


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2018/15
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/24)

Date : 23.08.2018

Name and address of the applicant	:	M/s. Omnisoft Technologies Private Limited 2 nd Floor, Fatehgunj Main Road, The Emperor, Fatehgunj, Vadodara – 390 002
GSTIN of the applicant	:	24AAACO3894M1Z1
Date of application	:	14.11.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	04.01.2018
Present for the applicant	:	Shri Dhruvank Parikh, CA

The applicant M/s. Omnisoft Technologies Pvt. Ltd. (OTPL) is engaged in IT business and education sector, with thrust on the franchisee model. The applicant has submitted that in the non-IT field, it has ventured in diverse segments, which has also lead to overall skill development of children involved in the said field. It is submitted that with products like UC-MAS, UC-DinoArt, and UC-MLS from UCMAS Education Group Malaysia, the applicant has ensured that with the medium of using tools like ABACUS, Arts, Various Memory enhancing Techniques (like mental mapping, mnemonics, etc.), a child's mental abilities & faculties like concentration power, memory, alertness, imagination skills (visualization power), and focus can be enhanced.

2.1 The applicant has submitted that UCMAS (Universal Concept Mental Arithmetic System) is a product of UC International Corp., headquartered in Kuala Lumpur, Malaysia and the UCMAS Education Group Malaysia has awarded the National Franchisee for the whole of India to the applicant. It is submitted that UCMAS is a progressively leveled program, wherein students in the age group of 4 to 13 years join in and take about 3 years to complete the program. There are ten levels in the Basic program route (Basic, Elementary A & B, Intermediate A & B, Higher A & B, Advance, and Grand A & B). For those joining the KG program route there are 12 levels (KG 1 to 4, Elementary B, Intermediate A & B, Higher A & B, Advance, Grand A & B). Each level is of approximately 3 months and students need to come to the center once a week for a 2 hour session. They need to practice for about 30 minutes daily when they are home for the next 6 days.

2.2 It is submitted that UCMAS is a child development program based on Visual Arithmetic and Abacus that boosts brainpower in children aged 4-13 years. Along with strengthening math skills, the UCMAS approach promotes whole brain development and establishes foundational building blocks like memory, concentration, creativity and problem solving – core skills that inspire greater confidence and success in all subject areas and in life. The program equips them with the skills they need to improve overall academic achievement and to confidently meet life’s challenges and achieve greatness. It is submitted that UCMAS is much more than developing number skills. Using Math as a medium and Abacus as a tool, this program helps developing basic cognitive skills and cognitive Executive Functions of a child. Cognitive skills are the core skills that the brain uses to think, read, learn, remember, reason, and pay attention. Working together, they take incoming information and move it into the bank of knowledge a child uses every day at school, and in life. UCMAS uses an army of cognitive skill development techniques like speed writing, flash cards, listening exercises, basic exercises, etc. and therefore, ensures that a child develops these skills rapidly in the first few years of life and build on them progressively throughout grade school. These crucial skills will enable a child to process sensory information and eventually learn to evaluate, analyze, remember, make comparisons and understand cause and effect. Although some cognitive skill development is related to a child's genetic makeup, most cognitive skills are learned. That means thinking and learning skills can be improved with practice and the right training. It is submitted that UCMAS promotes whole brain development by stimulating both sides of the brain using an innovative mental arithmetic program utilizing the Abacus as a teaching tool. By learning to perform mental calculations quickly and accurately, students aged 4-13 expand their mental capacity and develop skills such as multitasking, time management, memory, concentration and problem solving – skills that are crucial to success in all areas of study and in daily life. It is submitted that UCMAS not only leads to greater student proficiency and confidence in mathematics; it also builds the framework for children to develop fundamental learning skills essential to actively succeed in school and in every avenue of their daily life. UCMAS applies innovative pedagogical techniques developed by program specialists that include child development experts and child psychologists to leverage educational trends and to maintain a world-class quality program that deliver the maximum benefit to the students. With the exciting classes and energetic instructors, the Company ensures that its students have fun as they learn.

3. The applicant has raised the following question for advance ruling -

“The activity provided by UCMAS using abacus whether qualifies for exemption from the payment of GST?”

4.1 The applicant has submitted that as mentioned in Sr. No. 34 containing Heading 9996 in Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 issued by the Central Government, in exercise of the powers conferred by sub-section (1) of Section 9, sub-section (1) of Section 11, sub-section (5) of Section 15 and sub-section (1) of Section 16 of Central Goods and Service Tax Act, 2017, notifies different rates of Central GST applicable to supply of recreational, cultural and sporting services supplied in the course of intra-state supply of the said services. Similarly the levy of State Tax on the said supply is governed by Notification No. 11/2017- State Tax (Rate) dated 30th June, 2017 issued by the Government of Gujarat. Corresponding description finds mention in Notification No. 08/2017-Integrated Tax (Rate) dated 28th June, 2017 when the services are supplied in the course of inter-state supply of the said services for determining the rate of Integrated Tax applicable to the said services.

4.2 It is submitted that Entry No. 80 containing Heading 9996 in Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 issued by the Central Government exempts the levy of Central Tax on the Intra-State Supply of Services by way of Training or Coaching in Recreation Activities relating to:

- (a) Arts or culture, or
- (b) Sports by Charitable Entities registered under Section 12AA of the Income Tax Act.

The levy of State Tax on the above mentioned supply of services is Exempted by the Government of Gujarat vide Notification No. 12/2017-State Tax (Rate) dated 30th June, 2017 and similarly, the supply of said services mentioned herein above in the course of inter-state transaction is exempted vide Entry No. 83 containing Heading 9996 in Notification No. 09/2017-Integrated Tax (Rate) dated 28th June, 2017.

4.3 The applicant submitted that as per their knowledge and belief, the training and coaching services being imparted to the students under UCMAS - a child development program based on Visual Arithmetic and Abacus is covered within the purview of Exemption Notifications issued under all the three GST Acts vide Central, State and Integrated GST Acts respectively as mentioned herein above because of the reasons mentioned herein above.

4.4 It is submitted that UCMAS Training or Coaching Services provided by the applicant falls under the category of a Recreational Training Service/Activity. The word 'recreational activity' has not been defined in the GST Act specifically. Although, several definitions can be derived for the word 'Recreational / Recreation' through various dictionaries available either in print or in online version.

4.5 The applicant submitted that the UCMAS approach promotes whole brain development and establishes foundational building blocks like memory, concentration,

creativity and problem solving – core skills that inspire greater confidence and success in life. Therefore, if certain specialized training is provided to make career in a particular field, and also the course involves specific certification from the institute rendering such training, then the facilitation of such education falls under the ambit of Recreation and development through various unique techniques (can also be referred as an ‘Art of Development of Mind’). To elaborate further, it is submitted that UCMAS approach doesn’t impart training in a way suiting a particular field like a person undergoing training in cricket to improve his skills to enable him to participate in various levels of tournaments. The ABACUS training program imparted by the applicant under UCMAS approach is mainly to create interest in students for more advance form of mathematics so as to enhance their thinking capacity and mental development.

4.6 The applicant submitted that the entire thing is done by employing methods of play involving Musical, Visual and specialized effects which not only profuse the child with extra imaginary skills but also, refreshes and recreates and creates a feeling of enjoyment and pleasure among the children taking the training so as to make the whole thing interesting. Also, the training provided by the applicant does not in any sense forms the part of compulsory or core education for the students. The training imparted is optional and the child is at discretion, whether to opt for it or just continue with his/her regular studies.

4.7 It is submitted that Recreation should not be confined to playing games or watching television. There are a variety of activities which could be called as recreational. Even though, a vast majority of students do not find mathematics or arithmetic very interesting, by employing special methods, the subject which some consider as drudgery can be made interesting and thereby recreational. There are many games which can be played by using mathematics and mathematical concepts. Under UCMAS, the applicant applies various methods to make learning of arithmetical skills enjoyable.

4.8 It is further submitted that Abacus taught under UCMAS which is a recreational activity relates to an ‘art.’ ‘Art’ has again not been defined in the GST Act. ABACUS under UCMAS is not merely a method to improve the speed and accuracy of calculations but it is also an activity wherein the children undergoing training are developed with the other aspects of the mind. When the children have acquired an astonishing calculation speed, it is actually only the end result of having developed the mental capabilities inter-alia including concentration, observation, visualization, imagination and memory. Concentration is the concentrated and dedicated attention towards a particular matter with clear reflection that creates a deep image and mental impression. An enhanced concentration leads to a better absorption power. Studying will then be a joyful thing for these children. In the abacus and mental arithmetic education, children are trained to concentrate when listening to the teacher’s questions that range from easy to difficult and

then focus on calculating the answers as accurately as possible. Observation is the ability to compare and analyze and differentiate objects, motives and steps. It is also a state of alertness and swiftness of the mind and senses. This comes from the need to understand the theoretical requirements of each calculation and at the same time be aware of the time, and prompting from the teachers. By using the imaginations of the right brain to visualize the abacus in mind, inevitably the powers of visualization would become sharp and clear. Albert Einstein believes that the imagination is important than knowledge, because imagination is the main source of yet to be discovered knowledge. Memory is the ability to store and retrieve the information and experiences. It has been found that the memory in the left brain would not stay long, but an image that is recorded in the right brain would stay on in the mind forever. By stimulating the right brain with mental arithmetic, and in combination with the alertness of the eyes, ears and hands, the ability to store and recall develops together.

4.9 From the above, the applicant submitted that Training Activity performed by the company under UCMAS using Abacus is a recreational activity relating to an art and thereby exempt from GST. Hence, the applicant is exempted under GST as per the above explanation and above quoted Notifications under the GST Act. Therefore, the applicant requested for advance ruling in the interest of deciding a common rate of Taxation for both the applicant as well as other subordinate Franchises in the GST Regime.

5.1 In the additional written submission, the applicant referred to Notification No. 9/2003-Service Tax dated 20.06.2003 and Notification No. 24/2004-Service Tax dated 10.09.2004. It is also submitted that the wordings similar to those mentioned at Sr. 80 of Notification No. 12/2017-Central Tax (Rate) and Sr. 83 of Notification No. 9/2017-Integrated Tax (Rate) find mention in Sr. 8 of Notification No. 25/2012 dated 20.06.2012. The applicant relied on the decisions in the case of Fast Arithmetic Vs. Assistant Commissioner of Central Excise & Service Tax, Mangalore (Final Order No. 548/2009 dated 01.05.2009 in appeal No. ST/29/2006), K.K. Academy Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai (Final Order No. 1075-1076/2011 dated 07.07.2011 in Appeal Nos. ST/226/2007 and ST/10/2008) and Abacus Brain Study (P) Ltd. Vs. Commissioner of Central Excise (A), Hyderabad (Final Order No. 63/2011 in Appeal No. ST/349/2010).

5.2 The applicant submitted that above verdicts of different judicial forums were based on notifications no more in existence, however the analogy and intention of the Government in the Notifications existing / prevailing in the current context seems similar considering the fact that the explanations to the earlier notifications being existed prior to introduction of negative list reflected the intention of the Government to provide exemption to commercial coaching institutes being qualified as recreational one and the meaning thereof according to government was clarified by way of an explanation in the said notifications to mean a commercial coaching or training center which provides

training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies.

5.3 The applicant submitted that the usage of the word ‘art’ in the prevailing regime should not hinder the benefit as envisaged by the Government and hence the activity of the applicant of teaching under UCMAS using Maths as medium and Abacus as a tool should get exemption in the interest of lakh of students undergoing / intending to undergo the training at the coaching centers.

6.1 The Central Goods and Services Tax Commissionerate, Vadodara – I *inter-alia* informed that the department’s contention in the case of Abacus Brain Study (P) Ltd. Vs. Commissioner of Central Excise (A), Hyderabad [2013 (30) STR 401 (Tri. – Bang.)] was that it was a case of commercial coaching and the said decision of the Hon’ble CESTAT has been appealed against by the department before Hon’ble Supreme Court through Civil Appeal Nos. 2558-2559 of 2012, which have been admitted by the Hon’ble Supreme Court on 24.02.2012 and are pending for decision.

6.2 It has been further opined by the Vadodara – I Commissionerate that activity of the applicant cannot be called as art. As per oxford dictionary, ‘art’ is the expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power. Thus, Art is commonly used to describe something of beauty, or a skill which produces an aesthetic result.

6.3 It has been opined by the Vadodara – I Commissionerate that the activity performed by the applicant is a form of education imparted to the children to develop their interest and skills in mathematics and hence it is an education support service. It is submitted that it is not a system purely based on ‘abacus’, which is used to teach counting numbers to the children of pre-primary education, because the age group of children which are imparted education by the applicant are from 4-13 year and this range cannot belong to children of pre-primary schooling.

6.4 It has been further informed that the ‘Educational Support Service’ is classified under SAC 999294. It is submitted that the section 2(y) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 defines the ‘educational institution and that private coaching centers or other unrecognized institutions, self-styled as educational institutions or institutions supporting education, would not be treated as ‘educational institutions’ under GST and thus cannot avail exemptions available to an ‘educational institution’ under Sr. 66 for heading 9992 of above said notification.

7. We have considered the submissions made by the applicant in their application for advance ruling, in additional written submission as well as at the time of personal

hearing. We have also considered the views of the Central Goods and Services Tax Commissionerate, Vadodara – I.

8. The issue involved in this case is regarding admissibility of exemption provided vide Sl. No. 80 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 issued under the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017) and corresponding Notification No. 12/2017-State Tax (Rate) dated 30.06.2017 issued under the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017') or Sl. No. 83 of Notification No. 9/2017-Integrated Tax (Rate) issued under the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the 'IGST Act, 2017') to the supply of services being made by the applicant.

9.1 The said Sl. No. 80 of Notification No. 12/2017-Central Tax (Rate) reads as follows :-

<i>Sl. No.</i>	<i>Chapter, Section, Heading, Group or Service Code (Tariff)</i>	<i>Description of Services</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
80	9996	<i>Services by way of training or coaching in recreational activities relating to-</i> <i>(a) arts or culture, or</i> <i>(b) sports by charitable entities registered under section 12AA of the Income-tax Act.</i>	<i>Nil</i>	<i>Nil</i>

Thus, as per Sl. No. 80 of Notification No. 12/2017-Central Tax (Rate) exempts services by way of training or coaching in recreational activities relating to arts or culture or sports. (In case of training or coaching in recreational activities relating to sports, exemption is admissible only when such services are by charitable entities registered under section 12AA of the Income-tax Act).

9.2 The words 'recreational activities' and 'arts' have not been defined in the GST Acts or Notifications issued thereunder.

9.3 As per the dictionary meaning, 'Art' is the expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power.

9.4 The improvement of speed and accuracy of calculations or development of mental capabilities, such as, concentration, observation, visualization, imagination and memory cannot be said to fall within the meaning of 'Art'.

9.5 It will also be useful to refer to services covered under Heading 9996 – 'Recreational, Cultural and sporting services' and more specifically Group 99962 – 'Performing arts and other live entertainment event presentation and promotion services' and Group 99963 – 'Services of performing and other artists' as per the scheme of classification of services prescribed vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, which are reproduced below.

Heading & Group	Service Code (Tariff)	Service Description
Heading No.9996		Recreational, cultural and sporting services
Group 99961		Audiovisual and related services
	
Group 99962		Performing arts and other live entertainment event presentation and promotion services
	999621	Performing arts event promotion and organization services
	999622	Performing arts event production and presentation services
	999623	Performing arts facility operation services
	999629	Other performing arts and live entertainment services n.e.c.
Group 99963		Services of performing and other artists
	999631	Services of performing artists including actors, readers, musicians, singers, dancers, TV personalities, independent models etc
	999632	Services of authors, composers, sculptors and other artists, except performing artists
	999633	Original works of authors, composers and other artists except performing artists, painters and sculptors

9.6 It is evident from the dictionary meaning of the term 'Art' as well as from the relevant entries of the scheme of classification of services, as reproduced above, that the activities of the applicant do not fall within the term 'Art'. Therefore, the exemption provided vide Sl. No. 80 of Notification No. 12/2017-Central Tax (Rate) dated

28.06.2017 issued under the CGST Act, 2017 and corresponding Notification issued under the GGST Act, 2017 and Sl. No. 83 of Notification No. 9/2017-Integrated Tax (Rate) issued under the IGST Act, 2017 is not admissible to the activities of the applicant.

10. Further, the training imparted by the applicant to create interest in students for more advance form of mathematics so as to enhance their thinking capacity and mental development or employing methods of play involving Musical, Visual and specialized effects does not make the activities of the applicant as the training or coaching in recreational activities.

11. The decisions of Hon'ble CESTAT referred to by the applicant pertain to Notification No. 9/2003-Service Tax and 24/2004-Service Tax issued under the Finance Act, 1994 (Service Tax), which are not *pari-materia* to Sr. 80 of Notification No. 12/2017-Central Tax (Rate). Further, against the decision of Hon'ble CESTAT in the case of Abacus Brain Study (P) Ltd. (supra), Civil Appeal Nos. 2558-2559 of 2012 have been filed in the Hon'ble Supreme Court, which are pending. As held by the Hon'ble Supreme Court in the case of Union of India Vs. West Coast Paper Mills Ltd. [2004 (164) E.L.T. 375 (S.C.)], once an appeal is filed before the Hon'ble Supreme Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The same view was held by the Hon'ble CESTAT in the case of Commissioner of Central Excise, Chennai-II Vs. BOC India Ltd. [2007 (212) E.L.T. 222 (Tri.-Chennai)].

12. In view of the foregoing, we rule as under –

RULING

M/s. Omnisoft Technologies Private Limited (GSTIN 24AAACO3894M1Z1) is not entitled to the exemption provided vide Sl. No. 80 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 issued under the CGST Act, 2017 and corresponding Notification issued under the GGST Act, 2017 and Sl. No. 83 of Notification No. 9/2017-Integrated Tax (Rate) issued under the IGST Act, 2017. Hence the activity provided by UCMAS using abacus does not qualify for exemption from the payment of Goods and Services Tax.

(R.B. Mankodi)

Member

(G.C. Jain)

Member

Place : Ahmedabad

Date : 23.8.2018.