

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 10/2024

Date : 15-04-2024

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes

. . . . Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. Elsevier BV, C/o M/s Pricewaterhouse & Co LLP, Building 10, Tower C, 18 th Floor, DLF Cyber City, Gurugram-122 002, India.
2.	GSTIN or User ID	9917NLD29003OSV
3.	Date of filing of Form GST ARA-01	25-09-2023
4.	Represented by	Sri. Shivarajan K, C A & Authorised Representative
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bengaluru West Commissionerate, Bengaluru.
6.	Jurisdictional Authority - State	-Not Applicable-
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under IGST Act through debit from Electronic Cash Ledger vide reference No. DC2909230000081 dated 15.09.2023.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Elsevier BV, (herein after referred to as 'Applicant'), C/o M/s Pricewaterhouse & Co LLP, Building 10, Tower C, 18th Floor, DLF Cyber City, Gurugram-122 002, India., having GSTIN 9917NLD29003OSV, have filed an application for Advance Ruling, in form GST ARA-01 discharging the fee of Rs.5,000/- under the IGST Act 2017.



Elsevier BV

2. The Applicant is a company incorporated under the laws of the Netherlands, having their registered office at Radarweg 29, 1043 NX Amsterdam, the Netherlands, 226016. In India, the Applicant is registered under the Central Goods and Services Tax Act, 2017 (**'the CGST Act'**) read with Integrated Goods and Services Tax Act, 2017 (**'the IGST Act'**) with GSTIN 9917NLD29003OSV in the State of Karnataka, for providing the services under the category of online information and database access or retrieval (OIDAR) services; engaged in the business of providing online content such as educational periodicals, online journals, online books and online newspapers, videos to various educational institutions, corporates and individuals; supplies services i.e., different products (namely Clinical Key, SSRN, JCol etc.) to different types of customers. The applicant is seeking the rate of tax/ exemption on the supplies under Clinical Key subscription product supplied to specified customers (educational institutions).

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- a) *Whether the supply of services (subscription of Clinical Key) to the All India Institute of Medical Sciences ("AIIMS") is exempt from GST under Entry No. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28 June 2017?*
- b) *If the answer to the above question is negative, whether the Applicant or AIIMS needs to discharge the GST liability (i) for the period up to 30 September 2023 and (ii) for the period after 01 October 2023?*
- c) *Whether the supply of services (subscription of Clinical Key) to other educational institutions is exempt from GST under Entry No. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28 June 2017?*

4. **Admissibility of the Application :**

This application is filed by the Applicant, under Section 97 (2) (b) of the CGST Act read with Section 20 of IGST Act, 2017 for obtaining an advance ruling on the applicability of a notification issued under the provisions of the IGST Act, 2017. Thus the instant application is admissible in terms of Section 97 (2) (b) of the CGST Act read with Section 20 of IGST Act, 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant furnished the following facts relevant to the issue:

5.1 The Applicant submitted that they offer one of the services under the name 'Clinical Key' (**'the product'**), which is an online subscription based clinical database with search and navigate facility that helps doctors, nurses and other healthcare professionals make better decisions anywhere, anytime, in any patient scenario; Clinical Key is accessible through internet from the website "www.clinicalkey.com"; the user interface page of the website is a search engine that offers a compilation of resources such as full-text reference books and



journals, synoptic content, drug information, videos, practice guidelines, customized patient education handouts, clinical calculators etc.

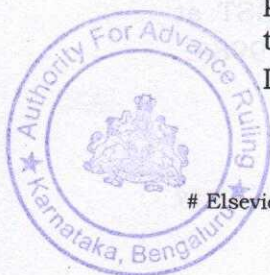
5.2 The user can type any keyword and the search engine will show various results, relating to that keyword. The content in the search results can be the proprietary content of the Applicant or it can be third party content as well. The online content accessible through Clinical Key can be categorized in the following categories.

- a. Clinical Overviews: Easy-to-scan, clinically focused medical topic synopses paired with links to in-depth, full-text references.
- b. Drug Monographs: Comprehensive information about U.S. prescription drugs, herbal supplements, nutritional, vitamin and OTC products
- c. Full-Text Books: Elsevier's world-renowned medical and surgical books, including Gray's Anatomy, Goldman's Cecil Medicine, and Braunwald's Heart Disease
- d. Full-Text Journals: Top journals from Elsevier, including The Lancet and Mayo Clinic Proceedings
- e. Step-by-step procedural videos and articles to teach techniques or simply help clinicians refresh their skills
- f. Clinical calculators: Drug, Clinical Criteria, Decision Tree, Medical, and Unit Conversion Calculators from EBM calc are available to aid clinicians in assessment and decision-making
- g. Images
- h. Practice guidelines
- i. Customizable patient education handouts
- j. MEDLINE abstracts
- k. Clinical trials

5.3 Customer Profile

The customers to whom Clinical Key is offered to individuals or institutional customers who are generally (i) Healthcare executives (ii) Clinicians (iii) Nurses (iv) Medical librarians and (v) Medical students. These customers can be an individual customer or institutional customer, described as below;

- **Individual customers:** Any individual customer may opt for a subscription package online through the website or he/she may reach out to the sales team of the Applicant who may help them with the onboarding process. Different subscriptions are offered at different prices.



- **Institutional customers:** With institutional customers such as hospitals, educational institutions etc., the Applicant enters into an annual subscription agreement wherein the total number of authorized users and the subscription fee are agreed, among other things. The institutional customers may be either registered under the CGST Act or they may be unregistered as well.

5.4 Clinical Key is supplied in different packages (essential package and specialty package, depending upon coverage of content). The essential package is the standard subscription inter alia including the core resources, whereas the specialty package is an advanced subscription which includes the core resources, and additional content relating to the respective medical specialty. These packages are available either on monthly subscription or on annual subscription. The customers could be located any place in the world. Once the subscription is active, the customers can access Clinical Key via their computer, tablet or mobile phone via login credentials.

5.5 Understanding regarding OIDAR services

In terms of Section 2 (17) of the IGST Act, “online information and database access or retrieval services” (OIDAR) means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology.

Further OIDAR services also includes electronic services such as advertising on the internet, providing cloud services, provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet, providing data or information, retrievable or otherwise, to any person in electronic form through a computer network, online supplies of digital content (movies, television shows, music and the like), digital data storage, and online gaming.

With the Clinical Key subscription, the customer gets online access to a medical centric database with a search facility. Further, the website also has a browse facility, for navigation of the content. The content is supplied in electronic form. There is no human intervention from the Applicant’s side given the user can himself navigate through the contents and access whatever that is available in the subscribed database.

Accordingly, the supply of subscription-based services via Clinical Key qualify as OIDAR services. In this backdrop, the Applicant is registered in the State of Karnataka in terms of Section 14 of the IGST Act. Presently, the Applicant is following the GST treatment as below.

- **Non-taxable online recipients (NTOR)-customers:** On the service supplied to these customers (located in India), the Applicant is discharging IGST at 18%, classifying the Clinical Key services as OIDAR services under SAC 9984.



- **Other customers:** On services supplied to GST registered customers (located in India), the reverse charge is applicable, and hence the Applicant is not discharging GST.

Copies of the sample invoices issued to the customers are enclosed as **Annexure 1**. A copy of the sample agreement entered with the customer is enclosed as **Annexure 2**.

A few customers, including educational institutions such as All India Institute of Medical Sciences (AIIMS) have been insisting the Applicant that supply of the Clinical Key subscription is exempt under Entry no. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28 June 2017 and thus the applicant filed the instant application.

6 Applicant's Interpretation of Law:

6.1 The applicant with regard to the issue of **Whether the supply of database services on subscription basis is exempt from GST under S. No. 69 (b) (v) of the exemption notification** stated that in the case of a Clinical Key subscription, the customers get online access to medical centric database with a search facility, with the content entirely supplied in electronic form. There is no human intervention from the Applicant's side given the user can himself navigate through the content and access whatever is available in the subscribed database. The Applicant submits their understanding as below.

6.2 **Supply of OIDAR services to NTOR is covered under Section 14:** It is firstly apposite to reproduce the relevant extracts of the IGST Act

Section 2 (16) / *Upto 30 September 2023*/

"non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation.—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution



Section 2 (16) **With effect from 01 October 2023**

"non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation.— For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017 (12 of 2017).

Section 2 (17): "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,-

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) **providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;**
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

IGST Act, 2017

Section 14. Special provision for payment of tax by a supplier of online information and database access or retrieval services

(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

6.3 As per Section 14 (1), the supply of OIDAR services by a person located in non-taxable territory and received by a NTOR, the supplier shall be liable to pay IGST on the said supplies. Further NTOR means

- Any unregistered person
- Who is receiving OIDAR services in taxable territory;



- Up to 30 September 2023, there was additional qualification on NTOR that OIDAR services should have been received in relation to any purpose other than commerce, industry or any other business or profession, however with effect from 01 October 2023, this condition has been removed

In the instant case, the Applicant is located in the non-taxable territory, hence, in respect of Clinical Key subscription given to NTOR persons, the Applicant becomes obligated to take registration in India and discharge IGST liability on such supplies. In the paragraphs below, the Applicant submits their understanding as to the rate of tax/ exemption on such supplies.

6.4 Rate of tax in normal situations : It is apposite to reproduce the relevant entries of the Notification No. 8/2017-IT (Rate) dated 28 June 2017 (**'the rate notification'**)

S. No.	Chapter, Section or Heading	Description of Service	Combined Rate
22	Heading 9984 (Telecommunications, broadcasting and information supply services)	(i) Supply consisting only of e-book. Explanation.- For the purposes of this notification, "e-books" means an electronic version of a printed book (falling under tariff item 4901 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)) supplied online which can be read on a computer or a handheld device.	5%
		(ii) Telecommunications, broadcasting and information supply services other than (i) above.	18%

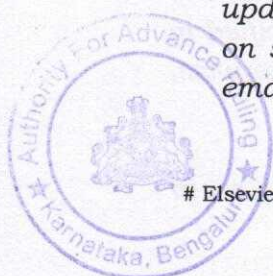
6.5 It is also apposite to reproduce the relevant extracts, of Explanatory Notes to Service Accounting Code (SAC) 9984, which are as reproduced below:

9984 Telecommunications, broadcasting and information supply services

99843 On-line content

998431 On-line text-based information such as on-line books, on-line newspapers and periodicals, on-line directories and mailing lists

This service code includes on-line books, including school textbooks, general reference books, such as atlases and other books of maps or charts, dictionaries and encyclopedias; publications issued on the Internet where the main content is updated at fixed intervals, usually on a daily, weekly or monthly basis; whether on subscription or single copy sales; portions of newspapers such as headlines emailed daily or more frequently; periodic newsletters; on-line directories and



mailing lists, including telephone books; other on-line collections of facts/information (databases)

.....

998439 Other on-line content n.e.c.

This service code includes games that are intended to be played on the Internet such as role-playing games (RPGs), strategy games, action games, card games, children's games; software that is intended to be executed on-line, except game software; mature theme, sexually explicit content published or broadcast over the Internet including graphics, live feeds, interactive performances and virtual activities; **content provided on web search portals, i.e. extensive databases of Internet addresses and content in an easily searchable format**; statistics or other information, including streamed news; other on-line content not included above such as greeting cards, jokes, cartoons, graphics, maps

Note: Payment may be by subscription, membership fee, pay-per-play or pay-per view.

6.6 The SAC 99843 covers supply of online content. At 6-digit level, SAC 998431 covers on-line books, textbooks, reference books, dictionaries, encyclopedias, publications which are updated on periodical basis (daily/ weekly/ monthly), newspapers portions, periodic newsletters etc. SAC 998439 covers content provided on web search portals, i.e. extensive databases of Internet addresses and content in an easily searchable format. As stated in facts above, the Clinical Key subscription includes supplying of online content (full-text reference books and journals, synoptic content, drug information, videos, practice guidelines, customized patient education handouts, clinical calculators etc.). Hence services are covered by SAC 9984. The Applicant is presently applying SAC 9984 and discharging IGST at 18% in terms of S. No. 22 (ii) of the rate notification against the services being supplied to NTOR persons.

6.7 **Applicability of Entry 69 of exemption notification** : It is apposite to reproduce the extracts of the Notification No. 9/2017-IT (Rate) dated 28 June 2017 ('the exemption notification')

*In exercise of the powers conferred by 52], sub-section (3) and sub-section (4) of section 5, sub-section (1) of section 6 and clause (xxv) section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017)] of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, **hereby exempts the inter-State supply of services of description as specified in column (3) of the Table below** from so much of the Integrated Tax leviable thereon under sub-section (1) of section 5 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise,*



subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl. No. (1)	Chapter, Section, Heading, Group or Service Code (Tariff) (2)	Description of Services (3)	Rate (per cent.) (4)	Condition (5)
69	Heading 9992 or Heading 9963	Services provided – (a) by an educational institution to its students, faculty and staff; (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee; (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 house- keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution; <u>(v) supply of online educational journals or periodicals;</u> Provided that nothing contained in sub-items (i), (ii) and (iii) of item (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. Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course.	Nil	Nil

Para 2. Definitions

(y) “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;

Para 3. Explanation. For the purposes of this notification,-

(ii) Chapter, Section, Heading, Group, or Service Code mentioned **in Column (2) of the Table are only indicative.**

6.8 As per the exemption notification, the exemption is linked to the description mentioned in column (3) of the aforesaid table. The Chapter, Section, Heading, Group, or Service Code mentioned in column (2) are only indicative. Hence even if the services hereunder are classifiable under SAC 9984, so long as the services are covered in the description in column (2) above, the services would be eligible for exemption. In view of entry 69 (b) (v), the exemption is available on **“supply of online educational journals or periodicals”** provided to an educational institution [as defined in para 2 (y)]. In below paragraphs, the Applicant explains their understanding of the phrase. As stated in Entry 69 (b) (v), the exemption applies to online educational journals or periodicals. The phrases “journals” and “periodicals” are not defined under the GST law; hence reference may be made to the external aids;

Journal	Journal is a serious magazine or newspaper that is published regularly about a particular subject [Cambridge dictionary]
	a journal is a magazine , especially one that deals with a specialized subject [Collins dictionary]
	A periodical publication containing news in any particular sphere [Section 81, Indian Evidence Act, 1872]
Periodical	periodical is a magazine or newspaper , especially on a serious subject , that is published regularly [Cambridge dictionary]
	periodicals are magazines , especially serious or academic ones , that are published at regular intervals [Collins dictionary]
	Recurring at regular intervals ; pertaining to period [O. XXI, R. 33, C.P.C., 1908];
	a serial publication usually produced at regular intervals of less than a year and containing at least some articles and or news items, as distinct from legislation and case reports. [Section 30 (2) (m) of Chartered Accountants Act, 1948].

From a reading of the definitions, it transpires that there are two features of a journal or a periodical i.e.

- (i) they are published at some regular interval and
- (ii) they are related to a particular subject/ sphere

In academic context, the journal and periodical may be contrasted with other materials such as textbooks, which is generally not published periodically.

6.9 In the instant case, Clinical Key is a compilation of resources such as full-text reference books and journals, synoptic content, drug information, videos, practice guidelines, customized patient education handouts, clinical calculators etc. Thus, the database itself is not a journal or periodical as such, but a compilation of various resources and inter alia include journals and periodicals. In this regard, it is also relevant to refer the term “database”.

*database is large amount of **information** stored in a **computer system** in such a way that it can be **easily looked at or changed*** [Cambridge dictionary]

*database, also called electronic database, any **collection of data, or information**, that is **specially organized** for **rapid search and retrieval by a computer*** [Britannica dictionary]

*A **collection** of independent works, data or other materials **arranged in a systematic or methodical way** and **individually accessible by electronic or other means**.*

[Article 2, E.C. Database Directive – extracted in P Ramanatha Aiyar Advance Law Lexicon]

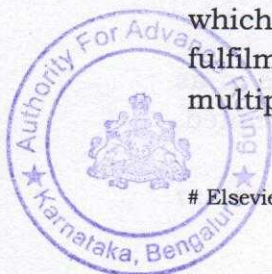
From the above, it emanates that there are three features of a database

- (i) it is collection of data or information
- (ii) the data or information is arranged in an organized manner
- (iii) for easy access or retrieval

Clinical Key is also a collection of various resources, which are organized in a systematic manner. A user can access the information through search/ navigation facility through electronic means. Therefore, Clinical Key is a database.

It appears that a ‘database’ is different from a journal and periodical in as much as the latter could be constituents of a database. A database could be a compilation of various journals or periodicals, with or without other resources (such as textbooks, videos, guidelines, handouts etc.). Hence as per this view, the supply of Clinical Key subscription may not qualify as ‘online educational journal or periodicals’.

However, on the other hand, it is the position of law that the beneficial exemptions should be interpreted in their contextual sense and with the reference of object sought to be achieved. The rule of purposive interpretation of statute which provides that statute should be interpreted in a manner that helps in the fulfilment of its object. It has also been recognized by the Supreme Court of India on multiple occasions that whenever two interpretations are feasible the court will



prefer such interpretation which advances the remedy and suppresses the mischief as it was envisioned by the legislature.

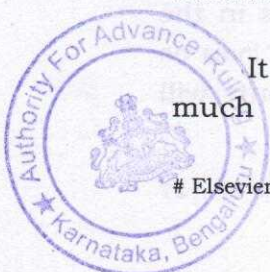
6.10 In the given case, S. No. 69 (b) *inter alia* provides exemption on various services supplied to educational institution viz. transportation of students, faculty and staff, catering services, security or cleaning or house- keeping services, services relating to admission to, or conduct of examination and supply of online educational journals or periodicals. The phrase “educational” in S. No. 69 (b) (v) is therefore important. From the 25th GST Council Agenda Notes, it transpires that the object of the exemption is to reduce costs of the degree awarding educational institutions to bring parity between the offline and online contents. Seeing from this perspective, the contents which are exempt in print should also be exempt if they are supplied online. In this backdrop, the Clinical Key database is a compilation of educational content which are also available in print form e.g., educational books. Therefore, from this perspective the exemption under S. No. 69 (b) (v) may be available to the entire database containing the educational materials.

6.11 In **Government of Kerala and another vs. Mother Superior Adoration Convent [2021 (376) E.L.T. 242 (S.C.)]**, it was emphasized by the Hon’ble Supreme Court that with respect to beneficial exemptions, their beneficial purpose must be given full effect to. A literal formalistic interpretation of the statute at hand is to be eschewed. First, the object sought to be achieved by the provision should be analysed, and the statute should be construed with such object. In case any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted.

In **K.P. Varghese v. Income Tax Officer [(1981) 131 ITR 597]**, the Supreme Court stated that literal construction of the section was not acceptable. The **section had to be interpreted with respect to the object and purpose**, the legislature had in view, in enacting the provision and the context of the setting in which it occurred

It is also submitted that services with respect to exemption relating to education sector, the exemption should be seen from the perspective of ‘in the course of providing education’. Reliance in this regard is placed on Hon’ble Karnataka High Court’s judgment in **Rajiv Gandhi University of Health Sciences, Karnataka vs Principal ADG, DGGI [2022 (64) G.S.T.L. 465 (Kar.)]**. In this case, in the context of *pari materia* provisions under the service tax, it was held by the Court that even though the University-petitioner was not itself providing the education services to students, but it was affiliating the colleges and regulating the manner in which the education is to be provided. Thus, the act of university in granting affiliation to a private college has to be considered as a service in furtherance of providing education and the decision of the respondents to consider otherwise is erroneous.

It is further submitted that the education sector is given a reduced rate in as much as e-books are taxable at 5% and journals and periodicals are exempted.



That being the case, a consolidation of substantially e-books, journals and periodicals with some other related content should not be taxable at 18%.

6.12 Understanding about AIIMS's status as an educational institution

The term 'educational institution' is defined under para 2(y) of the exemption notification as below:

'(y) "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;'

In view of the above, there are three categories of institution which could qualify as an educational institution. However, the proviso to Entry 69 (b) (v) states that this sub-clause (v) will not apply to educational institutions providing services by way of (i) pre-school, higher secondary school or equivalent or (ii) education as part of approved vocational education course. Thus, out of the 3 categories of educational institutions, entry 69 (b) (v) is applicable only to those educational institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

AIIMS was established in 1956 by the All-India Institute of Medical Sciences Act, 1956 ('the AIIMS Act') as an Institute body corporate. The autonomous university is approved by both the National Medical Commission (NMC) and the University Grants Commission (UGC). In terms of Section 13 of the AIIMS Act, the objects of the Institute shall be:

- To develop patterns of teaching in undergraduate and postgraduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India.
- To bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity: and
- To attain self-sufficiency in postgraduate medical education

AIIMS provide **both undergraduate and post graduate degrees in medical and para medical fields on its own**. Hence, in terms of the definition of an educational institution for Entry 69(b)(v), AIIMS will qualify as an educational institution providing services by way of education as part of a curriculum for obtaining a qualification recognized by any law for the time being in force.



**6.13 Understanding about AIIMS's status as NTOR
Up to 30 September 2023**

The NTOR means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in the taxable territory.

The term "governmental authority" is defined as under :

For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—

- (i) set up by an Act of Parliament or a State Legislature; or*
- (ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution.*

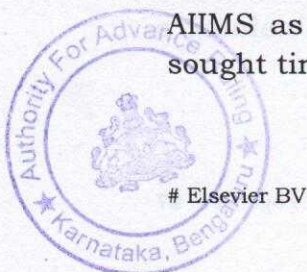
In this regard, it is submitted that since AIIMS was established in 1956 **by the Act of Parliament** it will fall under the definition of NTOR (up to 30 September 2023) which includes under its ambit all governmental authorities and the expression "governmental authority" means an authority or a board or any other body set up by an Act of Parliament or a State Legislature.

After 01 October 2023

The definition of NTOR is changed to include **any unregistered person** receiving online information and database access or retrieval services located in the taxable territory. In the view of new definition, even when AIIMS is a governmental authority, but since it is registered (normal registration) under the GST, it will not qualify as NTOR. The Applicant understands that all different AIIMS branches have obtained normal GST registration under the GST. Copy of GST registration status of AIIMS Raipur from GST portal is enclosed as **Annexure 3**

PERSONAL HEARING PROCEEDINGS HELD ON 03.11.2023

7. Sri Shivarajan K, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings and submitted a paper book containing the compilation of relevant provisions, relevant judgments and certain relevant screen shorts along with reiterating the facts narrated in their application. During the hearing in context of question number 2 and in the context of Section 2(16) of the IGST Act 2017 it was enquired about the status of AIIMS as to whether it qualifies as 'governmental authority' and the applicant sought time to furnish written submissions in this regard.



ADDITIONAL WRITTEN SUBMISSIONS DTD 21.11.2023

8. The applicant vide letter dated 21.11.2023 received in this office on 29.11.2023 made additional written submissions w.r.t Question 2 especially on the status of AIIMS as to whether it qualifies as 'governmental authority'.

8.1 It is apposite to submit that in Question No. 2, the Applicant had sought ruling on whether the Applicant (supplier of service) or AIIMS (recipient of service) is liable to pay GST on the supply of services (subscription of Clinical Key) (i) for the period up to 30 September 2023 and (ii) for the period after 01 October 2023.

8.2 In terms of Section 14 (1) of the Integrated Goods and Services Tax Act, 2017 ("**the IGST Act**"), GST is liable to be paid by the person located in non-taxable territory if provides online information and database access and retrieval (OIDAR) services to a non-taxable online recipient (NTOR), located in taxable territory. Upto 30 September 2023, NTOR definition included within its purview a 'governmental authority', relevant extracts reproduced below;

Section 2(16) 'non-taxable online recipient' means any Government, local authority, governmental authority, an individual or any other person not registered and unregistered person receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation. - For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,

(i) set up by an Act of Parliament or a State Legislature; or

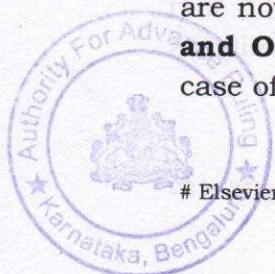
(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution;

8.3 **Clause (i) and clause (ii) are disjunctive.**

In this regard, the Applicant submits that 'governmental authority' is defined to mean two types of institution under clause (i) and clause (ii). Clause (i) is segregated by the word "or" and with the use of semi colon ";", where clause (ii) which is followed by the long line. The usage of semi colon combined with the word 'or', follows that there is necessary bifurcation between clause (i) and clause (ii). Meaning thereby, clause (i) and clause (ii) are disjunctive and the long line that follows clause (ii) is not applicable to clause (i).

8.4 Grammatically, a semicolon separates the two expressions showing that they are not inextricably connected [**Jayant Verma and Ors. vs. Union of India (UOI) and Ors. (16.02.2018 - SC) : MANU/SC/0133/2018**]. Similarly, in the case of case of **M/s Reckitt & Colman of India Ltd vs Asstt. Collr. of C. Ex., Hyderabad**



(1994 (72) E.L.T. 263 (A.P.) Hon'ble High Court of Andhra Pradesh, Hyderabad observed that semi-colon makes the entries mutually exclusive as under: -

*"Reading this heading, it would be apparent that the main item is 'pigments'. It is also described as dispersed in non-aqueous media, in liquid or paste form, of a kind used in the manufacture of paints. **Since there are semi-colons in the entry, "stamping foils" becomes another sub-heading,** and the third sub-heading is "dyes and other colouring matter" put up in forms or small packings of a kind used for domestic or laboratory purposes. Reading this entry, it is obvious that the other colouring matter must be in the nature of a dye, because the expression "other colouring matter" cannot be read independent of the word "dyes" and it must also be a "pigment" as it comes in the main category of "pigments". It follows that Item 3212.90 could refer only to other pigments or other colouring matter in the nature of a dye."*

8.5 The State of Tamil Nadu Represented by its Secretary Commercial Taxes Department, The Deputy Commissioner (CT) (FAC) versus Everest Industries Limited ([2022] 103 G S.T.R. 10 (Mad)) relevant extracts in this context are re-produced verbatim as under:-

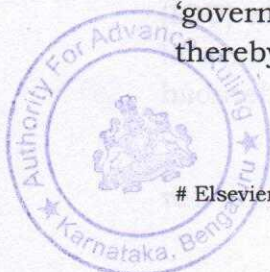
"99. Further, section 19 (2) is a positive provision which allows the dealers to claim ITC. Semi-colon followed by the disjunctive "or" used at the end of sub-clauses (i), (ii), (iii) and (iv). Semi-colons are generally used to distinguish or divide sentences more particularly when used in a series. It is also used in the sentences to denote a relation between two independent sentences....."

100. The use of semi-colon in the sub-clauses as referred above clearly indicates that the legislature intended to treat the sub-clauses as distinct and capable of being treated independently. The deliberate omission of the legislature to make way for separate clause for manufacturers who sell their goods to a dealer outside the State postulates the fact that the legislature intended to go-by the simple and plain meaning of the word "Sale" without any distinction.

*101. **It is not out of sight to point out here that the word "or" is used to denote the alternatives.** It is a conjunction that can be used as a conjunctive or disjunctive. **When it is used in a positive condition, it acts as a disjunctive implying its true purpose of indicating an alternate and implies satisfaction of any one of the conditions."***

8.6 AIIMS qualify as governmental authority under clause (i)

In the present case, as the Applicant had stated in the application [para-A.32], AIIMS was established in the year 1956 by the Act of Parliament i.e., All India Institute of Medical Sciences Act, 1956. By virtue of this, AIIMS qualifies as 'governmental authority' under clause (i) of Explanation to Section 2 (16), and thereby it becomes an NTOR up to 30 September 2023. Since, AIIMS qualify as



governmental authority by clause (i), the applicability of clause (ii) and the long line that follows is not required to be examined.

8.7 The interpretation of the term 'governmental authority' and the inter-play of clause (i), clause (ii) and the long line that follows clause (ii) was settled by Hon'ble Supreme Court in a very recent decision in **Commissioner, Customs Central Excise and Service Tax Patna Vs M/s Shapoorji Pallonji and Company Pvt Ltd [2023-TIOL-145-SC-CX]**. The question before the Court was whether the Indian Institute of Technology (IIT) and the National Institute of Technology (NIIT) qualify as 'governmental authority' as per S. No. 2 (s) of the service tax exemption notification.

8.8 The Hon'ble Court upheld that IIT and NIIT being institutions set up by Acts of Parliament qualify as 'governmental authority' under clause (i) of S. No. 2, the conditional long line that follows clause (ii) does not disentitle IIT and NIIT from being covered as governmental authority (**copy of the decision is attached-refer para 27 and 28 of the decision**). Relevant extracts;

28. Let us consider the problem from a different angle. The revised definition of "governmental authority" and the few punctuations in the definition (two semicolons and two commas) and the conjunction 'or' have been noticed above. **Literally read, the conjunction 'or' between sub-clauses (i) and (ii) clearly divides the two clauses in two parts with the first part completely independent of the second part. The first part is by itself complete and capable of operating independently.** A construction leading to an anomalous result has to be avoided and to so avoid, it has to be held that the long line of clause 2(s) starting with "with 90%" and ending with "Constitution" qualifies sub-clause (ii); and, if the conjunction 'or' is to be read as 'and', meaning thereby that the portion "with 90% ... Constitution" has to be read as qualifying both sub-clauses (i) and (ii), then the intention of re-defining "governmental authority" would certainly be defeated. As discussed earlier, the purpose for which "governmental authority" was re-defined must have been to make it workable. We cannot, therefore, resort to a construction that would allow subsistence of the unworkability factor. Assuming what Ms. Bagchi contended is right, it was incumbent for the appellants to bring to our notice, if not by way of pleading, but at least with reference to the relevant statutes, which of the particular authorities/boards/bodies are created by legislation - Central or State - "with 90% or more participation by way of equity or control by Government". Each word in the definition clause has to be given some meaning and merely because promoting educational aspects is one of the functions of a municipality in terms of Article 243W of the Constitution read with Schedule XII appended thereto is no valid argument unless equity or control by the Government, to the extent of 90%, is shown to exist qua the relevant authority/board/body. Incidentally, neither is there any indication in the petition nor has Ms. Bagchi been able to disclose the identity of any such authority/board/other body which is covered by her argument. No such identified authority/board/body covered by the aforesaid construction of the definition of "governmental authority" in



clause 2(s) of the Clarification Notification, which the appellants appeal to us to accept, having been brought to our notice, we are unable to find any fault in the decisions of the Patna High Court and the Orissa High Court extending the benefit of the Exemption Notification to the educational institutions, and a fortiori, to SPCL”

(Emphasis Supplied)

8.9 The definition of governmental authority in S. No. 2 (s) is *pari materia* to the definition contained in Explanation to Section 2 (16) of the IGST Act. In view of the Supreme Court’s judgment, AIIMS being set up by the Act of Parliament, qualifies as ‘governmental authority’ under clause (i), and thereby it also qualifies as NTOR for the period upto 30 September 2023.

For the period from 1 October 2023, since AIIMS is a recipient registered under the GST law, it does not qualify as NTOR and the liability to pay GST on OIDAR services is on the recipient and not the supplier as per the special provisions of section 14 of the CGST Act.

8.10 The Applicant reiterates their submissions in the application dated 15 September 2023 and paper book dated 03 November 2023 and requests that the aforesaid submissions may please be taken on record and be considered for pronouncing the ruling on the advance ruling application.

FINDINGS & DISCUSSION

9. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in *pari-materia* and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

10 We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant, the submissions made by their learned representative during the time of hearing and the written submissions dtd 21.11.2023.

11. The applicant submitted that they are engaged in the business of providing online content such as educational periodicals, online journals, online books and online newspapers, videos to various educational institutions, corporates and individuals, by way of different products (namely Clinical Key, SSRN, JCol etc.) to different types of customers, which are covered under the category of **online information and database access or retrieval (OIDAR) services**. The applicant seeks the rate of tax/ exemption on the supplies under ‘Clinical Key’ subscription, the product supplied to specified customers (educational institutions).

12. The applicant sought advance rulings in respect of the questions mentioned at para 3 supra. We consider one question at a time, discuss and decide the issues. The first question is ***“Whether the supply of services (subscription of Clinical Key) to the All India Institute of Medical Sciences (‘AIIMS’) is exempt from GST under Entry No. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28 June 2017?”***

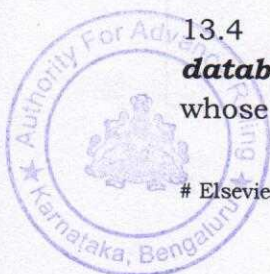
13. The applicant involved in supply of **subscription of clinical key** services to M/s All India Institute of Medical Sciences (AIIMS) and thus sought advance ruling as to whether the said services are exempt from GST under Entry No. 69 (b) (v) of the Notification No. 9/2017-Integrated Tax (Rate) dated 28 June 2017 or not.

13.1 The applicant provides the services under the product ‘Clinical Key’, which is an online subscription based clinical database with search and navigation facility that helps doctors, nurses and other healthcare professionals to make better decisions anywhere, anytime, in any patient scenario; it is accessible through internet from the website ‘www.clinicalkey.com’; the user interface of the website is a search engine that offers a compilation of resources such as full-text reference books, journals, synoptic content, drug information, videos, clinical calculators etc.; the search engine shows various results on typing the keyword, the content of the results can be the proprietary content of the applicant or of the third party; the categories of content accessible through the clinical key are Clinical Overview, Drug Monographs, Full-text books, Full-text journals, step-by-step procedural videos, clinical calculators, images, practice guidelines, customizable patient education handouts, MEDLINE abstracts and Clinical Trials.

13.2 The customers of the product ‘Clinical Key’ are individuals or institutional customers, who are generally healthcare executives, clinicians, nurses, medical librarians and medical students. Individual customers subscribe online through the website. Institutional customers such as hospitals, educational institutions etc., who are registered or unregistered under GST, subscribe annually for a specific number of authorized users. ‘Clinical Key’ is supplied in different packages i.e. essential package and specialty package, where the essential package is a standard one that includes the core issues and the specialty package is an advanced one that includes core resources and additional content related to respective medical specialty. Both the packages are available on monthly or annual subscription.

13.3 The customer, with the ‘Clinical Key’ subscription, gets online access to a medical centric database with a search facility. The website also has a browser facility for navigation of the content that is supplied in electronic form. There is no human intervention from the applicant’s side as the user himself navigates through the contents and access whatever that is available in the subscribed database.

13.4 Section 2(17) of the IGST Act 2017 defines ***“online information and database access or retrieval services”*** (OIDAR services) to mean the services whose delivery is mediated by information technology over the internet or an



electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

13.5 In view of the foregoing the impugned services i.e. supply of subscription based services via 'Clinical Key', qualifies to get covered under OIDAR services. The applicant, at present, is following the GST treatment of their services, described as under:

(a) Non-taxable online recipient (NTOR) customers : The applicant, on the services supplied to these customers (located in India), is discharging IGST at 18%, classifying the said Clinical Key services as OIDAR services covered under SAC 9984.

(b) Other customers : The applicant, on the services supplied to GST registered customers (located in India) is not discharging GST as the reverse charge is applicable

Now we proceed to examine the entry number 69(b)(v) of the Notification No.9/2017-Integrated Tax (Rate) dated 28.06.2017, which is as under:

Sl.No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
69	Heading 9992 or Heading 9963	Services provided – (a) by an educational institution to its students, faculty and staff; ⁵⁸ [(aa) by an educational institution by way of conduct of entrance	Nil	Nil

		examination against consideration in the form of entrance fee;]⁵⁸ (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 house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution ^{58a[***]}^{58a}; ^{58b}[(v) supply of online educational journals or periodicals;]^{58b} Provided that nothing contained in ^{58c}[sub-items (i), (ii) and (iii) of item (b)]^{58c} 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. ^{58d}[Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course.]^{58d}		
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Para 2. Definitions

(y) "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;



Para 3. Explanation. For the purposes of this notification,-

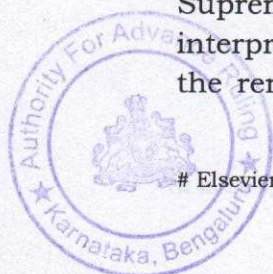
*(ii) Chapter, Section, Heading, Group, or Service Code mentioned **in Column (2) of the Table are only indicative.***

13.6 Entry 69(b)(v) read with second proviso and definition of 'educational institution' implies that the "supply of online educational journals or periodicals" to institutions providing "(ii) *education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*" is exempted from IGST unconditionally. Now the issues to be decided is whether the services provided by the applicant qualifies to be that of supply of online educational journals or periodicals; and whether AIIMS qualifies to be an institution providing education as a part of the curriculum for obtaining qualification recognized by law.

13.7 In the instant case, the service recipient is AIIMS, established in 1956 by the All-India Institute of Medical Sciences Act, 1956 ('the AIIMS Act') as, an Institute body corporate and approved as the autonomous university by both the National Medical Commission (NMC) and the University Grants Commission (UGC). AIIMS provide both undergraduate and post graduate degrees in medical and para medical fields on its own and thus gets covered under *an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.*

13.8 Next, we examine the services provided by the applicant. In the instant case, the applicant submitted that they offer services under the name 'Clinical Key' (**'the product'**), which is an online subscription based clinical database with search and navigate facility and that it is accessible through internet from the website "www.clinicalkey.com"; the user interface page of the website is a search engine that offers a compilation of resources such as full-text reference books and journals, synoptic content, drug monographs, Clinical overviews, videos, practice guidelines, customized patient education handouts, clinical calculators, medline abstracts, clinical trials etc. Thus it is seen that applicant provides online access and retrieval services to a systematically organized clinical / medical database with one of the constituents of database being journals or periodicals. One constituent part of database alone cannot define the whole. Given the composite nature of contract and supply involving several constituents detailed above, the supply by the applicant does not qualify as 'supply of online educational journals or periodicals'.

13.9 Applicant contended that the beneficial exemptions should be interpreted in their contextual sense and with the reference of the object sought to be achieved. Further the rule of purposive interpretation of statute provides that statute should be interpreted in a manner that helps in the fulfilment of its object. Hon'ble Supreme Court also recognised, on multiple occasions, that whenever two interpretations are feasible the court will prefer such interpretation which advances the remedy and suppresses the mischief as it was envisioned by the legislature.



The phrase 'Educational' in entry number 69(b)(v) supra transpires that the object of the exemption is to reduce costs of the degree awarding educational institutions to bring parity between the offline and online contents and thus the contents which are exempt in print should also be exempt if they are supplied online.

In the aforesaid backdrop, the applicant contends that the 'Clinical Key' database is a compilation of educational content which are also available in print form e.g. educational books and thus the exemption under entry number 69(b)(v) supra is available to the entire database containing the educational materials. Further the education sector is given a reduced rate in as much as e-books are taxable at 5% and journals & periodicals are exempted. Thus the consolidation of substantially e-books, journals and periodicals with some other related content should not be taxable at 18%.

The applicant relied upon the following case laws, in support of their claim.

- a) Hon'ble Supreme court judgment in **Government of Kerala and another vs. Mother Superior Adoration Convent [2021 (376) E.L.T. 242 (S.C.)]**,
- b) Hon'ble Supreme court judgment in **K.P. Varghese v. Income Tax Officer [(1981) 131 ITR 597] (SC)**
- c) Hon'ble Karnataka High Court's judgment in **Rajiv Gandhi University of Health Sciences, Karnataka vs Principal ADG, DGGI [2022 (64) G.S.T.L. 465 (Kar.)]**.

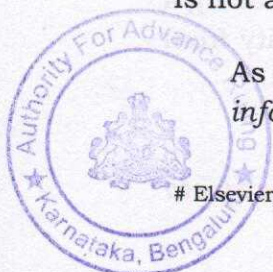
13.10 The case laws relied upon by the applicant are applicable only to the situations when there exists ambiguity in the interpretation of any exemption. In the instant case the exemption is crystal clear and very specific to 'supply of online educational journals or periodicals' and not to entire gamut of OIDAR services, which is a composite supply of service, provided to educational institutions. Thus the said laws are not squarely applicable to the instant case.

13.11 Thus it is seen that the supply of services by the applicant to AIIMS is not covered under exemption in terms of Entry No. 69(b)(v) of the Notification No. 9/2017-IT(Rate) dtd 28.6.2017 as amended.

14. Now we proceed to consider the second question i.e. ***If the answer to the above question is negative, whether the Applicant or AIIMS needs to discharge the GST liability (i) for the period up to 30 September 2023 and (ii) for the period after 01 October 2023?***

This question becomes relevant as it is discussed and decided, in the foregoing paras, that the first question is answered in negative i.e. the exemption is not applicable. Thus we proceed to answer this question.

As per Section 14. Special provision for payment of tax by a supplier of online information and database access or retrieval services.



(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services;

In the context of above provision of Section 14 of IGST Act, the applicant intends to know whether the applicant (being the supplier) or AIIMS (recipient of service) is liable to discharge GST. In terms of the said Section, GST is liable to be paid by the person, located in non-taxable territory, on supply of OIDAR services to a non-taxable online recipient (NTOR) located in taxable territory. The phrase 'Non-taxable Online Recipient' (NTOR) is defined in Section 2(16) of IGST Act, 2017 and was amended w.e.f 01.10.2023 as detailed below:

Section 2 (16) /*Upto 30 September 2023*/

"non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation.—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution

Section 2 (16) With effect from 01 October 2023

"non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation.— For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017 (12 of 2017).

For the period w.e.f 1.10.2023, it is clear that any unregistered person receiving OIDAR services, located in taxable territory is considered as NTOR. It is an admitted fact in that AIIMS has obtained GST Registration. Hence AIIMS being a GST registered recipient of OIDAR services, is liable to discharge GST liability from 1.10.2023.



For the period upto 30.09.2023, applicant contended that AIIMS is a 'governmental authority' and falls within the definition of NTOR in terms of Section 2(16) and the applicant being the service provider is liable to discharge GST. In this regard the relevant definition as it existed prior to 30.09.2023 is examined and the following conditions are to be satisfied to constitute NTOR:

- (i) *any Government, local authority, governmental authority, an individual or any other person not registered*
- (ii) *receiving online information and database access or retrieval services*
- (iii) *in relation to any purpose other than commerce, industry or any other business or profession,*
- (iv) *located in taxable territory.*

On the issue whether AIIMS constitute a governmental authority, the Explanation to the said sub-section is examined and the same is as under

Explanation. - For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,

- (i) *set up by an Act of Parliament or a State Legislature; or*
- (ii) *established by any Government,*

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution;

The expression 'governmental authority' is defined in the explanation. It is the contention of applicant that Clause (i) and clause (ii) of the definition are disjunctive as clause (i) is segregated by the word "or" and with the use of semi colon ";," and clause (ii) is followed by the long line; The usage of semi colon combined with the word 'or', follows that there is necessary bifurcation between clause (i) and clause (ii) and thus the long line that follows clause (ii) is not applicable to clause (i); AIIMS was established in the year 1956 by the Act of Parliament i.e., All India Institute of Medical Sciences Act, 1956 and hence AIIMS qualifies as 'governmental authority' under clause (i) of Explanation to Section 2 (16). As AIIMS qualify as governmental authority by clause (i), the applicability of clause (ii) and the long line that follows is not required to be examined.

The applicant submitted that the interpretation of the term 'governmental authority' and the inter-play of clause (i), clause (ii) and the long line that follows clause (ii) was settled by Hon'ble Supreme Court in a very recent decision in **Commissioner, Customs Central Excise and Service Tax Patna Vs M/s Shapoorji Pallonji and Company Pvt Ltd [2023-TIOL-145-SC-CX]**. The question before the Court was whether the Indian Institute of Technology (IIT) and the

National Institute of Technology (NIIT) qualify as 'governmental authority' as per S. No. 2 (s) of the service tax exemption notification.

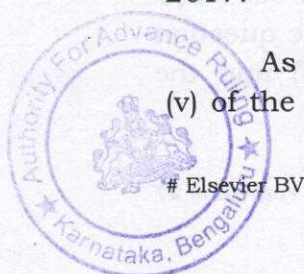
The Hon'ble Court upheld that IIT and NIIT being institutions set up by Acts of Parliament qualify as 'governmental authority' under clause (i) of S. No. 2, the conditional long line that follows clause (ii) does not disentitle IIT and NIIT from being covered as governmental authority. The definition of governmental authority in S. No. 2 (s) is *pari materia* to the definition contained in Explanation to Section 2 (16) of the IGST Act. In view of the Supreme Court's judgment, AIIMS being set up by the Act of Parliament, qualifies as 'governmental authority' under clause (i). Further the Hon'ble Supreme Court's judgment is binding. In view of the foregoing, we are of the opinion that AIIMS being set up by the Act of Parliament, qualifies as 'governmental authority' under clause (i).

The other two conditions of definition of NTOR, i.e., AIIMS to be receiving OIDAR services and located in taxable territory are satisfied as a matter of fact. However, the condition that ***the services are received in relation to any purpose other than commerce, industry or any other business or profession*** is not satisfied as the service recipient viz., AIIMS, as an institution, is into the business of providing medical and para-medical courses both at the undergraduate and postgraduate levels and awards its own degrees and thus the said services are received in relation to the business. Thus AIIMS does not satisfy the definition of NTOR in terms of Section 2(16).

In view of the foregoing, we examine whether the receipt of OIDAR services by AIIMS amounts to import of services or not. Section 2(11) of the IGST Act 2017 defines "import of services" to mean the supply of any services where (i) the supplier of service is located outside India, (ii) the recipient of service is located in India and (iii) the place of supply of service is in India. The provider of the OIDAR services is located outside India and the recipient of the said service i.e. AIIMS is located in India as a matter of fact. Section 13(12) of the IGST Act stipulates that the place of supply of OIDAR services shall be the location of the recipient of services and in the instant case the place of supply is in India as the recipient AIIMS is located in India. Thus all the conditions of import of service are satisfied and hence the receipt of OIDAR services by AIIMS amounts to import of services. Therefore AIIMS, being a person located in the taxable territory other than non-taxable online recipient, is liable to discharge GST on OIDAR services for the period upto 30.09.2023, in terms of Sl.No.1 of Notification 10/2017-Integrated Tax (Rate) dated 28.06.2017.

15. Now we proceed to consider the last question i.e. *whether the supply of services (subscription of Clinical Key) to other educational institutions is exempt from GST under Entry No. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28 June 2017?*

As discussed in the preceeding paras, the exemption under Entry No. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28 June 2017 is applicable only

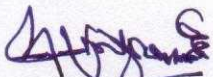


on 'supply of online educational journals or periodicals', whereas the applicant providing services of subscription of Clinical key are providing services by way of online access and retrieval services to a systematically organized clinical / medical database, and not covered under subject entry of the Notification.

16. In view of the foregoing, we pass the following

R U L I N G

- a) *The supply of services (subscription of Clinical Key) to the All India Institute of Medical Sciences ("AIIMS") is not exempt from GST under Entry No. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28 June 2017.*
- b) *Applicant is not liable to discharge the GST liability in respect of supply of services by the applicant to AIIMS through subscription of Clinical Key for both the periods i.e, for the period upto 30th September 2023 and for the period after 01 October 2023. The recipient of service, being the importer of service, is liable to discharge GST liability for both the periods.*
- c) *The supply of services (subscription of Clinical Key) to other educational institutions is not exempt from GST under Entry No. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28 June 2017.*


(Dr. M.P. Ravi Prasad)

Member
MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 15-04-2024

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-16, Bengaluru.
5. Office Folder.


(Kiran Reddy T)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

