

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

**Before:
Mr. A.P.S Suri, Member
Ms. Smaraki Mahapatra, Member**

In the matter of

Appeal Case No. 09 /WBAAAR/Appeal/2018 dated 04.12.2018

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by the Assistant Commissioner, CGST&CX, Joka Division, Kolkata South Commissionerate.

Present for the Appellant: Sri Asok Kumar Guin, Superintendent, Central Tax, Joka Division, Kolkata South CGST & CX Commissionerate

Present for the Respondent: Sri Rakesh B Chhatbar, CA, Authorised Representative

Matter heard on : 28.2.2019

Date of Order : 01.03.2019

This Appeal has been filed by the Assistant Commissioner, Joka Division, Kolkata South CGST & CX Commissionerate (hereinafter referred to as “the Appellant”) on 04.12.2018 against Advance Ruling No. 21/WBAAR/2018-19 dated 02.11.2018, pronounced by the West Bengal Authority for Advance Ruling in the matter of the Indian Institute of Management, Calcutta.

2. The Indian Institute of Management, Calcutta, located at Diamond Harbour Road, Joka, Kolkata, (hereinafter referred as “the IIM, Calcutta”), holding GSTIN 19AAAI0632H1ZZ, stated to be an Educational Institution funded by the Government of India, engaged, *inter alia*, in the provision of Education services to the students and others sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as “the GST Act”) on the following question:

(i) After the introduction of the IIM Act with effect from 31.01.2018, whether or not the IIM, Calcutta should be considered an “Educational Institution”;

(ii) whether the IIM, Calcutta is eligible for Exemption under Entry No. 66(a) of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 (hereinafter referred as “the Exemption Notification”), and from which date it should be effective;

(iii) whether or not the IIM, Calcutta is eligible to get refund of the tax amount already paid by them.

3. The West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR) pronounced its advance ruling by an order dated 02/11/2018 as under:

“(a) The Applicant is an ‘educational institution’ within the meaning of sub-clause (ii) of clause 2(y) of Notification No. 12/2017-Central Tax (rate) dated 28/06/2017.

(b) The Applicant is eligible for benefit for exemption under Entry No. 66(a) of Notification No. 12/2017-CT (Rate) dated 28.06.2017, being an educational institution in terms of clause 2(y) of the said notification.”

4. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR or pass any such further or other orders as may be deemed fit and proper in the facts and circumstances of the case on the following grounds:

(a) The exemption under Sl. No. 66(a) of the Notification No. 12/2017-Central Tax (rate) dated 28.06.2017 has been granted for services provided by an educational institution to its students, faculty and staff. The educational institute referred to here refers to any institution in general associated with training and learning in the field of education.

(b) The WBAAR failed to consider the fact that sl. no 67 of Notification No. 12/20170 Central Tax (rate) dated 28.06.2017 being specific in nature and applicable for IIMs only should prevail over the general exemption as provided in sl no. 66(a). The description, as contained in the exemption notification, clearly indicates that the notification intends to keep IIMs separate from the other educational Institutions within meaning of sl. no. 66(a). Otherwise the restriction imposed under sl. no. 67 shall become infructuous.

(c) The WBAAR failed to discuss on the issue as to whether the government has empowered the IIMs through any set of Acts or Rules to confer ‘degrees’ which requires no approval of UGC as laid down in section 22(1)(c) of UGC Act 1956. In absence of the same it cannot be stated that the qualifications offered by IIMs are recognized by the law.

5. During the course of hearing the Appellant reiterated the points as stated in the Grounds of Appeal. The Appellant also stated that through clarification given by the

Government of India, Ministry of Finance, Department of Revenue, Tax Research Unit, vide Circular No. 80/01/2019-GST (F. No. 354/428/2018-TRU) dated 01.01.2019, the matter has been settled.

6. The Respondent also concurred that the said Circular issued by Ministry of Finance, Department of Revenue, Tax Research Unit and stated that at present there is no ambiguity towards the applicability of GST on various courses offered by the IIM, Calcutta, to students.

7. The matter is examined and written and oral submissions made before us are considered.

8. As per clause 2(y) of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 “educational institution” means an institution providing services by way of -

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;

9. The Indian Institute of Management Act, 2017, which came into force on and from 31.01.2018, granted IIMs the status of “institutions of national importance” and they were empowered to grant degrees, diplomas and other academic distinctions or titles. Thus the Respondent is an “Educational Institution” within the meaning of sub-clause (ii) of clause 2(y) of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017, with effect from 31.01.2018.

10. Circular No. 82/01/2019-GST (F. No. 354/428/2018-TRU) dated 01.01.2019 issued by the Government of India, Ministry of Finance, Department of Revenue, Tax Research Unit, dealt with the applicability of GST on various programmes conducted by the IIMs. It clarified that from 01.07.2017 to 30.01.2018, IIMs were not covered by the definition of education institutions as given in Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 thus they were not entitled to exemption under serial No. 66 of the said Notification. However, IIMs were entitled to exemption for specific programmes falling under serial No. 67 of the Notification.

Relying upon the judgements of Hon’ble Apex Court the aforesaid Circular conceded that if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him. Therefore, from 31st January, 2018 to 31st December, 2018, IIMs can avail exemption under Sl. No. 66 or Sl. No. 67 of Notification. No 12/2017-CT (Rate) dated 28.06.2017.

11. For the sake of clarity these two entries are reproduced below:

Entry at serial No. 66:

“Services provided –

- (a) by an educational institution to its students, faculty and staff;
- (b) to an educational institution, by way of,-
 - (i) transportation of students, faculty and staff;
 - (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
 - (iii) security or cleaning or housekeeping services performed in such educational institution;
 - (iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary;

Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.”

Entry at serial No. 67:

“Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme: -

- (a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;
- (b) fellow programme in Management;
- (c) five year integrated programme in Management.”

It may be mentioned here that Sl. No. 67 was deleted vide Notification No. 28/2018-Central tax (Rate) dated 31.12.2018, with effect from 01.01.2019.

12. In view of above discussion we hold that the Indian Institute of Management, Calcutta, the Respondent, is an ‘education institution’ in terms of meaning of clause 2(y) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 after the enactment of IIM Act on and from 31.01.2018.

The exemption from GST under serial No. 66 of the said Notification was not available to the Respondent from 01.07.2017 to 30.01.2018, however, during this period exemption was available for specific programmes under serial No. 67. Further, for the period 31.01.2018 to 31.12.2018, the Respondent could avail exemption for the eligible programmes either under serial No. 66 or serial No. 67. After the deletion of serial No. 67 with effect from 01.01.2019, the exemption is available under entry 66. The said

entries should be read harmoniously with the Circular No. 82/01/2019-GST (F. No. 354/428/2018-TRU) dated 01.01.2019 issued by the Government of India, Ministry of Finance, Department of Revenue, Tax Research Unit.

The Advance Ruling No. 21/WBAAR/2018-19 dated 02.11.2018 stands modified to this effect and the Appeal stands disposed of accordingly.

Send a copy of this order to the Appellant and the Respondent for information.

(Smaraki Mahapatra)
Member
West Bengal Appellate Authority
for Advance Ruling

(A.P.S Suri)
Member
West Bengal Appellate Authority
for Advance Ruling