

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/28/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/01)

Date: 02.07.2020

Name and address of the applicant	:	M/s Patrator 307, Vraj Plaza, Opp. Janta Ice Cream, Bhatta, Ahmedabad
GSTIN/ User Id of the applicant	:	241800000353ARZ (Un-Registered)
Date of application	:	02.01.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	e) Determination of the liability to pay tax on any goods or services or both: f) Whether applicant is required to be registered under the Act.
Date of Personal Hearing	:	11.06.2020 (through Video Conferencing)
Present for the applicant	:	Mr. Darshit Soni

M/s. Patrator, 307 Vraj Plaza, Opp. Janta Ice Cream, Bhatta, Ahmedabad in not having GSTIN filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. The applicant submitted that, “ALOHA” a business brand is operated by EXPLORE KNOWLEDGE RESOURCES LLP, Rajkot. It charges Royalty from its franchisees for using its brand name and sells its product under its brand through its franchisees.

3. The applicant further submitted that “PATRATOR” is a partnership firm, unregistered under the GST Act and one of the franchisees of EXPLORE KNOWLEDGE RESOURCES LLP, Rajkot. Further submitted that they sell their products and provide services under the brand name of “ALOHA” to customers. They sell products like books, stationary etc. without having profit margin under the brand name of “ALOHA”. They offer various courses to students

Mental Arithmetic, English Smart under the brand name of “ALOHA”. All receipts of product sale or services are being taken in the name of their partnership firm “PATRATOR” and deposit the fees in their partnership firm bank account. At the end of every fifteen days, they pay royalty to their franchisor, KNOWLEDGE RESOURCES LLP, Rajkot based on fees they collect from their customers.

4. The applicant submitted that total yearly receipt of their partnership firms PATRATOR does not exceeds Rs. 20 lacs in any financial year; however an annual receipt of the franchisor, KNOWLEDGE RESOURCES LLP, Rajkot exceeds Rs. 20 lacs.

5. The applicant has submitted the copy of agreement held between the applicant and Explore Knowledge Resources LLP for franchisee of “ALOHA”.

6. Accordingly, the applicant sought the advance Ruling on the following question

1.) Is PATRATOR required to take GSTIN ?

2.) Is PATRATOR required to pay tax under GST Act?

Personal Hearing

7. Personal hearing in the matter was held on 11-06-2020. Shri Darshit Soni, appeared on behalf of the applicant and re-iterated the submission made in the Application.

Discussion and Finding

8. We have considered the submissions made by the Applicant in their application for advance ruling. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant’s interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 SGST Act.

9. The applicant has stated that they are partnership firm and have taken a franchisee of “ALOHA” from EXPLORE KNOWLEDGE RESOURCES LLP, Rajkot. Further, they submitted that they sell their product and provide service

under the brand name of “ALOHA” to customers. They sell products like books, stationary etc. without having profit margin under the brand name of “ALOHA”. They offer various courses like Mental Arithmetic, English Smart to the students under the brand name of “ALOHA”. All receipts of product sale or services are being taken in the name of their partnership firm “PATRATOR” and deposit the fees in their partnership firm bank account. At the end of every fifteen days, they pay royalty to their franchisor, KNOWLEDGE RESOURCES LLP, Rajkot based on fees they collect from their customers. They submitted that total yearly receipt of their partnership firms PATRATOR does not exceeds Rs. 20 lacs in any financial year; however an annual receipt of the franchisor, KNOWLEDGE RESOURCES LLP, Rajkot exceeds Rs. 20 lacs. Accordingly, they sought advance Ruling on the following questions :

- 1.) Is PATRATOR required to take GSTIN ?
- 2.) Is PATRATOR required to pay tax under GST Act?

9.1 Now, to answer the above questions we have to examine whether the applicant is required to take GST registration under provision of Section 22 of CGST Act, 2017 and Section 24 of CGST Act, 2017 or otherwise.

Section 22 of CGST Act, 2017 defines as under:

SEC. 22 REGISTRATION

Persons liable for registration

*22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where **he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lacs rupees:***

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees:

Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified:

Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty

lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation.—For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.— For the purposes of this section,—

i. the expression **“aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;**

ii. the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

iii. the expression “special category States” shall mean the States as specified in sub-clause(g) of clause (4) of article 279A of the Constitution 3 [except the State of Jammu and Kashmir] 4 [and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand].

9.2 Accordingly, as per Section 22(1) of CGST Act, 2017, if a person makes a taxable supply of goods or service or both and on account of said supply his aggregate turnover in a financial year exceeds of Rs. 20 lacs, then he is liable

for GST Registration. Aggregate turnover has been defined under Sub- Section 6 of Section 2 of CGST Act, 2017. Section 2(6) of CGST Act, 2017 is as under:

“aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

9.3 The applicant has stated that they are selling the books, stationary and other item under the brand name of “ALOHA” and also providing service i.e. courses like Mental Arithmetic, English Smart to the students under the brand name of “ALOHA”. All receipts/consideration on account of product sale or services are being taken in the name of their partnership firm “PATRATOR” and deposited in their partnership firm bank account. Further, they stated that consideration received on account of sale of product and providing service does not exceed Rs. 20 lakhs in a financial year. In terms of Section 22(1) of CGST Act, 2017, if aggregate turn over in a financial year exceeds an amount of Rs. 20 lacs on account of supply of goods and service, then person is liable to take GST registration. The applicant has stated his aggregate turnover on supply of goods and services do not exceeds Rs. 20 lacs in a financial year therefore, he is not liable for Registration under Section 22(1) of CGST Act, 2017.

9.4 Section 24 of CGST Act, 2017 deals with the category of persons who are compulsory liable to take GST Registration. Section 24 of CGST Act, 2017 is produced as under:

Section 24 Compulsory GST Registration

Notwithstanding anything contained in Sec. 22(1), the following categories of persons shall be required to be registered under this Act:

- (i) persons making any inter-State taxable supply;*
- (ii) casual taxable persons making taxable supply;*
- (iii) persons who are required to pay tax under reverse charge;*
- (iv) person who are required to pay tax under sub-section (5) of section 9;*
- (v) non-resident taxable persons making taxable supply;*
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;*
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;***
- (viii) Input Service Distributor, whether or not separately registered under this Act;*
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;*

- (x) every electronic commerce operator;*
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and*
- (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.*

All the above categories i.e. (i) to (xii) of persons are mandatory required to take GST registration and for them threshold limit of aggregate turnover of Rs. 20 lacs is not applicable. Sr. No. (vii) of said Section defines the category of person who supply the goods and service or both on behalf of the other taxable person. Now, we will examine whether the applicant is covered under the said category of person or not. Accordingly, we have gone through the agreement entered between applicant and Explore Knowledge Resources, LLP, Rajkot. The relevant terms and conditions of the said agreement are read as under:

III FINANCIAL TERMS

C. *The Franchisee agrees to collect a one time Student Registration fee of Rs. 1150/- for Mental Arithmetic Sr. Program and Rs.1150/- for tiny Tots Program, Rs. 650/- for English Smart Program from every student registered in their respective course and remit the same to the Company and forward a duplicate copy of the Student Registration/ application Form and receipt issued.*

C. *The Franchisee understands and agrees that the Company shall have the right, notwithstanding anything to the contrary, to vary without prior notice, royalty payable by franchisee, the registration fees and monthly or level fee payable by the students and it shall be the sole responsibility of the Franchisee to collect such revised fee from existing/new students of the Course of various level as and when circumstances warrant the collection of such revised fee on the direction of the Company.*

VI. REQUIREMENTS

The Franchisee agrees to fulfill the below mentioned requirements of infrastructure and manpower before commencement of operations of the Centre and will continue to possess it during the whole tenure and it's renewal of this contract.

VIII . STOCK

A. ***The Franchisee shall not use any other course material other than those supplied by the company.***

IX. ACCOUNTS AND AUDIT

A. *The Franchisee shall allow the authorized personnel of the company at all times to inspect the books, records, software data, receipts, application forms, reports and registers kept by the Franchisee and to use any information contained therein for the benefit of the Company.*

B. *The Franchisee shall permit the representatives of the Company to conduct spot checks on the Center(s) in order to ensure that **the Franchisee is functioning in compliance to the Company's instructions rules & regulations and as per the directions of the Company.***

C. *The Franchisee agrees that the Company or its agents shall have the right to examine and/or audit the Books of Accounts of the Franchisee all the materials in center premise or elsewhere and all the entries of the software, to verify the figures reported.*

D (v) *If the representative performing internal audit and or due diligence suggested any changes in the mode and maintenance of accounts and records in respect of the business, such suggestions shall be implemented by the Franchisee on the instructions of the Company.*

X. EVALUATION

A, *The Franchisee shall perform as per the performance Targets set out by the Company from time to time and intimated to the Franchisee or enroll in average of at least 10 students per course per month.*

XI. GENERAL CLAUSES & MUTUAL OBLIGATIONS:

C. *All payments of royalty or any other kind must be timely deposited by the franchisee, on untimely payment company may charge penalty s may deem fit or can take any necessary step including termination of contract or freezing the supply of books & certificates and deactivating software.*

F. The Franchisee undertakes to conduct only the Company's courses and utilize only the materials provided by the Company at its course center and shall not conduct any unauthorized or similar type of course that Company [Xplore Knowledge Resources LLP] has and promotes such type as Abacus and Mental Arithmetic Courses, English language courses, Vedic or speed math course, parapsychological activity based course, hand writing improvement course, at its Course centers nor shall he or she individually or as the Proprietor/ Partner(s), director (s) or in association with other persons or bodies or their relatives or through any such person conduct anywhere else in and out of the state or the country.

G. The Franchisee also undertakes not to conduct, run and engage in any other courses or activities else than licensed in this agreement, that the company possess and franchisees.

H. The Franchisee undertakes to fully promote and market the Company's Courses diligently and to the best of its ability.

K. The Franchisee shall assure the Company that only a maximum of 18 students shall be admitted in each batch of each level of the Company's course to be conducted by the Franchisee.

L. The Franchisee assures the Company that the premises and infrastructure wherein the courses are to be conducted by the Franchisee are in conformity with the specifications of the Company.

O. The Franchisee shall only use the application forms, receipt books, fees lists etc. supplied by the Company and shall not attempt to print its own material other than those used for marketing purpose like pamphlets, leaflets etc. excluding brochures and with prior approval of the design from the Company.

P. The Franchisee shall issue duly signed receipts for the payments received by it from students, by a duly authorized person of the Franchisee in the receipts books issued by the Company.

Q. All the payments from the students are collected in name of the Franchisee on receipts printed by the Company.

XII. STATUTORY CLAUSES & OTHER OBLIGATIONS OF FRANCHISEE:

N. The Franchisee shall not use any other course material other than those issued by the Company, nor shall the Franchisee adopt any other methodology or technical know-how, other than the Company's while imparting education to the students.

U. The Franchisee shall use the center premises exclusively for activities related to company's products only. No other activity related to any other business or training should be done without prior written approval of the company.

9.5 On going through the said clauses of the agreement, it is observed that the applicant is required to fulfill the requirements of infrastructure and manpower before commencement of operations of the Centre as per the instructions of the Company and will continue to possess it during the whole tenure and its renewal of this contract; the applicant shall permit the

representatives of the Company to conduct spot checks in order to ensure that the applicant is functioning in compliance to the Company's instructions rules & regulations and as per the directions of the Company; shall not use any other course material other than those supplied by the company; the applicant undertakes to conduct only the Company's courses and utilize only the materials provided by the Company at its course center and shall not conduct any unauthorized or similar type of course that Company [Xplore Knowledge Resources LLP] has; the applicant also undertakes not to conduct, run and engage in any other courses or activities else than licensed in this agreement, that the company possess and franchisees; the applicant shall only use the application forms, receipt books, fees lists etc. supplied by the Company and shall not attempt to print its own material. All the payments from the students are collected in name of the applicant on receipts printed by the Company. The applicant also collects Student Registration fee from every student on behalf of the Company and remits the same to the Company. According to all these clauses of the agreement, it is crystal clear that the applicant is only authorized to supply the goods and service under the brand name of "ALOHA" and cannot supply the other goods and service. Hence applicant is supplying the goods and service on behalf of the taxable person i.e. **Xplore Knowledge Resources LLP**. Accordingly, we rule that applicant covers under the Sr. No. (vii) of the Section 24 of CGST Act, 2017. Therefore, applicant is liable for taking GST registration. Since applicant is liable for GST registration, he is required to pay GST on supply of goods and services.

10. In view of the foregoing, we rule as follows:

RULING

Question 1. Is PATRATOR required to take GSTIN?

Answer: Yes in terms of Sr. No. (vii) of Section 24 of CGST Act, 2017.

Question 2. Is PATRATOR required to pay tax under GST Act?

Answer: Yes.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 02.07.2020.