

GIB/MH/ IL & FS EDUCATION/25.06.2018/AAR-461

Advance Ruling Category : Classification of Supply

State : Maharashtra

Order No.: GIB/MH/ IL & FS EDUCATION/25.06.2018/AAR-461

Name of Entry :

M/S. IL & FS EDUCATION AND TECHNOLOGY SERVICES LTD.

Date : 25-06-2018

Breif Issue :

FACTS OF THE CASE:

In this case the applicant IL&FS Education and Technology Services Ltd. is a public limited Company incorporated in India and registered under the Companies Act, 1956. The Applicant having GSTIN 27AABCI2106H1Z0 is registered in Mumbai, Maharashtra and falls within the jurisdiction of Mumbai Nodal Division-5, Maharashtra. The Applicant is the social infrastructure arm of IL&FS group and is engaged in the key areas of education, Skill development, healthcare and cluster development for long term and sustainable impact.

Inter alia, the Applicant is working with various State or Union Territory Governments to promote computer training among the students and teachers of the government and government aided higher secondary schools under the Information and Communication Technology ('ICT') @ School Project (hereinafter referred to as "ICT Project").

ISSUE OF THE CASE:

Whether the services provided by the Applicant to the Government secondary and higher secondary schools under the ICT Project, are covered under the scope of Entry No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (hereinafter referred to as "Notification No. 14/2017")

Decision of Advance Ruling Authority :

DECISION:

As per Entry No 72 pertaining to Heading 9992, Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration attract nil rate of taxes under the GST law - there are three elements involved as under which have to be satisfied by the applicant to be eligible to avail the benefit

of Entry No. 72 of Notification No. 12/2017:-1. Services should be provided to the Central Government, State Government, Union territory administration; 2. under any training programme and 3. for which total expenditure is borne by the Central Government, State Government, Union territory administration.

Services should be provided to the Central Government, State Government, Union territory administration-The applicant has entered into a contract with Maharashtra State, for a period of 5 years, for implementation of the ICT @ school project in Government and Government aided higher secondary schools across the State of Maharashtra. In the preamble of the contract it is mentioned that "In its pursuit to improve the quality of education in Secondary and Higher Secondary schools of Maharashtra, the supply of computer hardware, software and connected accessories, Faculty and provision of IT Education Services in Government Secondary and Higher Secondary schools in the State of Maharashtra on Build, Own, Operate and Transfer (BOOT) Model is envisaged under the ICT @school scheme under Public Private partnership' - Applicant, has to procure, supply and install requisite number of IT equipment i.e. computer hardware, software, etc and to maintain and keep the same in proper working conditions for the entire contract period of five years along with deployment of manpower (in the form of Faculty member/ Instructors, etc) in the said 1590 Schools to impart computer knowledge to the students and teachers for a total contract value of ₹ 284.61 Crores. Thus it is seen that the applicant, under the contract, is obliged to make taxable supply of goods and services to the during the contract period - There is not only provisions of rendering service under any a training programme, but there is also a provision to create necessary infrastructure in schools for implementation of ICF project. Hence from the terms of the Contract, we find that the applicant is not just providing a supply of Service but is also providing a composite supply of Goods i.e. hardware and network equipments, printers, scanners, power equipments, and also imparting training on use of such equipments as per the syllabus prescribed.

Services should be provided to the Central Government, State Government, Union territory administration under any training programme -The applicant is not just providing a supply of Service but is also providing a composite supply of Goods i.e. hardware and network equipments, power equipments, etc. In view of the fact that the applicant has to set up the site provided by the DE(S&HS) as a computer lab by way of procuring and installing the computers, and other equipments as mentioned above, it would appear that the entire project cannot be termed as a training programme. It would rather be a composite supply of goods and services, not naturally bundled and having distinctly separate components with distinct value attributable to each of the components - It is a composite supply having distinctly identifiable components with distinct value attributable to each of the components. There is no doubt that the applicant has provided computer training service as part of the contract, but the said service is not the pre-dominant/ principal supply. In fact as seen above the contracted supply has many distinct supply components out of which training is a small component - as per para 1(c) of Schedule II of the SGST/CGST Act, any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods and not a service - the second condition/pre-requisite is also not satisfied.

Services supplied for which the total expenditure is borne by the Central Government, State Government, Union Territory administration - From a plain reading of the terms of the contract that payment for the work done is to be made by DE(S&HS) which is a department of the State Government. Thus the source of funding the expenditure is the State Government. Thus there is no dispute in respect of fulfillment of this condition but as per discussions above, the other two conditions of Notification are not satisfied.

When the language of a taxing statute is clear, if the conditions of supply falls within the four corners of statute allowing exemption, it is to be exempted. If not, tax is to be levied. In the present case all the conditions of Entry No 72 of the Notification No. 12/2017 have not been fulfilled and therefore there is no question the applicant being eligible for exemption on the basis of the said Entry.

Entry No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 read With Entry No. 72 of Notification No. 17/2017-State Tax (Rate) dated 29.06.2017 is not applicable to the services provided by the Applicant under the ICT @ School Project - The supply of goods and services as made by the applicant under ICT @ School project is not in compliance of all conditions of exemption as notified under the above referred Notification.