


<p align="center">GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.</p>	
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ADVANCE RULING NO. GUJ/GAAR/R/75/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/43)
Date: 17.09.2020

Name and address of the applicant	:	M/s D.M. Net Technologies (Isha Chirag Patel), 2nd Floor, Shop No. 6, Opp. Jagatnagar P-2, India Colony Road, Bapunagar, Ahmedabad, Gujarat-380024
GSTIN of the applicant	:	24AKYPP8973B2ZG
Date of application	:	24.07.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) Applicability 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;
Date of Personal Hearing	:	17.08.2020 (through Video Conferencing)
Present for the applicant	:	Shri Monish Shah CA

BRIEF FACTS:

M/s D.M. Net Technologies (Isha Chirag Patel) (herein after referred to as the "Applicant" hereinafter), is having office at 2nd Floor, Opp. Jagat Nagar P-2, India Colony Road, Bapunagar, Ahmedabad-382350 and GSTIN number 24AKYPP8973B2ZG. The Applicant is engaged in providing specified educational services in the field of Information Systems Education, as detailed below:

- (i) The applicant is handling the courses, namely M.Sc.-IT in Animation, M.Sc.-IT in Mobile application, M.Sc.-IT in IMS (Infrastructure Management Systems) and M.Sc.-IT in Network Securities, **in partnership under MOU with Gujarat University.**
- (ii) The applicant designs the aforementioned courses on request of Gujarat University and then the contents of the courses are approved by the Gujarat University.

- (iii) The applicant then on the basis of the approved courses, provide training to the students as a partner under MOU with Gujarat University.
- (iv) The awareness and admission of the course is done by the Gujarat University. The fees for the said courses are also collected by Gujarat University. The applicant helps to administer the admission and fees collection process.

2. The applicant further submitted that the Gujarat University is providing the infrastructure facilities, viz. Classroom; Computer Systems and office equipment; Internet facilities; All required software; and All other required infrastructure.

2.1 After the training is completed, the enrolled students undergo examination which is conducted by the Gujarat University. On successful clearance of examination, a Degree is granted by Gujarat University. The applicant is not involved in the said process.

2.2 On receipt of the fees and completion of training, the applicant submits an information note to the Gujarat University (Partner of MOU), on the basis of which a fixed percentage of share as specified in Agreement is given to the Applicant.

2.3 Thus, while the administration and the curriculum is managed by the applicant, the examination is conducted by University on the basis of question papers set by the applicant and results after assessing the answers of all the candidates appeared for exam, is given to the University by the applicant and candidates, who clear this exam, are awarded degree by the Gujarat University.

3. The said agreement and MOU will be in force for 3 years from the date of signing and can be agreed upon with mutual consent. The copy of the detailed MOU & Agreement signed between Gujarat University and the Applicant is also submitted by them.

Relevant provisions under GST Law:

4. The Govt. of India has, w. e. f. 1st July, 2017, introduced a unified GST to replace the various indirect tax levies (i.e. Central Excise, Vat, Service Tax, Entry Tax, etc.). The Govt. has exempted certain services from levy of GST and has issued Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 to that effect.

Entry No.66 of the said notification exempts services provided by educational institutions to its students. The said Notification also defines an “educational institution” as follows:

(y) an “educational institution” means an institute 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.*

4.1 The Gujarat University grants qualification/degree to the students enrolled. Further, Section 4 of the Gujarat University Act, empowers the University to affiliate or recognize other institutions other than colleges, within its jurisdiction to provide education in the State. Accordingly, while the University set up by the Government grants degree/ qualification, the education is delivered by institution like colleges etc. under an approval or affiliation by the University.

5. The applicant further submitted that the operational and legal framework of the “Education sector” in respect of higher education is as follows:

- Governance of educational institutions is undertaken by the State Governments.
- State Government is empowered to set up Universities.
- University is in essence an administrative body which regulates the education curriculum within its geographical jurisdiction.
- University is empowered to affiliate colleges and other institutions which are allowed to grant admission, deliver education services, develop course content, hold examinations etc..
- University grants qualification/ degree to the students enrolled with the colleges/ institutions affiliated to the University.

6. The applicant has partnered with Gujarat University in the State of Gujarat and has been engaged in providing education in affiliation with the said university in the State of Gujarat.

7. The applicant proposes to undertake the following activities under the University curriculum:

- (i) Shall ascertain for itself the financial viability of the programs to be launched under Partnership arrangement;
- (ii) Shall ensure quality delivery of the course by faculty, quality Assurance Systems and Training;
- (iii) Shall not make any financial commitment for and on behalf of Gujarat University or Create financial liability binding Gujarat University under This Agreement or in any manner;
- (iv) Shall follow the course curriculum approved by the Advisory Board as constituted by Gujarat University;
- (v) Shall undertake to maintain the secrecy and confidentiality of the Gujarat University course, syllabus and study material which will remain the property of Gujarat University during the currency of the MOU or Lapse thereof;
- (vi) Shall ensure that Gujarat University is providing the following infrastructure facilities (List is only inclusive):
 - Classroom;
 - Computer Systems and office equipment;
 - Internet facilities;
 - All required software;
 - All other required infrastructure.
- (vii) All staff will be deputed by the applicant and university is not liable for any payment of staff. This will be taken care of by the applicant.
- (viii) Academic responsibility will be taken by the applicant. The applicant will inform Gujarat University of admission through University Co-ordinator & Registrar for all academic & Examination related activities.
- (ix) The examination pattern will be given by the Gujarat University.
- (x) The fees from the students will be collected by the Gujarat University and a fixed percentage of revenue collected shall be given to the partnered applicant as per the MOU for the education provided to the students and administering the course.

8. The applicant further submitted that it would be relevant to evaluate the scope of the exemption entry no. 66 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017. The said provision provides for exemption to "services provided by an educational institution to its students, faculty and staff. While services which would be exempt have not been defined or specified in relation to the said entry, the notification defines "educational institution". The essence of the above exemption is that the institution in question must qualify as an "educational institution". Once this condition is fulfilled, the services provided by such institution to its students and faculty shall by default be eligible for the above exemption.

9. The NACEN has issued a write up on Educational Services from which the following is extracted:

"What is the meaning of "Education" as a part of curriculum for obtaining a qualification recognised by law?"

It means that only such educational services are in negative list as are related, to delivery of education as a "part of" the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree course by colleges, universities or institutions which lead grant of qualification recognised by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification."

In this relation, from a plain reading of the above clarification, it is apparent that the key criterion for qualification of any service under the above exemption would be that education delivered results in a legally recognized qualification being granted to the student.

10. The applicant states that, he offers a curriculum to a student which enrolls him/her with a university recognized by an Indian Law. Further, the education is granted through a combination of theoretical and practical training sessions. The curriculum also involves examination being conducted by the University and all successful candidates are granted University degrees.

11. The applicant further states that, on identical facts, Karnataka State in the case of M/s Emerge Vocational Skills Private Ltd., vide its Order No. KAR ADRG 20/2018 has held that:

"The services provided by the applicant in affiliation to specified universities and providing degree courses to students under related curriculums to its students are exempt from Central Goods and Services

Tax, vide Entry No. 66 of the Notification No. 12/2017-CT (Rate) dated 28.06.2017 subject to the condition that such education services provided must be as a curriculum for obtaining qualification recognized by any law for the time being in force.”

12. Thus, the applicant on the basis of above, requested that "services provided by an educational institution to its students, faculty and staff" is exempt from tax under the CGST Act and the applicant qualifies as an "educational institution" in so far as those courses for which affiliation has been obtained from the University and partnered with Gujarat University in the State of Gujarat and for which University Curriculum is prescribed and qualification recognized by the law for the time being in force is given after the conduct of examinations by such University. The applicant is exempted from GST. Similar Notification is also present in the Gujarat GST Act and hence, the exemption is applicable *mutatis mutandis* under the Gujarat GST Act also.

13. In view of the above back drops, the applicant has raised following question for advance ruling on classification of services:

Whether the services provided by the applicant in affiliation to/ partnered with Gujarat University and providing education for degree courses to students under specific curriculum as approved by the Gujarat University, for which degrees are awarded by the Gujarat University are exempt from GST vide Entry No. 66 of the Notification No. 12/ 2017-Central Tax (Rate) dated 28th June, 2017?

14. At the time of personal hearing held through Video Conferencing on 17.08.2020, the Authorised Representative of the applicant, Shri Monish Shah CA reiterated the facts as stated in the Application.

DISCUSSION & FINDINGS:

15. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

15.1 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 GGST Act.

16. The applicant sought for advance rulings in respect of following question?

Whether the services provided by the applicant in affiliation to/ partnered with Gujarat University and providing education for degree courses to students under specific curriculum as approved by the Gujarat University, for which degrees are awarded by the Gujarat University, are exempt from GST vide Entry No. 66 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017?

17. From the submission made by the applicant, we observe that the applicant is a company enacted under the Company Act, 1956. They are having necessary expertise in the fields of Computer Animation, IT-Infrastructure Management System and Mobile Computing & Application Education.

18. We further note that an Agreement and a Memorandum of Understanding (MOU) are entered into on 05.07.2017 between the Applicant and the Gujarat University, Ahmedabad for knowledge sharing in the fields of Computer Animation, Mobile Computing & Application, IT-Infrastructure Management Systems (ITIMS) for Skill development, Entrepreneurship development, Youth empowerment and promotion of skill based training.

18.1 As per the said Agreement, responsibilities of the applicant and the Gujarat University, are as below:

“(A) RESPONSIBILITIES OF D.M. NET TECHNOLOGIES:

- (a) Shall ascertain for itself the financial viability of the programs to be launched under Partnership arrangement.*
- (b) Shall ensure quality delivery of the course by faculty, quality Assurance Systems and Training.*
- (c) Shall not make any financial commitment for and on behalf of Gujarat University or Create financial liability binding Gujarat University under This Agreement or in any manner.*
- (d) Shall follow the course curriculum approved by the Advisory Board as constituted by Gujarat University.*
- (e) Shall undertake to maintain the secrecy and confidentiality of the Gujarat University course, syllabus and study material which will remain the property of Gujarat University during the currency of the MOU or Lapse thereof.*
- (f) Shall ensure that Gujarat University is providing the following infrastructure facilities (List is only inclusive):*

- *Classroom*
- *Computer Systems and office equipment*
- *Internet facilities*
- *All required software*

- All other required infrastructure.
- (g) All staff will be deputed by D.M. Net Technologies and University is not liable for any payment of staff. This will be taken care of by D.M. Net Technologies.
- (h) Academic responsibility will be taken by D.M. Net Technologies. D.M. Net Technologies will inform Gujarat University of admission through University Co-ordinator & Registrar for all academic & Examination related activities.
- (i) The examination pattern will be given by Gujarat University.”

“B. RESPONSIBILITIES OF GUJARAT UNIVERSITY:

- (a) Shall accept admission forms from the students, along with fees prescribed by Gujarat University.
- (b) Shall after receipt of the processed application and fees, finalize the admission as per rules and inform the Enrollment number of the student.
- (c) Shall review the cost of delivery of the courses through D.M. Net Technologies and shall arrange to share the fees received by the enrolled students with D.M. Net Technologies.
- (d) Shall arrange to conduct examination by announcing the examination dates and schedule arrange for examination venues, arrange requirement at the examination venues, approve the panel of examiners and paper setter and get answer papers and practical/project report evolution done through D.M. Net Technologies as per clause 1(I) and arrange to announce the result as per schedule.
- (e) Shall provide necessary question paper and blank answer books to the Examination center on time. The answer scripts will remain as the property of Gujarat University.
- (f) Shall arrange to issue Certificate of the successful student on application along with the fee prescribed by Gujarat University. Gujarat University shall also provide continuous guidance to D.M. Net Technologies.”

18.2 From said Agreement, it further reveals that the tuition fee/ lab fee registration fee and examination fee per student per year/semester will be prescribed jointly by Gujarat University and Applicant from time to time. Said Fees will be collected from the students by Gujarat University. Said Program Fee will be shared by Gujarat University and Applicant in a ratio agreed by them under said agreement, i.e. 40% to Gujarat University and 60% to the Applicant.

19. The applicant has submitted that "*services provided by an educational institution to its students, faculty and staff*" is exempt from tax under the CGST Act, vide Entry at Sr. No. 66 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 and the applicant qualifies as an "educational institution" in so far as those courses for which affiliation has been obtained from the University and partnered with Gujarat University in the State of Gujrat and for which University Curriculum is prescribed and qualification recognized by the law for the time being in force is given after the conduct of examinations by such University. The applicant is exempted from GST. Further, the applicant has also referred the Advance Ruling Authorities of Karnataka State's Order No. KAR ADRG 20/2018 passed in the case of M/s Emerge Vocational Skills Private Ltd..

20. First, we examine the Entry at Sr. No. 66 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, which exempts:

"Services provided-

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

20.1 Thus, the services provided by an educational institution to students, faculty and staff are exempt. Further, the term "***educational institution***" is defined in para 2(y) of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, which reads as under:

"(y) an "educational institution" means an institute 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."*

20.2 From the above, it is clear that above entry exempts only following services imparted by any School, Colleges, Universities or Institutions 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.

20.3 Within the term “educational institution”, sub clause (ii) covers institutions providing services by way of **education as a part of a Curriculum for obtaining a qualification recognised by any law** for the time being in force. This is an area where doubts have been persisted as to what would be meaning of “*education as a part of a Curriculum for obtaining a qualification recognised by any law*”. In this regard, we refer to GST E flyer_40_Education Service issued by the NACEN, wherein the Explanation given in the Education Guide of 2012 was referred to understand the meaning of the term, which extracted below:

“What is the meaning of “education as a part of a Curriculum for obtaining a qualification recognised by any law”?”

*It means that only such educational services are in the negative list as are related to delivery of education as “a part of the law”. It is important to understand that to be in the negative list, the service should be delivered as a part of curriculum. **Conduct of degree courses by Colleges, Universities or Institutions which leads grant of qualifications recognised by law would be covered.** Training given by Private Coaching Institutes would not be covered as such training does not lead to grant of a recognized qualification.*

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From a plain reading of the above clarification, it is apparent that the key criterion for qualification of any service under the above exemption would be that education delivered results in a legally recognized qualification being granted to the student.

20.4 We find that the applicant is an educational consultant and a professional in the fields of Computer Animation, IT-Infrastructure Management System and Mobile Computing & Application Education, which uses their experience and knowledge in teaching, to help with curriculum development and other issues to Gujarat University and parents face. The applicant designs and handles the courses, namely M.Sc.-IT in Animation, M.Sc.-IT in Mobile application, M.Sc.-IT in IMS (Infrastructure Management Systems) and M.Sc.-IT in Network Securities, which undertaken by Gujarat University. The applicant then on the basis of the approved courses, provide training to the students. Further, the applicant also helps to administer the admission and fees collection process. Training given by the applicant as a Private Institutes would not be covered, as such training does not lead to grant of a recognized qualification. Thus, the applicant does not have any specific curriculum and does not conduct any examination or award any

qualification/degree. Hence, the applicant does not qualify as educational institution.

20.5 In this process, the applicant received Fees (i.e. 60% of total fees collected from students by Gujarat university) from Gujarat University, which attract GST @18%.

20.6 We have also perused the Order No. KAR ADRG 20/2018 of the Advance Ruling Authorities of Karnataka State passed in the case of M/s Emerge Vocational Skills Private Ltd., as referred by the applicant, and find that the M/s Emerge Vocational Skills Private Ltd., has exempted the services in question vide Entry No. 66 of the Notification No.12/2017-CT (Rate) dated 28.06.2017 subject to the condition that such education services provided must be as a curriculum for obtaining qualification recognized by any law for the time being in force. Hence, the same is not applicable to the facts of present case.

21. In view of the above, we have no hesitation to conclude that the applicant is not at all entitled for exemption in respect of said services provided by the applicant to Gujarat University, under Entry at Sr. No. 66 of the exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

22. In light of the foregoing, we rule as under –

R U L I N G

Question: Whether the services provided by the applicant in affiliation to/partnered with Gujarat University and providing education for degree courses to students under specific curriculum as approved by the Gujarat University, for which degrees are awarded by the Gujarat University are exempt from GST, vide Entry No. 66 of the Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017?

Answer: Answered in Negative, as discussed above.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 17.09.2020.