

ADVANCE RULING NO. RAJ/AAR/2021-22/28, Dated 25th October, 2021

RAJASTHAN AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

KAR BHAWAN, AMBEDKAR CIRCLE, NEAR

RAJASTHAN HIGH COURT

JAIPUR - 302005 (RAJASTHAN)

J.P.MEENA Additional Commissioner	:	Member (Central Tax)
M. S. Kavia Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s RAHUL GOYAL, 71-A, Vivek Vihar, New Sanganer Road, Jaipur, Rajasthan-302019.
GSTIN of the applicant	:	Unregistered
Clause(s) of Section 97(2) of CGST/SGST 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	:	12.10.2021
Present for the applicant	:	CA, Mohammad Azharuddin
Date Of Ruling	:	25.10.2021

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

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 SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s RAHUL GOYAL, 71-A, Vivek Vihar, New Sanganer Road, Jaipur, Rajasthan-302019.- (hereinafter the applicant) is fit to pronounce

advance ruling as it falls under the ambit of the Section 97(2) (a) & (e) given as under:

(e) Determination of the liability to pay tax on any goods or services or both

A. SUBMISSION AND INTERPRETATION OF THE APPLICANT;

1. The applicant is an individual having temporary user ID 082100000156AR4 under the Goods and Services Tax Act (hereinafter called as GST law) since 16.03.2021 and located at 26/B-5/H/803, Saryu Apartment, Jaipur, Rajasthan-302033.

2. The applicant was earlier registered under GST law vide GSTIN 08AGBPG9907F1ZG which was cancelled with effect from 30.09.2020. Prior to cancellation of registration, the applicant was providing Educational and Training Services to M/s Mentors Eduserv (GSTIN:1OADFPJ1214M1Z3) situated at 136/137 First, Parus Lok complex, Boring Road Crossing, Patna, Bihar - 800001.

3. The applicant used to classify such supplies under HSN 999294: Other Educational and Training Services n.e.c. under chapter 99 of the tariff code which are taxable @ 18% under GST law.

4. The applicant was exhibiting details of supplying educational related services etc. in his returns furnished in FORM GSTR-3B and FORM GSTR-1 for the respective tax periods and was accordingly paying respective Goods and Services tax on the same.

5. The applicant has now received a new offer from a prospective service recipient for providing educational related services etc from his place located at 26/B-5/H/803, Saryu Apartment, Jaipur, Rajasthan-302033.

6. The authorities under Income Tax law are suggesting/ directing the applicant to treat receipt of such services in the nature of employment whereas, the applicant has paid GST on consideration received from M/s Mentors Eduserv in respect of such services, treating as services other than by way of employment.

7. Since, the nature of services provided to M/s Mentors Eduserv and that offered by the prospective service recipient are same, the applicant is finding it difficult to determine whether any GST is payable or not on the service in question.

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).

1. The charging section 9(1) of BGST/ CGST Act provides for levy and collection of state tax and central tax on all inter-State and intra-State supplies of goods and services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council which will be collected in such manner as may be prescribed and shall be paid by the taxable person.

As noted above, the taxable event under GST law shall be the supply of goods or services or both made for consideration in the course or furtherance of business. Thus, determining whether or not a transaction falls under the meaning of supply, it is important to understand the meaning of "supply" in the light of GST law. Accordingly, supply has been defined under section 7 of the RGST/ CGST Act which is reproduced below:-

(1) For the purposes of this Act, the expression "supply" includes,-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II]

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

As it can be seen from section 7(2)(a) produced above, activities or transactions which are specified in schedule III of the GST Act shall be treated neither as

supply of goods nor supply of services i.e. such activities or transaction shall not be subject to tax under GST law. Moreover, Entry 1 of schedule III of GST law spells out that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services.

Hence, from the above discussion, it can be understood that GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.

As summarized above, the applicant has now got an offer from a prospective service recipient proposing to receive educational and training services from the applicant as per the terms and conditions enumerated in the agreement to be made.

It is to be noted that one of the condition set out in the agreements made between the applicant and M/s Mentors Eduserv was that the contract between the applicant and the service recipient would primarily be on principal - to -principal basis.

Relevant clause of the agreement dated 10.02.2020 is reproduced below for your reference:-

Section 13 - Miscellaneous Provisions

"13.1 No Agency: This agreement is entered into on a "principal to principal" basis and the parties are independent of each other, and nothing contained herein is intended to or shall be deemed to create any partnership, joint venture, employment or relationship of principal and agent between the parties hereto or between the First Party and Service Provider

It is worthwhile to note that the new offer also contains similar terms and conditions as stipulated in section 13 mentioned above.

However, we have been advised that the service provided are in the nature of employer and employee. Therefore, it will be out of the purviews of GST Act as per entry 1 of schedule III read with section 7(2).

B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-

Whether the services under consideration will be covered under entry 1 of schedule III of RGST/ CGST Act or not?

C. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 12.10.2021. CA, Mohammad Azharuddin (Authorised Representative) of applicant appeared for PH. During the PH, he reiterated the submissions already made in the written application. He requested for early disposal of the application.

D. FINDINGS, ANALYSIS & CONCLUSION;

1. We have gone through the facts of the case and submission made by the applicant at the time of preliminary hearing.
2. The applicant in their written submission stated that they were providing Educational and Training Services to M/s Mentors Eduserv, Bihar (GSTIN:1OADFPJ1214M1Z3) and were paying tax under category of Other Educational and Training Services under HSN 999294 of chapter 99 of the tariff code which are taxable @ 18% under GST law. Further, they stated that they have been advised by the Income Tax authority that the service provided by them is in the nature of employer and employee. Therefore, it will be out of the purviews of GST Act as per entry 1 of schedule III read with section 7(2).
3. The applicant wants to know whether the services under consideration will be covered under entry 1 of schedule III of RGST/ CGST Act or not.
4. Before we delve deep to decide the case, it would be proper in the fitment of justice to discuss the relevant provisions of the statute which are as under-

4.1 Section 7 of the CGST Act, 2017:-

7. Scope of supply.-(1) For the purposes of this Act, the expression -supply includes-

- (a) all forms of supply of goods or services or both such as sale, transfer, baiter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business; [and]
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; [****]
- (d) [*****]

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1) , they shall be treated either as supply of goods or supply of services as referred to in Schedule II]

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1 A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as,-

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

4.2 Section 9 of the CGST Act, 2017:-

9. Levy collection-(1) Subject to the provisions of sub-section (2), re shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

4.3 Section 15 of the CGST Act, 2017

15. Value of Taxable Supply.-(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

4.4 SCHEDULE III of the CGST Act, 2017:-

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.

2.

4.4 The explanation to Section 15 the CGST Act, 2017 provides meaning of related persons :-

Explanation.- For the purposes of this Act,-

(a) persons shall be deemed to be -related persons if-

- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent, or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;

(b) the term -person also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

5. Apart from above, lets analysis the relevant clause of the agreement dated 10.02.2020, as per applicant's written submission, the new offer also contains similar terms and conditions as stipulated in section 13.

Section 13 of the above-said agreement is reproduced below:

Section 13 - Miscellaneous Provisions

"13.1 No Agency: This agreement is entered into on a "principal to principal" basis and the parties are independent of each other, and nothing contained herein is intended to or shall be deemed to create any partnership, joint venture, employment or relationship of principal and agent between the parties hereto or between the First Party and Service Provider ".

On gone through the above clause of the agreement, we find that agreement has been entered into on a "principal to principal" basis and there is no scene in respect of any employment. Hence, it can be said that there no Service is provided by an employee to the employer in the course of or in relation to any employment in the instant case. Thus, the provisions of entry no. 1 of schedule III of the GST act are not applicable.

6. In view of the above relevant legal provisions, we are of the view that:-

- * Explanation to section 15 defines the related person.
- * Schedule I of the GST Act deem every transaction between the related or distinct person as a supply, even if there is no consideration.
- * Schedule III of the GST Act excludes the supply by an employee to the employer from the GST scope. It deems it as no supply.

7. In the instant case, the applicant intends to provide Educational and Training Services to its service recipient i.e. M/s Mentors Eduserv on the basis of section 13 of the agreement dated 10.02.2020. on gone through the section 13 of the agreement, we find that there is no establishment of term 'employment'. Hence, activity or transaction between service provider i.e. applicant and service receiver i.e. M/s Mentors Eduserv does not constitute employee-employer relation. Thus, we find that this activity or transaction is not covered under entry no. 1 of the Schedule III of the act and resulted in a 'supply of service' as per Section 7 of the CGST Act, 2017 and tax will be leviable under section 9 of the CGST Act, 2017 and valuation thereof will be done as per section 15 of the CGST Act, 2017.

8. In view of the foregoing, we rule as follows: -

RULING

Question: Whether the services under consideration will be covered under entry 1 of schedule III of RGST/ CGST Act or not?

Answer: NO, services under consideration will not be covered under entry 1 of schedule III of RGST/ CGST Act, 2017.

25/10/2021	
(J. P. MEENA)	(M. S. Kavia)
Member	Member
(Central Tax)	(State Tax)

(Please Note - Above is not an official Copy of AAR Order. Kindly download Official copy from official website of relevant Authority.)