

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADMISSION ORDER NO. GUJ/GAAR/ADM/2018/33
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/31)

Date : 30.8.2018

Name and address of the applicant	:	Take Off Academy (Nidhi Rahul Gandhi) 6/B, Hindu Co. Op. Housing Soc., Opp. Sardar Patel Stadium, Navrangpura, Ahmedabad – 380 009
GSTIN of the applicant	:	24ACGPM2933G1ZT
Date of application	:	12.12.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both; (e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	12.04.2018
Present for the applicant	:	Shri Samir Siddhapuria, Advocate

The applicant Take Off Academy has filed application seeking advance ruling on following questions –

- (a) The consideration received from M/s. Pearson VUE, for Tax Invoice No. 001 dated 31st July, 2017 for conducting test on behalf of M/s. Pearson VUE in India is export of services u/s 16(1)(a) of the IGST Act or not ?
- (b) If the answer of the above question is negative then transaction of supply of services is intra state supply of service or interstate supply of services ?

2. The applicant has submitted that Pearson US enters into an agreement with certain Indian Organizations / establishments who are organizing test as per Pearson VUE Authorized Centre Agreement to provide facilities for the electronic delivery of tests. The applicant is contracted organization providing facilities / services for electronic delivery of test in India to M/s. Pearson VUE. The term facilities / service include infrastructure, certified test administrators, verification of the candidates, test vigilance and successful delivery of each tests. The key activities undertaken by the applicant have also been narrated in the application. It is submitted that the applicant conducts test for the students or migrants who need to clear the exam before they apply for admission or visa for an overseas university as per Pearson VUE Authorized Centre Agreement. This exam is similar to IELTS or TOEFL but it is computer based exam. M/s. Pearson VUE decides

the test fees in consonance with clause 6 of the agreement and the applicant is not entitled to collect the fees from the candidates who are giving exams. It is therefore submitted that the applicant is providing services to the recipient situated outside India and receiving consideration from outside India and hence considering the provisions of Section 2(6), 2(14), 2(15), 13 and 16 of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the 'IGST Act, 2017') and Section 2(93) of the Central Goods and Service Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017'), the supply of services provided by the applicant to M/s. Pearson VUE is required to be held as export of service as zero rated supply.

3. The personal hearing for admission of the said application for advance ruling was held on 18.01.2018. Shri Siddhapuria was given an opportunity to explain as to how this authority is having jurisdiction to decide this matter and was also given liberty to reframe / amend application, if he wanted.

4. The personal hearing for admission of the said application for advance ruling was again held on 21.03.2018. The applicant, vide letter dated 21.03.2018 submitted the application for modification of question raised for advance ruling as follows :-

- (a) The consideration received from M/s. Pearson VUE for Tax Invoice No. 1 dated 31.07.2017 for conducting test on behalf of M/s. Pearson VUE in India is liable to tax or not ?

However, still the issue of jurisdiction of this authority to decide the question raised in the application remained. Therefore, one more opportunity was granted to explain as to how this authority is having jurisdiction to decide this matter.

5. On the personal hearing held on 05.04.2018, further time was sought which was granted. Thereafter, personal hearing was held on 12.04.2018.

6. In respect of the issue of jurisdiction of this authority on the question raised for advance ruling, the applicant vide letter dated 12.04.2018 referred to Section 97(2) of the CGST Act, 2017 and submitted that the scope of clauses (a) and (e) of Section 97(2) is very wide and this authority has jurisdiction to decide the liability to pay tax under Section 97(2)(a) and (e). The applicant also referred to Section 20 of the IGST Act, 2017 and submitted that sub-section (xvii) of said Section 20 clearly provides that the advance ruling provision of CGST Act will *mutatis mutandis* applies to the IGST Act, 2017, therefore this authority is having jurisdiction to decide the question posed for determination. The applicant also referred to rulings given by West Bengal Authority for Advance Ruling and Kerala Authority for Advance Ruling.

7. We have considered the submissions made by the applicant in application for advance ruling, in the letters dated 21.03.2018 and 12.04.2018 as well as submissions made during the course of personal hearings.

8. Section 97(2) of the CGST Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017') empowers the Advance Ruling Authority to decide the issues, which are as follows :-

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) 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.*

No other issue can be decided by the Advance Ruling Authority and therefore the Acts limit the Advance Ruling Authority to decide the issues earmarked for it under Section 97(2).

9.1 The issue whether the consideration received by the applicant from M/s. Pearson VUE for Tax Invoice No. 1 dated 31.07.2017 for conducting test on behalf of M/s. Pearson VUE in India is 'export of service' under the provisions of the IGST Act, 2017 can be determined in light of various provisions of the IGST Act, 2017, including Section 2(6), which defines 'export of services'.

9.2 The definition of "export of services" as per Section 2(6) of the IGST Act, 2017 is as follows :-

"2(6) - "export of services" means the supply of any service when,

- (i) the supplier of service is located in India;*
- (ii) the recipient of service is located outside India;*
- (iii) the place of supply of service is outside India;*
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;"*

Thus, one of the important requirements of supply of any service to be treated as 'export of service' is that the place of supply of service is outside India.

9.3 The provisions for determination of place of supply of services where the location of the supplier or the location of the recipient of services is outside India are contained in Section 13 of the IGST Act, 2017. Section 16 of the IGST Act, 2017 provides that 'zero rated supply' means any of the following supplies of goods or services or both, namely :-

- (a) export of goods or services or both; or*
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone Unit.*

9.4 Thus, the entire issue is intrinsically related to determination of 'place of supply' of service by the applicant.

9.5 The applicant has referred to the provisions of Section 13 of the IGST Act, 2017 and submitted that place of supply is outside India as the applicant's case is not covered by sub-clause 3 to 13 of Section 13 of the IGST Act, 2017. Thus, the applicant is well aware that the issue is related to 'place of supply'.

9.6 This authority has been constituted in exercise of the powers conferred by section 96 of the Gujarat Goods and Services Tax Act, 2017, which Act extends to the whole of the state of Gujarat. This authority is a creature of statute and has to function within the legal boundary mandated by the Act. As the 'place of supply' is not covered by Section 97(2) of the Acts, this authority is helpless to answer the question raised in the application, as it is lacking jurisdiction to decide the issues. The jurisdiction of this authority does not extend to the questions on determination of 'place of supply'.

10. In the Advance Ruling dated 21.03.2018 of West Bengal Authority for Advance Ruling in case of Global Reach Education Services Pvt. Ltd., it has been held that had there been a dispute relating to 'place of supply' that authority would not provide a ruling on the issue at all. In the Advance Ruling dated 26.03.2018 of Kerala Authority for Advance Ruling in case of M/s. Synthite Industries Ltd., there has been no discussion or decision as to whether the advance ruling authority has jurisdiction to decide the issue of 'place of supply'.

11. The application is therefore rejected without going into the merits of the case, on the issue of lack of jurisdiction, at the stage of admission.

ORDER

The application for Advance Ruling of Take Off Academy (Nidhi Rahul Gandhi - GSTIN 24ACGPM2933G1ZT) is rejected, under sub-section (2) of section 98 of the CGST Act, 2017 and the GGST Act, 2017.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date : 30.8.2018.