	Chapter	Description of Service	Rate	Condition
66.	Chapter 99	Services provided - (a) by an educational institution to its students, faculty and staff; “(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;”;	NIL	NIL

Relevant portion of Notification No.12/2017-State Tax(Rate) dated 30.06.2017 reads as under:

No.(GHN-41)GST-2017/S.11(1)(7)-TH:- In exercise of the powers conferred by sub-section (1) of section 11 of the Gujarat Goods and Services Tax Act, 2017 (Guj.25 of 2017), the Government of Gujarat, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the State tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl.No.	Chapter	Description of Service	Rate	Condition
66.	Chapter 99	Services provided - (a) by an educational institution to its students, faculty and staff; “(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;”;	NIL	NIL

13. The applicant has submitted that to claim exemption for the aforesaid entry, it is necessary to provide services by an Educational Institution to its students, faculty and staff; that coming to the first dimension to the Exemption Entry which is term services is defined as per Section 2(102) of the CGST Act, 2017 as under:

“(102) “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;”

14. The applicant has stated that by referring to the definition of services, it can be squarely concluded that the activity carried out by the State Examination Board of conducting various types of exams falls under the classification of services; that subsequently, the second dimension to the exemption entry talks about services to be rendered or provided by an Educational Institution which is defined as per Para 2 of Notification No.12/2017-Central Tax(Rate) as under:

*“(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 recognised by any law for the time being in force;
(iii) education as a part of an approved vocational education course;”*

15. The applicant has submitted that explanations inserted in Notification No.12/2017-Central Tax Rate w.e.f.26.07.2018 reads as under:

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

16. The applicant has submitted that it can be understood from the above that State Examination Board is a State Educational Board and will be treated as Educational Institution as far as this exemption notification is concerned; that third dimension of the exemption entry talks about services being provided to the students and it should be noted that the persons apply for the examination are the students either cleared Std.4th, Std.6th, Std.8th, Std.9th, Std.10th, Std.12th etc. or Graduates or having age 11 years to 13 years; that looking to all the dimensions, it can be said that the applicant is eligible to claim exemption benefit under Entry No.66(a)(aa) of Notification No.12/2017-Central Tax(Rate). The applicant has also stated that they have already received an Order from Authority of Advance Ruling vide No.GUJ/GAAR/R/16/2019 dated 28.08.2019 with respect to previous application for advance ruling and that this is a fresh application for advance ruling with respect to Entry No.5 and Entry No.66(a) and (aa) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017.

17. The applicant has given additional submission received vide email dated 30.09.2020 wherein they have submitted scanned copies of: (i) Resolution dated 14.11.1966 issued by the Deputy Secretary of Government of Gujarat (in English and Gujarati). (ii) Letter dated June, 1985 of the State Examination Board addressed to the Secretary, Education Department, Gandhinagar regarding re-organisation of the Board (in Gujarati). (iii) Resolution dated 25.01.1981 issued by the Education Department of Gujarat regarding appointment of the 13 members of the Board (in Gujarati). (iv) Resolution dated 12.08.1992 issued by the Education Department of Gujarat regarding re-organisation and appointment of the 13 members of the Board (in Gujarati). (v) Resolution dated 26.10.1999 issued by the Education Department of Gujarat regarding granting autonomy to the State Examination Board (in Gujarati). (vi) Resolution dated 24.05.2000 issued by the Education Board of Gujarat pertaining to granting of autonomy to the State Examination Board (in Gujarati). The applicant has asked the following question seeking Advance Ruling on the same:

“Whether the applicant is eligible to claim exemption benefit under Sr.No.5 and Sr.No.66(a) & (aa) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?”

DISCUSSION & FINDINGS:

18. We have considered the submissions made by the applicant in their application for advance ruling, the additional submissions submitted by them vide email dated 30.09.2020 as well as the arguments/discussions made by their representative Shri Devam Sheth C.A at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

19. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act.

20. As per the submission of the applicant, the objective of the establishment of the State Examination Board is to arrange and conduct examination, graduate level and post graduate level examinations and awarding different professional Diploma and Certificates for General knowledge, knowledge of different subjects like Sports, Drawing, Architecture of the students studying in the various schools and high schools and that the main functionality to conduct examination for different aspects such as: (1) Jobs (TET, HTAT, TAT(S), TAT(HS), HMAT). (2)

Scholarships (Primary, Secondary, National Talent Search). (3) Services (Department Exam and Panchayat Class III) and (4) Certificates (Drawing, Diploma in Home Science etc.). The type of examinations held by the applicant, the eligibility criteria for appearing in these exams and the benefits of clearing the exams is detailed in para-5 above. The applicant has asked the following question seeking Advance Ruling on the same:

“Whether the applicant is eligible to claim exemption benefit under Sr.No.5 and Sr.No.66 (a) & (aa) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?”

21. On going through the submissions of the applicant as well as the questions raised by them seeking Advance ruling on the same, we find that the main issue to be examined is whether the services supplied by the applicant as mentioned above are eligible for benefit under Sr.No.5 and Sr.No.66 (a) & (aa) of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 or otherwise. But, before examining the issue, we are required to find out under what heading, sub-heading or group, the services supplied by the applicant (conducting of examinations) are covered under, for which we will be required to refer to Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, which contains the Chapter, Section and Heading of classification of services along with their GST rates. On going through the said notification, we find that the services of conducting examinations is covered under Heading 9992 (which covers Education Services), Group 9929 and Service Code (Tariff) 999299 (other educational support services), wherein GST payable is 18% (9% CGST + 9% SGST). The same appears at Entry No. 30 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and reads, as under:

Sl.No.	Chapter	Description of Service	Rate	Condition
30.	Heading 9992	Education Services	9	---

As per Annexure to Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, the same appears at Sr. No. 602 and reads, as under:

Sl.No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Description of Service
581.	Heading 9992		Education Services.
596.	Group 99929		Other education and training services and educational support services.
597.		999291	Culture education services
598.		999292	Sports and recreation education services.
599.		999293	Commercial training and coaching services.
600.		999294	Other training and coaching services not classified elsewhere.
601.		999295	Services involving conduct of examination for admission to educational institutions.
602.		999299	Other educational support services.

22. Next, we need to refer to Notification No.12/2017-Central Tax (Rate) dated 28.06.2017. As per the said notification, exemption is granted to the intra-State supply of services described in column (3) of the Table of the notification from payment of GST subject to the conditions specified in the corresponding entry in column (5) of the said Table. Sr. No. 5 of the said notification reads, as under:

Sl.No.	Chapter	Description of Service	Rate	Condition
5.	Chapter 99	Services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.	NIL	NIL

It can be seen from the above that as per Sr. No. 5 of aforementioned notification, services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution is exempted from payment of GST. Therefore, the following conditions are required to be fulfilled in order to be eligible for exemption of the above notification:

- (1) The applicant should be a Governmental Authority.
- (2) The services supplied by the applicant should be by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution.

23. As per Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No.32/2017-Central Tax (Rate) dated 13.10.2017, the definition of 'Governmental Authority' is as under:

“(zf) “Governmental Authority” means an authority or a board or any other body, -

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

In this regard, the applicant vide their submission have stated that the Education Department, which is one of the Departments of the Government of Gujarat has its own sub divisions like Gujarat Secondary and Higher Secondary Education Board, Gujarat State Technical Examination Board, **State Examination Board**, Gujarat State School Textbook Board, Gujarat Council of Education Board Research and Training and Gujarat Institute of Education Technology. In view of the facts mentioned above, it can be seen that the 'State Examination Board' being one of the sub-divisions of the Education Department of Gujarat, is, therefore, a Board which has been established by the Government of Gujarat itself. Also, as per the submission of the applicant, all the 13 members of the State Examination Board are appointed by the Government of Gujarat and all of them are officers belonging to the State Government or are State Government employees of Gujarat. Further, as per the Memorandum of Association of the 'State Examination Board, Gujarat State' submitted by the applicant, under the point 4 (A)(Objectives), it is specifically mentioned that 'State Examination Board' will be an autonomous independent body under State Department of Education for conducting various examinations. The applicant has also submitted a copy of resolution dated 26.10.1999 passed by the Government of Gujarat (in Gujarati) wherein it has been mentioned that the State Government of Gujarat has declared State Examination Board as an autonomous body wherein it has been stated that henceforth, the State Government Budget will provide only for the salary of the employees of the said Board and would provide for the administrative expenses of the Board for one year only, after which the Board will have to make it's own arrangements vis-a-vis administrative expenses through exam fees etc. Besides, on the homepage of the website of State Examination Board, we can see the state emblem of India (the adaptation of the Lion Capital of Ashoka) as well as the Swachh Bharat emblem which indicates that the applicant is a Government of Gujarat enterprise or a Government of Gujarat body. Looking to all the facts mentioned above, it appears that the 'State Examination Board' is a Board which is fully controlled by the Government of Gujarat through the Members of the said Board who are all appointed by the Government of Gujarat and are all State Government employees and therefore, the said Board appears to be a Government body wholly owned by the State Government of Gujarat.

24. Next, we are required to find out whether the activities carried out by the applicant i.e. the conducting of examinations are in relation to: (i) any functions entrusted to a municipality under Article 243W of the Constitution of India or (ii) any functions entrusted to a panchayat under Article 243G of the Constitution of India. The same are listed hereunder:

Article 243G of the Constitution of India has entrusted the following functions to the panchayats:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
- 17. Education, including primary and secondary schools.**
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Article 243W of the Constitution of India has entrusted the following functions to the municipalities:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

25. On going through the aforementioned lists, we find that there is an entry at Sr.No.17 of the list of functions entrusted to a Panchayat vide Article 243G of the Constitution which reads as “*Education, including primary and secondary schools.*” We also find that the applicant themselves have referred to the said entry in their submission stating that the services provided by them are in relation of discharge of functions covered under the aforementioned Entry at Sr.No.17 only. In view of the above, we need to find out the definition of ‘Education’ first. Definition of ‘Education’ as per Dictionary.com is as under:

“the act or process of imparting knowledge, especially at a school, college, or university”

26. As per the above definition, Education is the act or process of imparting knowledge, especially at a school, college or university. On comparing the functions of the State Examination with that to the definition of ‘Education’, we find that the function of the applicant does not pertain to imparting of knowledge at school, college or university but pertains to conducting of various types of examinations. However, since the conduct of examinations pertaining to Primary, secondary and higher secondary schools by the applicant would be indirectly related to Education, such type of examinations would get covered under the above entry. On going through the list of the examinations conducted by the State Examination Board listed at para-5 above, it is seen that out of the list of 23, only 7 exams pertain to exams of primary and secondary level, whereas the remaining 16 exams (listed at Sr.No.1 to 8 and 16 to 23 of the list mentioned at para-5 above) conducted by the State Examination Board pertain to employment for the successful candidates i.e. the clearing of these examinations would either make the successful candidates eligible for the posts of the jobs of teachers or lecturers in various government or private schools/colleges or result in them getting employed in various posts of teachers, lecturers, stenographers, clerks for PGVCL, forest guards, Jail Sipahi for Home Department, Stenographers for GIDC, CRC/BRC/URC for Education Department, School Inspector for Education Department, Environment Officer and Scientific Officer for GPCB etc. The applicant is also conducting exams such as Teachers Eligibility Tests, wherein the successful candidates would be eligible for appointment as teachers in primary, secondary or higher secondary schools. Further, Teachers Aptitude Tests are also being conducted by them, wherein the successful candidates would be eligible for appointment as teachers in primary, secondary or higher secondary schools. Further, departmental exams are also being held by the applicant for the working Government employees, which are for their confirmation or for their promotion. Hence, these exams, being qualifying exams or exams, which results in the employment of the successful candidates, cannot, by any stretch of imagination be covered under the Entry ‘*Education, including primary and secondary schools*’. However, the 7 exams conducted by the applicant (listed at Sr.Nos.9 to 15 of the list of exams as at para-5 above) and as detailed below, can be said to be pertaining to ‘*education including primary and secondary schools*’. They are listed as follows: (i) Elementary Drawing Grade Exam (for Std.4th pass students) for Certificates for drawing skill. (ii) Intermediate Drawing Grade Exam (for 8th pass students) for Certificates for drawing skill. (iii) Primary Scholarship Exam (for students pursuing std. 6th) which pertains to scholarship of Rs.750/- per year for standards 6th to 8th (iv) Secondary Scholarship Exam (for students pursuing std.9th) which pertains to scholarship of Rs.1000/- per year for standards 9th to 10th. (v) National Talent Search Exam Stage-1(NTSE) (for students pursuing std.10th) wherein successful candidate would receive scholarship of Rs.1250/- per month for 11th and 12th standard and receive scholarship of Rs.2000/- for under Graduation or Post Graduation and PHD. for National Council of Educational Research and Training, New Delhi. (vi) National Means cum Merit Scholarship-Exams(NMMS-Exam)(for students pursuing std. 8th) wherein successful candidate shall receive scholarship of Rs.1000/- per month for 10 months in a year for 4 years by Ministry of Human Resource Development, New Delhi(for Std.9, 10, 11 and 12th). (vii) Rashtriya Indian Military College, Dehradun-Entrance Exam(RIMC-Dehradun) (for students between 11

yrs. 6 months to 13 yrs.old (Only male candidate)) wherein successful candidate gets admission in Rashtriya India Military College, Dehradun.

27. Now, the next issue to be decided is as to whether the applicant is eligible for exemption as available under Sr.No.5 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017. As per the said entry, services (falling under Chapter 99) provided/supplied by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution are exempted from payment of GST. As discussed earlier, Entry at Sr.No.17 falling under the list of functions entrusted to a Panchayat under Article 243G of the Constitution of India covers '*Education including primary and secondary schools*'. Also, as discussed earlier, since 16 of the 23 exams held by the applicant (mentioned at Sr.No.1 to 8 and 16 to 23 of the list at para-5 above) do not get covered under the Entry at Sr.No.17 mentioned above, the services supplied by the applicant in respect of these exams are not eligible for the benefit of exemption available at Sr.No.5 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 for the simple reason that the services supplied for these exams are not related to any functions entrusted to the Panchayats under Article 243G of the Constitution of India. However, as discussed in para-24 above, since the exams listed at Sr.No.9 to 15 of para-5 above are covered under Entry at Sr.No.17 of the list mentioned above, the services supplied by the applicant in respect of these exams are eligible for the benefit of exemption available at Sr.No.5 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017.

28. Now, the next issue to be decided is as to whether the applicant is eligible for exemption as available under Sr.No.66(a) and (aa) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 as amended. On going through the aforementioned entry of the said notification, it is seen that the said notification has been amended vide notifications No.02/2018-Central Tax(Rate) dated 25.01.2018. After this amendment, Entry No.66 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 reads as under:

Sl.No.	Chapter	Description of Service	Rate	Condition
66.	Heading 9992	<p><i>Services provided –</i></p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;</p> <p><i>(b) to an educational institution, by way of,-</i></p> <p><i>(i) transportation of students, faculty and staff;</i></p> <p><i>(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</i></p> <p><i>(iii) security or cleaning or house-keeping services performed in such educational institution;</i></p> <p><i>(iv) services relating to admission to, or conduct of examination by, such institution;</i></p> <p><i>(v) supply of online educational journals or periodicals;</i></p> <p><i>Provided that nothing contained in sub-items (i), (ii) and (iii) of item (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.</i></p> <p><i>Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-</i></p> <p><i>(i) pre-school education and education up to higher secondary school or equivalent; or</i></p>	NIL	NIL

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

29. Provisions of Entry No.66(a) and (aa) read, as under:

“Services provided by-

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

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

On going through the above, it is seen that the primary condition for being eligible for the said exemption is that the entity providing/supplying the services should be an educational institution. ‘Educational institution’ is defined at para-2(y) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 and reads, as under:

“(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 recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;”

30. As discussed earlier, the State Examination Board is a government body, which was established for the sole purpose of arranging and conducting the examinations at the different Primary, Secondary and Higher secondary levels as well as other examinations as detailed in para-5 above. Most of the exams pertain to employment for the successful candidates i.e. the clearing of these examinations would either make the successful candidates eligible for the posts of the jobs of teachers or lecturers in various government or private schools/colleges or result in them getting employed in various posts of teachers, lecturers, stenos, clerks for PGVCL, forest guards, Jail Sipahi for Home Department, Stenographers for GIDC, CRC/BRC/URC for Education Department, School Inspector for Education Department, Environment Officer and Scientific Officer for GPCB etc. The applicant is also conducting exams such as Teachers Eligibility Tests, wherein the successful candidates would be eligible for appointment as teachers in primary, secondary or higher secondary schools. Further, Teachers Aptitude Tests are also being conducted by them, wherein the successful candidates would be eligible for appointment as teachers in primary, secondary or higher secondary schools. Further, departmental exams are also being held by the applicant for the working Government employees, which are for their confirmation or for promotion. Besides these, the applicant is also conducting various types of Exams for students of primary, secondary and higher secondary classes and students who are successful in these exams, would be eligible for certificate for drawing skills, scholarships etc.

31. Thus, it can be seen from the above, that State Examination Board has nothing to do with imparting education i.e. **it is not an institution providing/supplying services by way of:** (i) pre-school education and education up to higher secondary school or equivalent OR (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force OR (iii) education as a part of an approved vocational education course. State Examination Board is a Board established by the Government of Gujarat for the limited purpose of conducting various types of examinations as mentioned above and would therefore not be covered under the definition of ‘Educational institution’. In this context, we find that the applicant has referred to the amendment made in respect of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 vide Notification No.14/2018-Central Tax(Rate) dated 26.07.2018, which reads, as under:

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

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

Referring to the above amendment, the applicant has stated that the State Examination Board is a State Educational Board and are therefore covered under the above mentioned clause(iv) and would therefore be eligible for the exemption under Entry No.66(a) and 66(aa) of Notification No.12/2017-central Tax(Rate) dated 28.06.2017, as amended. In this regard, we would like to emphasize that the State Examination Board, although established by the Education Department of the Government of Gujarat, is an autonomous body, established for the sole purpose of conducting various types of examinations and cannot, therefore, be considered as a State Education Board as the functions of the State Examination Board are completely different from that of a State Educational Board. Further, we find that in order to be eligible to avail the benefit of exemption available under the aforementioned Sr.No.66(a) and (aa), the primary criteria of being an ‘Educational Institution’ as defined in para-2(y) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 has to be fulfilled/satisfied, failing which, the applicant will not be considered eligible for availing the benefit of the said exemption. Since, as discussed earlier, the applicant does not get covered under the definition of ‘Educational Institution’ thus rendering themselves ineligible for the benefit of the aforementioned exemption, we conclude that the applicant is not eligible for the benefit of exemption of GST available under Sr.No.66(a) and 66(aa) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 as amended from time to time.

32. In the light of the aforesaid circumstances, we rule as under:

R U L I N G

Question: Whether the applicant is eligible to claim exemption benefit under Sr.No.5 and Sr. No. 66(a) & (aa) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?

Answer:

- (i) The applicant is eligible to claim exemption benefit under Sr.No.5 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time), in respect of services supplied for the exams mentioned at Sr.No.9 to 15 of the list of exams (mentioned at para-5 above). However, no such exemption is available in respect of services supplied for the exams mentioned at Sr.No.1 to 8 and 16 to 23 of the list(mentioned at para-5 above) for the reasons discussed hereinabove.
- (ii) The applicant is not eligible to claim exemption benefit under Sr.No.66(a) & (aa) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 (as amended from time to time), for the reasons discussed hereinabove.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 05.11.2020.