

West Bengal Authority for Advance Ruling
Goods and Services Tax
14, Beliaghata Main Road, Kolkata 700015

Name of the Applicant	Indian Institute of Management, Calcutta
GSTIN	19AAAI0632H1ZZ
Address of the Applicant	Diamond Harbour Road, Joka , South 24 Parganas, West Bengal, 700104
Application Reference No (ARN)	AD190818000285Y
Case No:	WBAAR 22 OF 2018
Date of Application	06/08/2018
Order No & Date	21/WBAAR/2018-19 dated 02/11/2018
Present for the Applicant	Rakesh B Chatbar, Authorised Representative

1. The Applicant, stated to be an Educational Institution funded by the Government of India, engaged, *inter alia*, in the provision of Educational Services to the students, seeks a Ruling within the meaning of the CGST/WBGST Act, 2017 (hereinafter collectively referred to as “the GST Act”) on the following questions:

- (i) After the introduction of the IIM Act wef 31/01/2018 (hereinafter referred to as “the IIM Act, 2017”), whether or not the Applicant should be considered an “Educational Institution”
- (ii) If the Applicant is eligible for Exemption under Entry No. 66(a) of the Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 (hereinafter referred to as “the Exemption Notification”), and from which date it should be effective.
- (iii) Whether or not the Applicant is eligible to get Refund of the Tax amount already paid by the Applicant.

The issues that can be taken up by the Authority of Advance Ruling are determined by Section 97(2) of the GST Act. Queries regarding the date of effect of any change in the tax rate and regarding refund are not covered under Section 97(2) of the GST Act.

The Authority for Advance Ruling can only take up for consideration the queries related to whether or not the Applicant is an “Educational Institution” and is liable to be exempted under of the Entry No. 66(a) of the Exemption Notification.

The Applicant states that the questions raised are not pending or decided in any proceedings under the Act.

The officer concerned has not raised any objection.

The Application is, therefore, admitted, limiting the Ruling only to the questions admissible under section 97(2) of the GST Act.

2. Apart from providing Educational Services, IIM Calcutta also imparts placement and recruitment services and renting out of immovable property. Prior to 31/12/2018, the Applicant was a “Society” under the Societies Registration Act, 1860. In terms of the Indian Institutes of Management Act, 2017 (hereinafter “the IIM Act”), the Applicant has become an ‘Educational Institution’ having the right to award honours degrees etc as provided under the IIM Act with effect from 31/01/2018.

The Applicant is stated to be eligible to grant degrees, diplomas and other academic distinctions or titles and to institute and award fellowships, scholarships, prizes and medals, honorary awards and other distinctions in terms of section 7(f) of the IIM Act. Therefore, the Applicant qualifies as an ‘educational institution’ as defined under clause 2(y) of the Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 and is eligible for exemption under entry no. 66(a) of the Exemption Notification.

3. Prior to the enactment of the IIM Act the Applicant was exempted under entry no. 67 of the Exemption Notification which categorically granted Exemption to:

“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.”

4. The Applicant refers to several judgments, including ones by the Apex Court, where the court settles that if benefits under more than one provision are lawfully available, the assessee can enjoy the one more beneficial to him. [Collector of Central Excise –vs- Indian Petro Chemicals (1997) 92 ELT 13 (SC); HCL Ltd –vs- Collector of Customs (2001) 130 ELT 405 (SC); Commissioner of Central Excise and Service Tax –vs- Orient Bell Ltd (CEA – 65/2016 before the High Court of Karnataka); Winsome Yarns Ltd (Excise Appeal No. 55317-55318 of 2013 before CESTAT, Delhi)]

Referring to these judgments in course of Personal Hearing the Applicant argues that as exemptions under both Entry Nos. 66(a) and 67 are now available, the Applicant should be allowed to claim exemption under Entry No. 66(a), being more beneficial having a broader ambit.

5. “Educational institution” is defined under clause 2(y) of the Exemption Notification as 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*

6. The Applicant has stated to have been providing different programmes such as Post Graduate Programme (PGP) for 2 years term, Post Graduate Programme for Executives (PGPEX) for one year term, Post Graduate Programme for Executives for visionary Leaderships in manufacturing (PGPEX-VLM) for one year term, Fellow Programme etc.

After enactment of the IIM Act the Applicant is eligible to grant degrees, diplomas and other academic distinctions or titles and to institute and award fellowships, scholarships, prizes and medals, honorary awards and other distinctions under Section 7 of the IIM Act.

The IIM Act is aimed to declare certain Institutes of Management to be of national importance. On and from the commencement of the Act, every existing Institute shall be a body corporate by the same name as mentioned in column 5 of the Schedule to the above Act. The Applicant is mentioned therein.

7. However, the IIM Act does not mention any specific degree/diploma/program that can be or shall be undertaken by the Applicant. In absence of such specification, reference should be made to the degrees/programmes recognized and approved by the University Grants Commission Act 1956 (hereinafter referred to as “the UGC Act”) and the All India Council for Technical Education Act, 1987 (hereinafter “the AICTE Act”) that can be lawfully awarded by any higher educational institution in the country.

It can be seen that the AICTE Act and the UGC Act are very specific and detailed about the approved courses/programmes under it. Neither of the above-mentioned Act mentions courses like PGPEX-VLM and CES-MIM..

8. The question, therefore, is whether the Applicant should now continue to enjoy Exemption under Entry no. 67, which has not been deleted even after the IIM Act came into being, or be considered for exemption under Entry no. 66(a) of the Exemption Notification.

9. The Applicant is an “Educational Institution” within the meaning of sub-clause (ii) of clause 2(y) of the Exemption Notification in terms of the IIM Act. Exemption under Entry no.

66(a) is applicable to such educational institutions as such, especially as the law mentions that the qualifications awarded are to be “recognised by any law for the time being in force”. As Entry No. 67 specifically concerns IIMs, courses mentioned therein, will be eligible for Exemption under the specific entry, even if not mentioned elsewhere under any law for the time being in course.

Hence, it can be concluded that both the provisions of the law are available to the Applicant.

10. The judgments alluded to are relevant in the present context in so much as they all have dealt with situations where there are no disputes that benefits under two or more notifications are available to the assessee. The court, including the apex court, settles that if benefits under more than one provision are lawfully available, the assessee can enjoy the provision more beneficial to him.

In view of the foregoing we rule as under

RULING

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.

This Ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

(VISHWANATH)
Member

West Bengal Authority for Advance Ruling

(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling