

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id		27AABCI2106H1Z0/271800000534ARP
Legal Name of Applicant		IL&FS Education and Technology Services Ltd.
Registered Address/ Address provided while obtaining user id		3rd Floor, C D Quardrant, The ILFS Financial Center, Bandra Kurla Complex, Bandra East, Mumbai City, Maharashtra
Details of application		GST-ARA, Application No. 48 Dated 28.03.2018
Concerned officer		Asstt. Commissioner of S.T.(D-904) Nodal Division 5, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	That Applicant is, <i>inter alia</i> , engaged in providing computer training services to the Government aided secondary and higher secondary schools across the state of Maharashtra to implement the ICT @ School Project.
Issue/s on which advance ruling required		(ii) applicability of a notification issued under the provisions of the Act (v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by IL&FS Education and Technology Services Ltd., the applicant, seeking an advance ruling in respect of the following question:-

The present Advance Ruling Application is for determining applicability of Entry No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 read with Entry No. 72 of Notification No. 12/2017-State Tax (Rate) dated 29.06.2017 to the services provided by the Applicant under the ICT @ School Project.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference



to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. **FACTS AND CONTENTION - AS PER THE APPLICANT**

The submission (Brief facts of the case), as reproduced verbatim, could be seen thus -

Brief relevant facts:

1. IL&FS Education and Technology Services Ltd. ("Applicant") is a public limited company incorporated in India and registered under the Companies Act, 1956. The Applicant having GSTIN 27AABCI2106H1Z0 is registered in Mumbai, Maharashtra and falls within the jurisdiction of Mumbai Nodal Division-5, Maharashtra. The Applicant is the social infrastructure arm of IL&FS group and is engaged in the key areas of education, skill development, healthcare and cluster development for long term and sustainable impact.
2. *Inter alia*, the Applicant is working with various State or Union Territory Governments to promote computer training among the students and teachers of the government and government aided higher secondary schools under the Information and Communication Technology ('ICT') @ School Project (hereinafter referred to as "ICT Project").
Overview of ICT Project
3. Information and Computer Technology (ICT) is universally acknowledged as an important tool for improving the quality of education. Realizing the importance of ICT and the vital role that it plays in educational sector, the Government of India framed nationwide policy viz. National Policy on Education, 1986 (as modified in 1992) (hereinafter referred to as the old policy), which stressed the need to employ information technology to improve the quality of education. Also, a number of different schemes such as Computer Literacy and Studies in School (CLASS) and Educational Technology (ET) were introduced under the old policy to promote computer literacy in India.
4. Subsequently, the Ministry of Human Resource and Development, Government of India, revised its old policy keeping in view past experience, the feedback which had been received and changing needs. Thus, a nationwide Information and Communication Technology in Schools ('ICT in Schools') Scheme was introduced to replace the existing ET and CLASS schemes. Thereafter, in the year 2012, Department of School Education and Literacy framed nationwide guidelines under National Policy on ICT in School (hereinafter referred to as the new policy) for implementation of ICT in School Scheme
5. ICT in Schools visions to transform all the Government and Government aided schools into smart schools, where each school should have a computer lab and students are provided with premier computer training. In addition to computer training, ICT in Schools also provide for encouragement of usage of digital medium to impart education in other subjects and to create capability in terms of teaching staff enabling the schools to fully implement ICT in Schools.

Mode of Implementation

6. As discussed above, this new policy framed by the Central Government endeavors to provide guidelines to assist the States in optimizing the use of ICT in school education within a national policy framework. As per the guidelines in the new policy, the Central Government provides that for effective implementation of ICT Projects, the State or Union Territory Governments may consider entry of private partners in various aspects of the ICT Project by adopting the Build, Own, Operate and Transfer (BOOT) model to avoid out of date/obsolete equipment in schools. Thus, the new policy lays emphasis on the Public-Private Partnership (PPP) in the implementation of ICT Projects.
7. It is to be noted that ICT in Schools scheme is a collaborative venture between the Central and the State or Union Territory Governments which actively solicits the partnership between the Governments for the effective implementation of ICT Projects. Under this scheme, the State Government or Union Territory Government shall be responsible for defining norms, standards, guidelines and framework to facilitate and monitor the implementation of the scheme in an effective manner¹. Thus, primary responsibility of implementing ICT Projects is on the State or Union Territory Governments.
8. However, while framing the policy, standards, norms, etc. for implementation of ICT Projects, the State or Union Territory Governments would be guided by the national level policy framed by the Ministry of Human Resource and Development, Government of India. This is to ensure uniform and high standards, optimum utilization and cost-effective implementation of ICT Projects. Thus, the State and Union Territory Governments have to implement ICT Projects in accordance with the guidelines issued by the Central Government in this regard.
9. As the State or Union Territory Government is required to implement ICT Projects in accordance with the guidelines issued by the Central Government, almost all states have been following the PPP model by sourcing out the ICT Project work to the private parties under the BOOT model (as suggested by the Central Government).



10. Thus, as a matter of fact, throughout the nation, the States are adopting the BOOT model to implement ICT Project in schools. In fact, the Applicant is also implementing such ICT Projects on BOOT model basis in various states viz. Odisha, Maharashtra, West Bengal, etc.
- ICT Project in the State of Maharashtra
11. The present application concerns one such ICT project being implemented by the Applicant in the State of Maharashtra. The Director of Education (Secondary and Higher Secondary), Maharashtra State (hereinafter referred to as DE(S&HS)) had invited tender vide tender notice no. 11 on e-tendering sub-portal of Directorate of Primary Education to implement ICT project in 5000 government secondary and higher secondary schools in ten identified regions in the State of Maharashtra.
12. The said tender was for the supply of computer hardware, software and connected accessories along with the site preparation (i.e. vinyl flooring, furniture and fixtures, electrical fittings, power backup facilities, LAN, etc.), maintenance of equipment and provision of computer training services for 5 years in 5000 schools divided in 10 zones on the BOOT Model basis.
13. The Applicant was selected vide Letter of Award accepted on March 26, 2013 to execute the contract in 3 zones i.e. 1590 schools. Accordingly, the Applicant entered into an agreement with DE(S&HS) on 13th November, 2013 (hereinafter referred to as "the agreement").
- Activities to be undertaken by the Applicant
14. In terms of the agreement, DE(S&HS) would arrange the necessary minimum constructed rooms/space in each school for setting up computer labs and the Applicant would carry out the necessary work viz. flooring, furniture and fixtures, etc. for preparing each site to be used as an ICT lab.
15. Further, as per the specifications laid down in the Annexure-I and Annexure-IA to the agreement and the decision of the technical committee, the Applicant would procure the requisite number of IT equipment i.e. Computers, Printers, Scanners, etc. The equipment so procured would be installed and commissioned by the Applicant in the ICT lab prepared in schools. All these activities i.e. site preparation, installation and commission are to be completed by the Applicant in the time prescribed in the agreement i.e. within 120 days from the date of handing over of the sites by DE(S&HS).
16. Once the labs are ready, the Applicant shall operate the same for imparting computer training. For this, the Applicant is required to provide one teacher, having specified qualifications and experience, to each school. The teachers so appointed would utilize the available ICT infrastructure (i.e. the ICT lab so created by the Applicant) for imparting computer training to the students in accordance with the curriculum developed in this regard by the Director, Pune as per Annexure-III to the agreement.
17. Annually, the appointed teacher shall also impart necessary training to at least 5 school teachers including the headmaster/headmistress of the school in computer aided learning and computer education with the usage of available ICT infrastructure. Further, the applicant shall impart technical training to the subject teachers for a period of ten days per year for normal operation, installing and use of textbook based educational software, computer education software, additional educational software, school management software, common software applications.
18. Moreover, it is also the responsibility of the Applicant to maintain and upkeep the ICT labs in proper working conditions for the entire contract period at its own cost. For this, the Applicant would have to provide requisite manpower to carry out the necessary repairs as and when required within the time limit prescribed in the agreement. Besides, the Applicant would also appoint a help desk which will serve as a single point of contact for all ICT related incidents and service requests. Further, the Applicant shall also provide 1 District coordinator for each district and 1 Project manager for a region for project management & monitoring which would coordinate with the Government of Maharashtra.
19. In terms of the agreement, all the above-mentioned activities are to be carried out for a total consideration of Rs. 284,61,00,000/- (Rupees Two hundred and eighty-four crores sixty-one lakhs only) which would be payable in installments (throughout the period of contract) on completion of the activities as detailed in Para 7.1 of the agreement.
20. After the expiry of the contract period (i.e. 5 years), the entire infrastructure (supplied and installed) will be transferred to DE(S&HS) at a nominal value of Re. 1/-.

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

APPLICANT'S ELIGIBILITY FOR ADVANCE RULING:

21. That Section 97 of the Central Goods and Service Tax Act, 2017 (hereinafter, referred to as 'CGST Act'), entails that advance ruling may be filed by an applicant on following questions: -
- Classification of any goods or services or both;
 - Applicability of a notification issued under the provisions of this Act;
 - Determination of time and value of supply of goods or services or both;
 - Admissibility of input tax credit of tax paid or deemed to have been paid;
 - Determination of the liability to pay tax on any goods or services or both;
 - Whether applicant is required to be registered;



- g. Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
22. The Applicant submits that the issue on which advance ruling is sought in the instant matter relates to the applicability of Sl. No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 under CGST Act to the services provided by the Applicant. The questions relating to applicability of a notification issued under the CGST Act, 2017 are eligible to be posed for advance ruling before the Advance Ruling Authority in terms of Section 97(2)(b) of the CGST Act, 2017. Hence, present advance ruling application is maintainable before the Hon'ble Authority of Advance Ruling.

ISSUE(S) REQUIRING ADVANCE RULING:

23. The Applicant submits the following question for Advance Ruling and their interpretation on the question is as under:
- a. Whether the services provided by the Applicant to the Government secondary and higher secondary schools under the ICT Project, are covered under the scope of Entry No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (hereinafter referred to as "Notification No. 12/2017")?

Applicant's understanding:

24. In the understanding of the Applicant, the activities undertaken by the Applicant under ICT project would be covered under the scope of Entry 72 of Notification No. 12/2017, for the reasons furnished herein below:

Applicable provisions:

Notification No. 12/2017

25. Notification No. 12/2017 provides for the exemption for intra-State supply of services of description as specified in column (3) of the Table, from so much of the Central Tax leviable thereon under sub-section (1) of section 9 of the CGST Act, as is in excess of the central 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).

26. For quick reference, Entry No. 72 of the Notification No. 12/2017 is reproduced herein below:

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

27. The corresponding exemption is provided under Entry No. 72 of Notification No. 12/2017 dated 29.06.2017 issued under Maharashtra Goods and Service Tax Act, 2017.

Analysis of the exemption entry

28. On a careful perusal of the above extracted entry, it is clear that NIL rate under the said entry would be leviable to all the services which are provided:
- a. under any training programme;
- b. to the Central Government, State Government, Union Territory administration; and
- c. the total expenditure of such training programme is borne by the Central Government, State Government or Union territory administration.

29. Thus, to avail the exemption benefit under Entry No. 72 of the Notification No. 12/2017, all the pre-requisites mentioned above are to be satisfied.

Applicability of the above analysis to the present case

The services are provided under the training programme

30. In the instant matter, the Applicant is carrying out various activities viz. installation, commissioning, site maintenance, operation, etc. to implement ICT Projects in the government secondary and higher secondary schools in the state of Maharashtra. A detailed explanation of the activities carried out by the Applicant is already provided in the facts above (Annexure I to the present application).

31. At this juncture, it is essential to analyse whether all the above referred activities carried out by the Applicant would qualify as 'supply of services under the training program' or not?

32. In order to answer this question, it is pertinent to understand true nature, scope and extent of the activities undertaken by the Applicant in the implementation of ICT Projects under the ICT in Schools scheme.

All the activities undertaken under ICT Projects are naturally bundled

33. It has been explained in the facts of the instant matter (Para 6-9 of Annexure I to the application) that the national level policy framed by the Central Government for implementation of ICT Projects provides that the State Government(s) should preferably follow BOOT model.

34. This suggestion of the Central Government is in fact being followed by the State Governments. Multiple state governments, as mentioned in facts also, are awarding the contracts for implementing ICT Projects on BOOT model only. In all such cases, the private parties are implementing ICT Projects under BOOT Model, wherein, all the activities including supply, installation, commissioning, operation, maintenance, and computer training



- are to be performed by such private parties. It is a matter of fact that competitors of Applicant are also providing similar bundle of services to other State Governments under ICT in school scheme.
35. It is pertinent to note that under such contracts all activities are to be undertaken by a single vendor and there is no possibility of performance of different activities by different vendors. This practice is being followed by the entire industry since the introduction of ICT Projects.
36. The perspective of recipient of supplies here i.e. the Government of Maharashtra or other state governments in other cases, is to receive everything together as a bundle in all the cases. In other words, the state governments want one private party to implement ICT project in a wholesome manner.
37. Therefore, in view of the industry practice and the expectation of state governments as recipient of supply, the Applicant is of the understanding that all the activities performed by the private parties under the BOOT model are naturally bundled.
- The basic infrastructure is being developed to provide computer training to the students or teachers
38. With the background in mind, as discussed above, the Applicant would like to highlight the fact that the basic idea of the Government of Maharashtra behind sourcing out the ICT project to the Applicant is that the Applicant should provide computer training to specific number of schools in Maharashtra for five years. Further, to be able to impart such computer training, the Applicant is also made responsible for creating the infrastructure in such schools as required, which will be used by the Applicant for first five years and thereafter, by the respective schools.
39. It is pertinent to note that the infrastructure built by the Applicant is used by the teachers appointed by the Applicant to provide computer training to students as well teachers of the government and government aided schools. A detailed explanation of the activities undertaken by the Applicant is provided in the facts of the present application.
40. The Applicant humbly submits that the entire infrastructure is being developed for imparting computer training and that the Applicant is engaged in single supply of computer training services to the state of Maharashtra.
- The ICT in Schools scheme has been introduced with an aim to promote computer literacy among the students and teachers
41. The above argument that the entire infrastructure is developed to provide computer training is also supported by the policies framed by the Central as well as State Government in this regard.
42. The vision and mission statement in the new policy² provides that the scheme has been introduced in schools with an aim to promote computer literacy and technologically-aided education among the students as well as teachers.
43. The preamble to the agreement clearly provides that the supply of computer hardware, software, faculty and provision of education services under BOOT model are in pursuit to improve the quality of education in secondary and higher secondary schools of Maharashtra.
44. On a careful perusal of the new policy issued by the Central Government and the preamble of the agreement, it is abundantly clear that the prime object behind this scheme is to promote computer literacy among students and teachers. Thus, the main thrust under this scheme is to impart computer training and to achieve this, the Government is making provisions for ICT lab and other IT infrastructure.
- BOOT Model achieves the object of imparting computer training and therefore, is preferred over outright purchase of assets
45. It may be argued that in order to achieve the object of providing computer training, the Government may purchase the assets and employ the teachers from the external service provider or engage the available school teachers.
46. However, it is to be noted that the new policy suggests that the State Government(s) may choose the BOOT Model for ICT infrastructure to maximize coverage of the program in schools in the shortest possible time. The Applicant understand that the emphasis on the use of BOOT model for implementation of ICT project is for the following merits of the BOOT model:
- a. The schools covered under this project are technologically backward wherein, even the teachers are not well versed with the computer or technology. Thus, the existing teachers are incapable of imparting computer training.
 - b. The Computer/ICT is a new area which people in the education system are not familiar with and hence, the teachers themselves requires training from those who are experts or more familiar with it.
 - c. Even the Government lacks the basic infrastructure and it is also not technically equipped to maintain and operate the hardware and software systems installed for ICT Projects.
 - d. Under the BOOT model, the experts in the IT fields are engaged and thus, the schools will get benefit of the expertise of the private IT vendors.
 - e. It takes a considerable time for the computer learning processes to stabilize and the BOOT model leverages the expertise of IT vendors for the time period enough for smooth transition.
47. Thus, for the above referred merits of the BOOT Model, the Government has encouraged the State Governments to opt it for implementing ICT Projects.



48. It is to be noted that prior to introduction of the new policy, the Government of India had amended its old policy in 2011 by issuing revised guidelines of ICT in Schools (hereinafter referred to as revised guidelines). A copy of the revised guidelines is enclosed as *Annexure-E*. Under its revised guidelines also, the Government has stressed upon the fact that the 'Outright Purchase Basis' or 'Direct Procurement of Hardware' by the State Governments would be the last resort³. Moreover, the State Government(s) opting to implement the ICT Project under Outright purchase method would be required to give a detailed justification as to why BOOT model is not opted⁴.
49. It has been experienced in the past that the 'Outright Purchase of Assets' helped in creation of assets or infrastructure, but in absence of the qualified teachers or trainers, such infrastructure was never utilized for imparting education and resultantly, the assets would eventually have become obsolete. Not only this, even the Government was not technically equipped to operate and maintain the computer systems (both hardware and software) to ensure smooth implementation of ICT Projects. Thus, it failed to achieve the object of imparting computer training to the students and teachers.
50. Therefore, keeping in mind the past experience, BOOT model is preferred and outright purchase of assets is kept as the last resort. The Applicant submits that the above discussion is to bring to the notice of the Hon'ble Advance Ruling Authority that the focus under the BOOT model and the present agreement of the Applicant with the State of Maharashtra is on the provision of quality computer training for 5 years and not creation / supply of infrastructure.
- The Applicant is not providing operation or maintenance services
51. It is to be noted that in terms of the agreement, during the period of contract (i.e. 5 years), the operation and maintenance of the entire IT infrastructure, equipment is to be carried out by the Applicant on its own cost. It is to be noted that during this period, the ownership of the equipment and infrastructure remains with the Applicant. This can be inferred from the following terms of the contract:
- during the period of contract, the equipment, infrastructure, etc. are to be repaired by the Applicant at its own cost⁵.
 - it is the responsibility of the Applicant to obtain necessary insurance⁶ for the equipment, infrastructure, etc. Thus, for the entire contract period, the risk remains with the Applicant.
 - Further, the ownership of the ICT labs and all other infrastructure will be transferred by the Applicant to the DE(S&HS) at a nominal value of Re. 1/- at the end of the contract period i.e. 5 years.
52. Therefore, the above referred terms of the agreement clearly establish that during the period of contract, the ownership of the equipment and infrastructure lies with the Applicant.
53. As the entire infrastructure is owned by the Applicant, the activities of maintenance or operation of the infrastructure, hardware, software, etc. carried out by the applicant are in regard to self-owned equipment. Thus, it cannot be said that the Applicant is engaged in the supply of operation or maintenance services in as much as operation or maintenance of self-owned equipment does not amount to supply of services to third party.
54. Reliance in this regard is placed on the decision of *CMS (I) operations and Maintenance Co. Pvt. Ltd. vs. CCE, Pondicherry*⁷ wherein, the Hon'ble Tribunal has held that the maintenance or repair services undertaken by CMS cannot be taxed under 'Management, Maintenance or Repair service' in as much as the same are undertaken in respect of the self-owned goods and would amount to self-service. This view of the Tribunal is upheld by the Hon'ble Supreme Court in *CCE, Pondicherry vs. CMS (I) operations and Maintenance Co. Pvt. Ltd.*⁸
55. Thus, in view of the above discussion it is clear that the entire infrastructure is owned by the Applicant and the repair and maintenance activities undertaken by the Applicant are in regard to the self-owned equipment. Therefore, there is no supply of maintenance or operation services by the Applicant.
56. In fact, the repair and maintenance of the equipment and infrastructure is performed by the Applicant so that it may continue to provide computer training during the contract period in a smooth manner without any obstruction.
- There is no supply of goods during the period of contract
57. The activities undertaken by the Applicant are under BOOT model basis and therefore, the ownership in the infrastructure developed by it would be transferred after the expiry of the contract period (i.e. 5 years). This is also clearly provided in the tender notice that the ownership of the entire hardware, software, other equipment, etc. will be transferred by the Applicant to DE(S&HS) at a nominal value of Re. 1/- at the end of the contract period⁹.
58. In view of the above, it can be concluded that during the entire period of contract, the Applicant is not engaged in the supply of goods in as much as supply of goods is taking place after the expiry of 5 years.



59. Without prejudice to the above discussion regarding supply of goods, it is submitted that even if some value is to be attributed towards supply of goods (equipment / infrastructure), the supply of goods here is ancillary to the principal supply of computer training service. As discussed above, the basic idea of the ICT project implementation is provision of computer training to specific schools in the state of Maharashtra and not procurement of equipment / mere creation of infrastructure.
60. In view of the above discussion, it is abundantly clear that the Applicant is responsible for provision of computer training for five years using the newly built infrastructure. Entry No. 72 of Notification No. 12/2017 requires that the services must be provided under a training programme. It is important to analyse if the services of provision of computer training by the Applicant can be considered to have been provided under a training programme.
61. It is pertinent to note that the term 'training' used in the above referred Entry No. 72 has not been defined in the Notification No. 12/2017. Further, this term is also not defined in the CGST/SGST Act as well as CGST/SGST Rules. Therefore, it is necessary to refer to the dictionary meaning of the term 'training':
- (i) *P. Ramanatha Aiyar's The Law Lexicon - The Encyclopaedic Law Dictionary*
Train: To make fit by study, exercise and proper guidance.
Training: Training means systematic instructions.
 - (ii) *Collins Cobuild English Dictionary for Advanced Learners*
Training:
1. Training is the process of learning the skills that you need for a particular job or activity.
2. Training is a physical exercise that you do regularly in order to keep fit or to prepare for an activity such as a race.
 - (iii) *The New Lexicon Webster's Dictionary*
Train:
1. to cause a person or animal to respond to discipline and instruction.
2. to make a person or animal efficient in some activity by instruction and repeated practice.
Training:
1. preparatory discipline for participants in athletics.
2. instruction and practice in a particular skill, first aid training.
 - (iv) *Chambers English Dictionary*
Training
1. practical education in any profession, art, or handicraft;
2. a course of diet and exercise for developing physical strength, endurance or dexterity;
 - (v) *Oxford Dictionary of English, third edition*
Training means the action of teaching a person or animal a particular skill or type of behaviour
62. On a careful perusal of the above referred dictionary meaning, it can be understood that in common parlance, training is generally used to refer to practical instruction or learning process. It also means practical guidance given for developing skills or the action of teaching or giving instruction in a particular subject to enhance skills.
63. It is to be noted that under the erstwhile service tax regime, the services in the nature of commercial training and coaching provided by commercial training and coaching institutes were taxable and the term 'commercial training and coaching' was also not defined under the Finance Act (both under the positive and negative regime). Further, the courts had, at various occasions, interpreted the term 'training' used therein and distinguished it from education.
64. In this regard, reference is made to the decision of Hon'ble Tribunal (Larger Bench) in the decision of **Great Lake Institute of Management Ltd. vs. CST, Chennai**. In the said case, the Tribunal has interpreted the definition of the term 'commercial training or coaching institute' to include any institute or establishment imparting skills/knowledge/lessons on any subject or field.
65. At this juncture, it is pertinent to note that the term training is a subset of education in as much as education is a holistic process of overall development of a person. It includes moral, intellectual and physical development of a child or a person and is not restricted to a particular subject and it covers various subjects and areas. On the other hand, training is inculcating skills in an individual in a particular subject or field. It is further supported by placing reliance on the decision of Hon'ble Mumbai Tribunal in the case of **CCE, Pune - III vs. Mitcon Consultancy and Engg. Services Ltd.** wherein, the Hon'ble Mumbai Tribunal has held that the term education includes training.
66. In the instant case, the Applicant is engaged in imparting computer skills to the students as well as teachers. As far as students are concerned, they are taught computer as a subject wherein, various skills viz. operation of computers, using MS-Office, internet, etc. are given to them. Besides that, even teachers and headmaster/headmistress are given skills in regard to computer-aided learning.
67. It is to be noted that the activities of the Applicant are restricted to providing skills to teachers as well as students in a particular subject i.e. computer. Thus, these activities, being narrow in scope, would qualify as training services.
68. Further, in the decision of **Great Lake Institute of Management Ltd. (supra)**, the Tribunal also observed that Parliament has not restricted the scope of training or coaching as is defined, by super adding any conditions such as in terms of pedagogic methodology, course or training content, syllabus, duration, periodicity, tenure/duration or like conditions.
- Similarly, Entry No. 72 of Notification No. 12/2017, also provides that the benefit of NIL rate would be available to the services provided under a training programme. Notably, the term 'training' used therein, is neither



defined nor qualified by adding any conditions *viz.* content, syllabus, periodicity, etc. Thus, once it is established that the services are in the nature of imparting skills or knowledge, the same would amount to training services for the purpose of entry No. 72 of Notification No. 12/2017.

70. It is already discussed in detail that the Applicant is engaged in providing computer related skills to the students as well as teachers. Thus, it is abundantly clear that the services provided by the Applicant *viz.* computer related training to the students as well as teachers under ICT Project would squarely fall within the ambit of term 'training' used in Entry No. 72 of Notification No. 12/2017 irrespective of the tenure, syllabus, content, etc. of the Project.
71. In view of the above discussion, it can be inferred that the first pre-requisite of the Entry No. 72 of the Notification No. 12/2017 is fulfilled.
- The services are provided to the Government of State of Maharashtra*
72. The second pre-requisite of Entry No. 72 of Notification No. 12/2017 is that the services are to be provided to the Central or State or Union Territory administration. In the instant case, the agreement pertaining to implementation of ICT Project is entered into between the Applicant and DE(S&HS).
73. School Education Department of the State of Maharashtra is working as an Administrative Department with several Directorates under its control. The functions of School Education Department are to implement National Education Policy 1986, up to higher Secondary level and to give recognition to the educational institutions. The main objectives are to guide, help and to co-ordinate all aspects of educational policies and administrative matter to work for improving educational standards and improvement in quality of resource books. Amongst all other Directorates, one of them is DE(S&HS), which is responsible for education of students of Secondary (VIII - X) and Higher Secondary (XI - XII). A detailed structure and functioning of School Education Department is given in Para 1.1 of the tender notice no. 11 issued by DE(S&HS).
74. Thus, DE(S&HS) is entrusted with the responsibility of overall implementing and reviewing the quality education in the government secondary and higher secondary schools across the State of Maharashtra. As the ICT Project is to be implemented in the government secondary and higher secondary school, the agreement has been entered into by the Director of Education on behalf of the State of Maharashtra.
75. It is also apparent from the definition clause of the agreement which provides that director means the Director of Education (Secondary and Higher Secondary), Maharashtra State that is acting on behalf of the Government of Maharashtra as the implementing officer in respect of ICT Project in the State of Maharashtra. Therefore, it is clear that the DE(S&HS) is an implementing authority acting on behalf of the State of Maharashtra for implementation of ICT Project. Thus, the Applicant is providing services to the Government of State of Maharashtra.
76. In view of the above, it is abundantly clear that the Applicant is engaged in providing computer training services to the Government of Maharashtra. Therefore, the second pre-requisite of the Entry No. 72 of Notification No. 12/2017 is also fulfilled.
- The entire expenditure is borne by the Central Government and the State Government of Maharashtra*
77. Further, the third pre-requisite of Entry No. 72 of Notification No. 12/2017 is that the entire expenditure is to be borne by the Central or State or Union Territory Government administration. As per Para 3.1.3 of the revised guidelines, the total expenditure on this programme is borne by the Central and State/UT Government in the ratio of 75:25 except for the NER states including Sikkim where it is 90:10. This information is also available at the website of MHRD¹⁰. A screenshot of the relevant page of the MHRD website is enclosed as *Annexure-F*.
78. Therefore, the third pre-requisite of the Entry No. 72 of Notification No. 12/2017 is also fulfilled.

ISSUES REQUIRING ADVANCE RULING AND APPLICANT'S UNDERSTANDING:

In the light of aforementioned, the Applicant seeks to enter the following question for Advance Ruling and its interpretation of the question will be as under:

Question:

Whether the training services provided by the Applicant are covered under the scope of Entry No. 72 of Notification No. 12/2017?

Applicant's Understanding:

The Applicant is providing computer training services to the Government of Maharashtra and the whole expenditure in regard to such training programme, is borne by the Central Government as well as the Government of Maharashtra. Thus, the services provided by the Applicant would fall within the scope of Entry No. 72 of Notification No. 12/2017 and thus, leviable to CGST and SGST at Nil rate.

03. CONTENTION - AS PER THE CONCERNED OFFICER

No submissions have been made by the department.

04. HEARING

The case was taken up for preliminary hearing on dt. 18.04.2018, with respect to admission or rejection of the application when Sh. Kapil Sharma, Advocate along with Ms. Jyoti Pal, Advocate and Sh.



Vinesh Khanna, AVP, Sh. Amitabh Jain, CEO and Sh. Srinivas, SVP appeared and requested for admission of application as per their contentions made in ARA. The jurisdictional officer, Sh. Rishikesh Wagh, Asstt. Commissioner of S.T. appeared and stated that they would be making submissions in due course.

The application was admitted and during the Final Hearing on 06.06.2018, Sh. Manish Gaur, Advocate along with Ms. Jyoti Pal, Advocate and Sh. Vinesh Khanna, appeared and made oral and written submissions. The jurisdictional officer, Sh. Dinesh Bhaskar, Asstt. Commissioner of S.T. appeared and stated that they would be making submissions in due course.

05. OBSERVATIONS

5.1 We have perused the records on file and gone through the facts of the case and the submissions made by the applicant and the department.

5.2 We find that the question raised by the applicant pertains to the fact whether Entry No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 is applicable to the agreement entered into by the applicant with The Director of Education (Secondary and Higher Secondary), Maharashtra State (hereinafter referred to as DE(S&HS) to implement ICT project in 5000 government secondary and higher secondary schools in ten identified regions in the State of Maharashtra.

5.3 We therefore take up the issue of interpretation of afore-mentioned Entry No. 72 of the said Notification to the subject activity of the applicant for discussion and are reproducing the said Entry No which is as under:-

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

5.4 We observe that as per Entry No 72 pertaining to Heading 9992, Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration attract nil rate of taxes under the GST law.

5.5 From a reading of the description mentioned in column 3 of the above mentioned table we find that there are three elements involved as under which have to be satisfied by the applicant to be eligible to avail the benefit of Entry No. 72 of Notification No. 12/2017:-

1. Services should be provided to the Central Government, State Government, Union territory administration.
2. under any training programme.
3. for which total expenditure is borne by the Central Government, State Government, Union territory administration.

5.6 We now take up each of the factors involved in the said Entry No. 72 of the Notification No 12/2017-CT (Rate) as follows:-



A. SERVICES SHOULD BE PROVIDED TO CENTRAL GOVERNMENT, STATE GOVERNMENT, UNION TERRITORY ADMINISTRATION.

The applicant has submitted that they are **working with various State or Union Territory Governments to promote computer training among the students and teachers of the government/government aided higher secondary schools under the ICT Project**. The applicant in their submissions have stated that they are engaged in single supply of computer training services to the state of Maharashtra in the form of installation, commissioning, site maintenance, operation, etc. to implement ICT Projects in the government secondary and higher secondary schools in the state of Maharashtra. They have also submitted that the ICT project is sourced from them by the DE(S&HS) for providing computer training to specific number of schools in Maharashtra for five years and further, to be able to impart such computer training, the Applicant is also made responsible for creating the infrastructure in such schools as required, which will be used by the Applicant for first five years and thereafter, by the respective schools.

We find that the applicant has referred to the provisions of Entry No 72 of Notification No. 12/2017 mentioned above. A plain reading of the said provisions makes it very clear that the Government in inserting the said entry has covered only **services** provided to Central Government etc. The applicant has further submitted that the entire infrastructure is owned by them and the repair and maintenance activities undertaken by them are in regard to the self-owned equipment. Therefore, there is no supply of maintenance or operation services by the Applicant.

A reading of the preamble of the agreement entered into by the applicant with the Director of DE(S&HS) reveals that the applicant has to make supply of computer hardware, software, faculty and provision of education services under BOOT model. Para 4.2 of the contract between the applicant and the Director, Education states that *"The prices and total value of goods shall be firm for the contract period and shall be inclusive of all taxes, duties...."* Para 4.3 of the said contract says that *"the contractor shall supply the multimedia base computer aided learning software...."* The said portions of the contracts clearly envisage a situation of supply of both goods and services and not services only. For the contract to fall under **"Services provided to..."** there should be only services rendered and no supply of goods which is not so in this case.

To summarise, the applicant has entered into a contract with DE(S&HS), Maharashtra State, for a period of 5 years, for implementation of the ICT @ school project in Government and Government aided higher secondary schools across the State of Maharashtra. In the preamble of the contract it is mentioned that *"In its pursuit to improve the quality of education in Secondary and Higher Secondary schools of Maharashtra, the supply of computer hardware, software and connected accessories, Faculty and provision of IT Education Services in Government Secondary and Higher Secondary schools in the State of Maharashtra on Build, Own, Operate and Transfer (BOOT) Model is envisaged under the ICT @ school scheme under Public Private partnership"*. As seen in the contracts the Applicant, has to procure, supply and install requisite number of IT equipment i.e. computer hardware, software, etc and to maintain and keep the same in proper working conditions for the entire contract period of five years along with deployment of manpower (in the form of Faculty member/Instructors, etc) in the said 1590 Schools to impart computer knowledge to the students and teachers for a total contract value of Rs 284.61 Crores. Thus it is seen that the applicant, under the contract, is obliged to make taxable supply of goods and services to the DE(S&HS) during the contract period.



Further, from the terms and conditions of the contract, we find that there is not only provisions of rendering service under any a training programme, but there is also a provision to create necessary infrastructure in schools for implementation of ICT project. Hence from the terms of the Contract, we find that the applicant is not just providing a supply of Service but is also providing a composite supply of Goods i.e. hardware and network equipments, printers, scanners, power equipments, and also imparting training on use of such equipments as per the syllabus prescribed (The said tender was for the supply of computer hardware, software and connected accessories along with the site preparation (i.e. vinyl flooring, furniture and fixtures, electrical fittings, power backup facilities, LAN, etc.), maintenance of equipment and provision of computer training services for 5 years in the various schools). Thus, it will be incorrect to dub the entire project as a training programme. It is rather a composite supply of goods and services, not naturally but artificially bundled having distinctly separate components with distinct value attributable to each of the components.

B. SERVICES SHOULD BE PROVIDED TO CENTRAL GOVERNMENT, STATE GOVERNMENT, UNION TERRITORY ADMINISTRATION UNDER ANY TRAINING PROGRAMME

From the foregoing discussions we find that the applicant is not just providing a supply of Service but is also providing a composite supply of Goods i.e. hardware and network equipments, power equipments, etc. In view of the fact that the applicant has to set up the site provided by the DE(S&HS) as a computer lab by way of procuring and installing the computers, and other equipments as mentioned above, it would appear that the entire project cannot be termed as a training programme. It would rather be a composite supply of goods and services, not naturally bundled and having distinctly separate components with distinct value attributable to each of the components for example:-

1. Procurement of hardware and software including computers.
2. Maintaining the same for a period of 5 years and then transferring the ownership of the property to DE(S&HS).
3. Supplying of manpower in the form of teachers, etc.
4. Training the teachers and the students to create digital awareness.

Further, we find that the applicant has stated that they are imparting computer skills to the students as well as teachers. Also we see that the contract is for the supply of computer hardware, software and connected accessories along with the site preparation (i.e. vinyl flooring, furniture and fixtures, electrical fittings, power backup facilities, LAN, etc.), maintenance of equipment and provision of computer training services for 5 years in 1590 Govt, and Govt. aided high schools of Maharashtra under ICT@school project for a certain contract value. Thus, the contract is clearly for supply of goods and services including training. It is a composite supply having distinctly identifiable components with distinct value attributable to each of the components. There is no doubt that the applicant has provided computer training service as part of the contract, but the said service is not the pre-dominant/principal supply. In fact as seen above the contracted supply has many distinct supply components out of which training is a small component. It is also seen from their submissions that during the contract period, the infrastructure built by the Applicant remains property of the Applicant. Even after the expiry of contract period, the ownership of the entire infrastructure (supplied and installed) will be transferred to the DE(S&HS) at a nominal value of Re. 1. On the basis of this argument the applicant has submitted that there is no consideration to the transfer of the



goods in question and therefore there would be no supply of goods. Here we may mention that as per para 1(c) of Schedule II of the SGST/CGST Act, any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods and not a service. In view of this, the second condition/pre-requisite is also not satisfied.

C. SERVICES SUPPLIED FOR WHICH THE TOTAL EXPENDITURE IS BORNE BY THE CENTRAL GOVERNMENT, STATE GOVERNMENT, UNION TERRITORY ADMINISTRATION.

We find from a plain reading of the terms of the contract that payment for the work done is to be made by DE(S&HS) which is a department of the State Government. Thus the source of funding the expenditure is the State Government. Thus there is no dispute in respect of fulfillment of this condition but as per discussions above, the other two conditions of Notification are not satisfied.

5.7 Thus we find that when the language of a taxing statute is clear, if the conditions of supply falls within the four corners of statute allowing exemption, it is to be exempted. If not, tax is to be levied. In the present case all the conditions of Entry No 72 of the Notification No. 12/2017 have not been fulfilled and therefore there is no question the applicant being eligible for exemption on the basis of the said Entry.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 48/2017-18/B- 55 Mumbai, dt. 25.06.2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1.Determining applicability of Entry No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 read with Entry No. 72 of Notification No. 12/2017-State Tax (Rate) dated 29.06.2017 to the services provided by the Applicant under the ICT @ School Project.

Answer :- Answered in the negative. The supply of goods and services as made by the applicant under ICT@ School project is not in compliance of all conditions of exemption as notified under the above referred Notification.



—sd—
B. V. BORHADE
(MEMBER)

—sd—
PANKAJ KUMAR
(MEMBER)

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI