



BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING

for the State of Andhra Pradesh (Goods and Service Tax)

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,
R.K. Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,
Andhra Pradesh – 521151)

Present:

Sri PEEYUSH KUMAR (Member) (State Tax)

Sri NARESH PENUMAKA (Member) (Central Tax)

The 28th day of September, 2020

Order /AAAR/AP/04 (GST)/2020

1	Name and address of the appellant	M/s. Master Minds, D. No. 5-25-72, 3/11, Brodipet, Guntur.
2	GSTIN	Un-registered
3	Date of filing of Form GST ARA-02	29.06.2020
4	Date of Hearing (Video Conference)	23.09.2020
5	Authorized Representative	Sri Y. Sreenivasa Reddy, Advocate
6	Jurisdictional Authority –	-

(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act, 2017).

At the outset, we would like to make it clear that the provisions of both the CGST Act and the APGST 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 provisions under the APGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and APGST Act"] by M/s Master Minds, Guntur (herein after referred to as the "Appellant") against the Advance Ruling No. AAR No.08/AP/GST/2020 dated 05.03.2020 Authority for Advance Ruling, Andhra Pradesh.

1. Brief Facts of the Case:

1. The appellant is a coaching Institute providing coaching to the students appearing for the Intermediate, CA Foundation Course, CA, CMA.
2. The appellants also provide hostel accommodation and catering services to the students.

3 The appellant claimed exemption from service tax during the service tax regime under the serial No. 66D(1)(ii) of the Negative List up to 01.03.2016 and under the Notification No.25/202- ST dated 20.06.12, as amended thereafter as 'Educational Institution' as per the definitions provided in the respective provisions detailed above.

4. It is the case of the appellants that since their service is providing education as part of a curriculum for obtaining Chartered Accountant, Cost Management Accountant as an educational Institution, they were exempted. No service tax was levied earlier under the Service Tax or leviable there to under the Goods and Service Tax enactments.

In the above circumstances the Appellant approached the Advance Ruling Authority-Andhra Pradesh for Ruling on the following queries:

- 1.** Whether the services of 'supply of service of education' as per the curriculum prescribed by the statutory authorities/ government to the students of the applicant for obtaining qualifications/ certificates of CA-Foundation, CA-Inter, CA-Final, CMA (ICWA)-Foundation, CMA-Inter, CMA-Final and Intermediate duly recognized by the respective statutory authorities/ government are exempted under Notification No.12/2017-CT (Rate) dt.28.06.2017 (entry no.66 (a)), as amended?
- 2.** Whether the charges collected for providing accommodation to the students undergoing the above courses are exempted from GST as provided under Notification No.12/2017-CT (Rate) dt.28.06.2017 (entry no.14), as amended read with Circular No.32/06/2018-GST dt.12.02.2018 since the amount charged from the students by the hostel run by the applicant is less than Rs.1000/- per day?
- 3.** Whether the charges collected by the applicant for catering service by supplying food to the students undergoing the above courses are exempted from GST as provided under Notification No.12/2017-CT (Rate) dt.28.06.2017 (entry no.66(a)), as amended?

The Authority for Advance Ruling Andhra Pradesh in the impugned orders in AARNo.08/AP/GST/2020 dated 05.03.2020 held:

- 1.** The applicant is not eligible for the exemption under Entry No.66 (a) of Notification No.12/2017-CT (Rate) Dated 28.06.2017, as amended as a Service provider Supply of service of education as per the curriculum Prescribed by the statutory authorities/government to the students of the applicant for obtaining Qualifications/certificates of CA-Foundation, CA-Inter, CA-Final, CMA (ICWA)-Foundation, CMA-Inter, CMA-Final and Intermediate duly recognized by the respective statutory authorities/ government.
- 2.** The applicant is not eligible for the exemption on the Charges collected for Accommodation from the wards under Entry No.14 of NotificationNo.12/2017-CT (Rate) Dated 28.06.2017.

3. The applicant is not eligible for the exemption on the Catering service and food supplied to the students Under Entry No.66 (a) of Notification No.12/2017-CT (Rate) dated 28.06.2017.

Aggrieved by the impugned order dated 05.03.2020 the Appellant has filed the present Appeal, inter alia, on the following grounds which are urged without prejudice to each other:

2. Grounds of Appeal:

1. The impugned order of the learned Advance Ruling Authority is not a speaking order and passed with a revenue bias without considering any of the submissions made and numerous citations cited by the appellant in the application. The impugned order is also passed in violation of judicial discipline as the same is passed without considering the decisions from various Courts and without even distinguishing them.

2. The learned authority misread the definition of the term 'educational institution' given in Notification No.12/2017-CT (Rate) dt.28.06.2017 which brought educational services out of the purview of GST, if supply provided is (a) related to education (b) the education is provided is as a part of a curriculum and (c) the education is provided for obtaining a qualification recognised by any law for the time being in force. If any of these conditions is not satisfied, the appellant shall not qualify to be eligible for the exemption. The appellant had clearly explained in his application how he fulfils all the above conditions and the appellant's detailed submissions were even recorded in para 4.10 to 4.27 of the impugned order the appellant's detailed submissions were recorded. But they are not controverted by the authority while passing the order but simply denied the exemption by passing a bald order.

3. The finding given by the learned lower authority that the appellant is not an educational institution since he is providing only part of the curriculum but not providing training or coaching for all the syllabus prescribed by the above statutory bodies is irrelevant. The definition of the term 'educational institution' clearly provides that education must be imparted as a part of such curriculum i.e., it must be a part of the syllabus for such course or qualification. The appellant is providing education as a part of syllabus prescribed by the statutory bodies and this fact is not negated by the learned authority. There is no explanation as to which part of the curriculum was not followed by the appellant.

4. The finding of the learned authority that since the appellant is not recognised or affiliated with these statutory bodies, it cannot be treated as educational institution is beyond the definition of the term 'educational institution'. A plain reading of the definition of the term 'educational institution' does not mention that only those institutes which are accredited or recognized to the statutory bodies are eligible for the exemption. Nowhere in the said Notification No.12/2017-CT (Rate) such legal requirement is prescribed that an educational institute shall be recognised or affiliated by these statutory bodies. The only condition prescribed under the GST law vide the said notification is that the

education imparted should be part of curriculum and this education should lead a student to obtain a qualification recognised by any law.

5. The learned authority has erred in treating the coaching offered to students preparing for entrance examinations like IIT, EAMCET as similar to the activities undertaken by the appellant. The coaching offered to these entrance examinations does not lead to any qualification recognized by law. After passing an entrance exam such as IIT-JEE, EAMCET etc., the students need to apply for the institutes for admission basing on the rank card. In the instant case of the appellant, the students register with the ICAI, ICMAI institutes and there after obtains coaching from the appellant, based on the curriculum provided by these statutory bodies and obtain a qualification recognized under law after the coaching and attending to examinations. This distinction though explained in the application by the appellant, the lower authority did not consider the same.

6. The ground taken by the learned authority to deny the exemption to the coaching imparted by the appellant is that the said coaching does not lead to grant of any certificate recognised by law and therefore, it is not an educational institution. This is both factually and legally incorrect. The coaching to all the courses viz., CA-Inter, CA-Final, ICWA-Final and ICWA-Inter and Intermediate education leads to grant of certificates duly recognised under the law. This had been clearly explained in the application. Further, as explained clearly in the application, granting of a certificate is not a condition in the said Notification to claim the exemption and this condition was existing prior to 2011. This submission also though made was not at all considered. The impugned order was clearly passed with pre-determined mind set.

7. The learned lower authority had given the findings in the order traversing beyond the definition and meaning provided in the statute. The authority misread and misinterpreted them without considering the submissions made by the appellant with regards to rules for statutory interpretation which provide that an exemption Notification should be read literally as it is written and to be construed liberally. The following judgments of Hon'ble Supreme Court cited and explained in the application were not considered by the lower authority in utter disregard to the Apex Court judgements in violation of principle of judicial discipline.

- (a) State of Gujarat Vs. Reliance Petronet Ltd [2008(227) ELT 3(SC)].
- (b) Kohinoor Elastics (P) Ltd vs. Commissioner of Central Excise, Indore (2005) 7 SCC 528.
- (c) Compack (P) Ltd vs. Commissioner of Central Excise, Vadodara (2005) 8 SCC 300 (para 20 refers).
- (d) CC (Prev), Amritsar Vs. Malwa Industries Ltd [2009(235) ELT 214 (SC)] (para 20 refers).

8. The learned authority deliberately ignored the contention of the appellant that the term 'education' is very wide and every coaching or training shall be

treated as education. The appellant relies upon the following decisions in this regard:

(a) The Hon'ble Supreme Court in Gujarat University Vs. Krishna Ranganath Mudholkar AIR 1963 SC 703 wherein it is held that the expression "education" is of wide import and includes all matters relating to imparting and controlling education.

(b) The Hon'ble Supreme Court in the case of Sole Trustee, Lok Shikshana Trust v. CIT, (1976) 1 SCC 254 wherein the term "education" was held to mean:

"the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. What education connotes is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

(c) The Hon'ble Supreme Court in the case of P. A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 wherein it was held as follows:

"81. "Education" according to Chambers Dictionary is "bringing up or training; strengthening of the powers of body or mind; culture".

82. In Advanced Law Lexicon (P. Ramanatha Aiyar, 3rd Edn., 2005, Vol. 2) "education" is defined in very wide terms. It is stated:

"Education is the bringing up; the process of developing and training the powers and capabilities of human beings. In its broadest sense the word comprehends not merely the instruction received at school, or college but the whole course of training moral, intellectual and physical; is not limited to the ordinary instruction of the child in the pursuits of literature. It also comprehends a proper attention to the moral and religious sentiments of the child. And it is sometimes used as synonymous with 'learning'."

9. The learned Authority erred in holding that since the appellant is not issuing any coaching completion certificate and since the student has the liberty to leave the institute, the appellant's institute cannot be considered as Educational Institution. This observation/ finding is not at all relevant while considering the exemption to the appellant. Once the appellant fits into the description of the term 'Educational Institution', other factors are irrelevant, as a student in a University can also discontinue his studies. The only relevant factor is that education imparted by the appellant is a part of curriculum for obtaining a statutory qualification. For this reason, a government college or university can also be held to be not an educational institution as students drop out from these colleges/ universities also.

The denial of exemption to the supply of service of education is against the policy of the Government. Various circulars issued by the CBIC placed before the learned authority were simply ignored by it.

10. The appellant is treated as an 'educational institution' by the Central Government Authorities as can be seen from the correspondence the appellant

had with the office of the Provident Fund Commissioner, Guntur and Employees State Insurance Corporation, Vijayawada, filed herewith relevant parts of the said letters are extracted below for ready reference:

Letter dt.12.07.2017 from the PF Commissioner:

"On the basis of particulars furnished by you on 09-07-2007 and on the basis of the Inspection of the records of your Establishment conducted by the Enforcement Officer on 06-07-2007 and 10-07-2007, it is evident that

(a) Your Establishment/factory viz., M/s Master Minds, 5-25-72, 3/11, Brodipet, GayatriNilayam, Guntur is engaged in Educational Institution imparting knowledge and training which is included in schedule/class of establishments which are included in Employees Provided Fund and Miscellaneous Provisions Act, 1952."

Letter dt.21.11.2018 of the ESI:

"1. *I have to inform you that u/s 1 (3) of the ESI Act the Central Govt. has made the provisions of the Act applicable to all the factories coverable under u/s 2(12) of the Act, within the area specified in the Notification.*

2. *I have to inform you that the appropriate Govt. has extended the provisions of the Act, to other establishments u/s 1(5) of the Act w.e.f. 01.05.2008 vide Andhra Pradesh Gazette Notification No. 582 dt. 14-10-2008 to those areas where ESI Scheme has already brought to force under sub-section (3) and (5) of Section 1 of the ESI Act, 1948 and shall apply to Private Educational Institutions (those run by individuals, trustees, societies or other organisations) and Medical Institutions (Including Corporate, Joint Sector, Trust, Charitable and Private Ownership hospitals, nursing homes, diagnostic Centres, pathological labs) wherein 20 or more persons are employed or were employed on any day of the preceding twelve months, except Medical and Educational Institutions established and run by Ramakrishna Math and Ramakrishna Mission.*

11. It is clear from the Government of India through their letters issued from PF office and Employees State Insurance Corporation that they had already taken a view that the appellant's establishment is an "Educational Institution". The Hon'ble Advance Ruling Authority taking a contrary view is not in consonance with the Government's consistent stand and therefore liable to be rejected.

12. Prior to introduction of GST, Service Tax was exempted on the education provided by an 'educational institution'. The relevant extract of Notification No.25/2012-ST dt.20.06.2012 was re-produced in Para 8.4 to 8.5 of the impugned order. The wordings are exactly same in the case of Notification 12/2017-CT (Rate) dt.28.06.2017 which granted such exemption in GST. The appellant was accordingly allowed the exemption during the Service Tax regime and the orders passed by the Commissioner of Service Tax was accepted by the committee of Chief Commissioners including one of the Hon'ble Members of this Appellate Authority. It is highly improper to deny the same under GST when identical exemption is provided that too when the adjudication orders passed in

his favour were accepted by the Committee of Chief Commissioners and even refund of the service tax paid was sanctioned to him. The Hon'ble Tribunal in the case of Sri Chaitanya Educational Committee Vs. CCE, Guntur [2018(4) TMI 664-CESTAT-Hyd] examined the provisions of various periods and held that coaching institutes providing coaching do fall under the definition of the term 'educational institution'. Though the Tribunal's Order was issued only up to 2014-15, subsequent changes i.e., introduction of the definition of the term 'educational institution' in Notification No.25/2012-ST dt.20.06.2012 makes the appellant eligible for the exemption re-produced in Page 16 and 17 of the impugned order clearly indicates that the issue is same in both in respect of Service Tax and GST. This decision and documents though produced were not considered by the learned lower authority. The definitions of this term 'educational institution' under both the Acts are again extracted below for ready reference:

Sl.No	Under the Service Tax regime till 01.07.2017	Under GST with effect from 01.07.2017
1	As per Section 66D of the Act and as per Notification No.25/2012-ST dt.20.6.2012: "2(oa): Educational institution means an institution providing service by way of: (i)Pre-school education and education up to higher secondary school or equivalent. (ii) Education as a part of curriculum for obtaining qualification of any law time being in force. (iii) Education as a part of an approved vocational educational course."	Notification No. 12/2017-Central Tax (Rate), dt 28.06.2017: "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;

13. The learned authority erred in denying the benefit of the exemption for the education provided to the students in respect of Higher Education Course i.e., Intermediate Education which is covered under clause (i) of the said Notification without even discussing about the same. The impugned order is passed on the

ground that the coaching for the CA and ICWA courses attracts GST since the coaching does not result in issue of any certificate and hence does not fall under the definition of the term 'educational institution' as per clause (ii) or (iii) of the said definition. The education provided to Higher Secondary Education is exempted even if the institution is not an educational institution since clause (i) of the definition does not mention about leading to grant of any qualification or certificate. Same is extracted below again for ready reference:

'2(oa): Educational institution means an institution providing service by way of: Pre-school education and education up to higher secondary school or equivalent.

14. The Hon'ble Authority denied the exemption sought for in respect of accommodation referring to the Board Circular dt. 01.01.2019 and Entry No. 66 of the said Notification. The appellant referred to Board Circular dt.12.02.2018 while seeking the Ruling. Even if the appellant is not treated as an educational institution, there is no bar in granting exemption to the students for providing accommodation since the charges collected from them are less than Rs.1000/- per day. This issue is not at all considered by the learned authority.

15. The authority also erred in denying the exemption for providing catering to students on the ground that the appellant is not an 'educational institution'.

16. The appellant supplies printed books to the students and their value do not form part of the value of the education service provided by him. Invoices are raised separately by him separately. Copies of sample invoices/ bills issued by him for sale of books are filed. GST is exempted on printed books vide Sl.No.119 of Notification No.2/2017-CT (Rate) dt.28.06.2017 and the same is to be excluded from the fee collected by the appellant from his students.

The learned Advance Ruling Authority passed the impugned order without jurisdiction as the DGCEI has already initiated investigation against the appellant with regards to the same issue and searches were also conducted and statements were recorded in this regard.

3. Personal Hearing:

The proceedings of Hearing were conducted through video conference on 23rd September 2020, for which the authorized representative, Sri Y. Sreenivasa Reddy, Advocate attended and made additional submissions as under:

4. Additional Submissions:

1. During the service tax regime, the appellant claimed exemption from payment of service tax since an exemption from payment of service tax on the services provided by an educational institution to its students by way of exclusion of the services under Sl.no. 66D(1)(ii) of the Negative List till 1.3.2016 and under Notification No.25/202-ST dt.20.6.2012, as amended thereafter. The term 'educational institution' is defined as follows in the said notification:

Till March 2016:

(on)"educational institution' means an institution providing services specified in clause (1) of section 66D of the Finance Act,1994'

From March 2016:

"2(oa): Educational institution means an institution providing service by way of:

(ii) Education as a part of curriculum for obtaining a qualification of any law time being in force.

Clause (I) of Section 66D of the Finance Act, 1944 covering the educational services is as under:

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

2. As per the above definition, the appellant falls under the category of 'educational institution' if the following conditions are fulfilled:

- (a) The service provided should be is related to 'education'.
- (b) The education is provided as a part of a curriculum and
- (c) The education is provided for obtaining a qualification recognised by any law for the time being in force.

3. There is no other condition prescribed under the said Notification or in the GST Act. The appellant accordingly claimed exemption from service tax since the coaching provided by him is in relation to education provided to the students; the coaching is provided strictly following the curriculum prescribed by the concerned statutory institutions and the coaching is for obtaining a qualification recognised under law. The service tax department issued periodical show cause notices demanding service tax on the services on the grounds, inter alia, that the appellant was not issuing certificates to the students; that he is not recognised institutions etc., and hence not eligible for the exemption. These demands were subsequently dropped as far as coaching for Intermediate course, CA- Final and CMA- Final. The orders were accepted by the Committee of Chief Commissioners also and the service tax collected by the department was accordingly refunded.

4. The above arguments that the appellant is to be recognised with ICAI and ICWAI; he should issue certificates etc., were not accepted by the adjudicating authority in the order dt.23.05.2019 issued for the period from April 2013 to March 2017. In fact, the demands were dropped when there was a condition that the coaching shall lead to certificates duly recognised under law as against more liberal entry that the coaching is for obtaining a qualification. The later entry in the Notification in service tax regime brought into GST regime simply mentions that the service shall be relating to education as part of curriculum for obtaining a qualification recognised under the law.

5. Under the GST regime also, identical exemption is provided. The entries in the Notification No.25/2012-ST dt.20.06.2012 were borrowed into GST regime. Notification No.12/2017- Central Tax (Rate) provides exemption from GST on

the services provided by an educational institution to its students, faculty and staff. The entry in the notification is as follows:

66. "Services provided—

(a) By an educational institution to its students, (faculty and staff.

6. The term 'educational institution' is defined in the said notification categorizing the services under three clauses. The appellant falls under clause (ii) which reads as under:

(ii) *education as part of a curriculum for obtaining a qualification recognised by any law for the time being in force.*

7. The catering and accommodation services provided to the students by an educational institution are also exempted vide the above Notification.

8. Since identical exemption extended to him in service tax regime is provided in GST regime also, the appellant did not pay any GST on the services provided by him to the students. The GST department had even cancelled GST registration on request by the appellant. However, the DGGI, Visakhapatnam initiated an enquiry against the appellant on the ground that he had to pay GST. Searches were conducted at the appellant premises and statements were recorded. Documents were called for and investigation is still in progress. Since the department had raked up the closed issue, the appellant wanted to take a ruling from the Advance Ruling Authority on whether it is an educational institution and accordingly whether the exemption provided under Notification No.12/2017-CT (Rate). The appellant explained in his application filed before the learned Advance Ruling Authority:

(a) Details of demands issued to him during the service tax regime, details of orders passed dropping demands by the adjudicating authorities, acceptance of the orders by the Committee of Chief Commissioners and granting of refund of the tax already paid.

(b) Details of coaching he provides, the syllabus he follows as per the one prescribed by the statutory bodies, the qualifications the students obtain after passing the exams with the education provided by the appellant, along with relevant documents viz., certificates, curriculum etc.,.

(c) How it falls within the four corners of the definition of the term 'educational institution' as per the principles of interpretation of legal provisions and notifications etc.,

(d) Copies of documents showing that he is recognised as an educational institution by other government departments.

9. The appellant had also submitted that the jurisdictional Tribunal (CESTAT) at Hyderabad in the case of Sri Chaitanya Educational Committee had dropped the demand of service tax holding that the institute giving coaching to similar courses fall under the definition of the term 'educational institution' and there is no such

condition of recognition etc., but this case law like other decisions is not considered by the ARA.

10. The learned ARA, however, gave a ruling vide the impugned order stating that the appellant is not an educational institution for the following reasons.

- (a) The appellant is not recognised with the ICAI or ICWAI.
- (b) The students have option to choose particular coaching and need not undergo coaching for entire course.
- (c) The coaching itself does not lead to grant of certificate but he has to write an exam thereafter.
- d) The coaching is not mandatory for the students to appear for the examination.
- e) The ICAI and ICWAI provide coaching for various other courses on completion of which the certificates were issued and therefore, the appellant is providing coaching for a part syllabus.
- f) Since the appellant is not an educational institution, the catering service and accommodation provided by him to the students are also not eligible for exemption.

11. The impugned Ruling is not legally correct for the following reasons:

- (a) The ARA should not have, in the first place, entertained the application since the issue is under investigation by DGGI and this fact was even intimated to the ARA by the appellant himself in his application. Though the appellant subjected himself for the proceedings before the ARA voluntarily, there is no tappel against the law as held in the case of Share Medical Care Vs. Union of India [2007(2) TMI 2-Supreme Court] and hence ARA should not have gone against Section 98(2) of the GST Act, 2017 which bars the ARA to take up the case for ruling when the issue is pending enquiry before any other authorities. In the case of RE: M/s. Karnataka Co-operative Milk Producers Federation Ltd reported in 2020 (3) TMI 73- Appellate Authority for Advance Ruling, Karnataka, though the appellant preferred appeal, the Appellate ARA held the order of the lower authority as void ab initio as it violates the provisions of Section 98(2) of the Act though the DGGI issued only letter calling for information from the assessee. In the present case, the DGGI had conducted searches, recorded statements and collected all the documents from the appellants. All these documents are filed with the application. Same are filed again herewith for ready reference. The ARA had mentioned in the impugned order that he had conducted enquiry with state tax authorities and got a report that there is no enquiry pending with them against the appellant. In fact, even the state tax authorities also called for records from the appellant and stopped enquiry when it was informed that the issue is under investigation by DGGI. Section 98(2)

applies not only to the enquiry by the state tax authorities but even to the enquiry/ investigation being conducted by the central tax authorities.

(b) The learned ARA himself admitted in the order in the first page itself that the appellant is a leading educational institution and the coaching provided by him enables the students to appear for the examinations conducted by respective statutory bodies and to obtain necessary qualifications. He cannot pass the order with conflicting statements.

(c) The learned ARA himself mentioned that identical exemption is provided under GST regime and service tax regime. In such case, when the issue is closed during service tax regime, same cannot be overturned for GST purpose for the sake of granting a negative ruling keeping the revenue in mind being quasi-judicial authorities. He passed the impugned order-though relying on the order of the Commissioner of Central Tax dropping the demand of service tax with detailed findings but negating the same acting as an appellate authority.

(d) The learned ARA without going into the issue whether the applicant falls within the definition of the term 'educational institution' as it is defined in the GST Act, 2017 following the Rules of Interpretation of legal provisions, held that the appellant is not an educational institution on irrelevant grounds citing various conditions for eligible to be an educational institution but none of which is prescribed in the notification. The submission that a notification is to be read literally as per the settled legal position is given ago-bye.

(e) These issues were dealt with by the Commissioner of Central Tax and he held the appellant is an educational institution since these conditions are not stipulated in the notification. The ARA did not explain how the findings of the Commissioner of Central Tax are wrong when he referred to and discussed them in his order.

(f) None of the decisions/ judgements cited and discussed by the appellant in the application was even referred to leave their discussion by the ARA in gross violation of principles of judicial discipline.

g) The ARA had not granted exemption even to the Intermediate course which is a certificate issued by the state government and coaching is provided as per the syllabus prescribed by the government.

h) The jurisdictional Tribunal in the case of Sri Chaitanya Educational Committee had elaborately discussed the exemption under the negative list and also under Notification No.25/2012-ST and held that even the coaching provided to the students for appearing the JEE etc., is exempted from service tax. The ARA had not explained how this decision is not relevant to the appellant's case.

12. The appellant also wishes to bring to the kind notice of the appellate authority that the reasons given by the learned ARA to pass the impugned order

are dealt with by Hon'ble High Court of Kerala in the case of Commissioner of Central Excise & Service Tax vs. Tandem Integrated Services 2019 (3) TMI 1440-Kerala High Court wherein it was held that there is no condition of recognition or issue of certificates etc., in the notification and hence the coaching imparted by coaching institutes for preparing the students for examinations for obtaining qualifications and hence service tax cannot be demanded. Relevant part of the decision is extracted below for ready reference:

11. "The argument of the learned Counsel for the Revenue is that the respondent is not a regular college which grants certificate, diploma or degree for any educational qualification recognised by law and would therefore, not come within the exemption under subsection (27) of Section 65 of the Finance Act, 2003. It was also argued that though parallel colleges were granted the same benefits as University affiliated regular colleges, the assessee herein has activities other than preparing students for University degrees, diplomas and certificates or those issued from institutes, legally recognised. The assessee prepares students for entrance tests, competitive tests for employment, etc., all of which are commercial in nature bringing it under the tax net.

13. The assessee herein is also imparting education to obtain recognised degrees/ diplomas from Universities and that apart the students are also being provided training to appear for competitive examinations. entrance tests, etc. It is not necessary that the respondent-firm should issue a certificate, diploma or degree. The students given coaching by the appellant are issued with certificates, diplomas and degrees, as issued by the Universities, identical to regular colleges and parallel colleges also. The students are being prepared for courses and are imparted training to appear for competitive examinations as well. The decision of this Court in Malappuram District Parallel College Association (supra) would squarely apply to the respondent-firm, since they are imparting coaching for courses leading to recognised certificates, diplomas and degrees issued by lawfully constituted academic bodies. Hence when such institutes also carry on training schedules to prepare students for competitive exams, categorised as "commercial coaching", as per the clarification issued by the CBCE, they stand exempted."

13. The above judgement is based on the High Court decision in the case of Malappuram District Parallel College Association and Ors. Versus UOI and Ors. 2005 (8) TMI 336 - High Court of Kerala where in demand of service tax on the coaching provided by the private coaching institutes called parallel colleges without any recognition with the government or affiliation with other recognised colleges for enabling the students to sit for the exams to get certificates of BA, B.Com etc., is set holding that such demand of service tax on these coaching institutes on the ground that they are not recognised etc., is discriminatory and violative of Article 14 of the Constitution of India and against the policy of the government to encourage education and also that when students who take coaching in the recognised and unrecognised colleges is to obtain the same certificate by the students, service tax cannot be demanded on the coaching centres.

14. The appellant further submits that the appellant sells books and coaching materials published by him as per the syllabus of ICAI and IAWAI to the students

issuing separate bills and the value of these books shall be deducted as they are exempted from GST from the value of the consideration received from the students.

15. The appellant accordingly prays this Hon'ble Appellate Authority:

- (a) To quash the proceedings since they are against the Section 98(2) of CGST Act, 2017 without going into merits of the case as the issue was under investigation by the central and state tax authorities.
- (b) To declare the order of the lower authority as illegal as the same is passed without considering the submissions made by the appellant and without considering various decisions from Hon'ble Supreme Court etc.,
- (c) To set aside the order of the lower authority as the same is passed against the settled legal position.
- (d) To pass order declaring the appellant as an educational institution and
- (e) To pass such other order or orders as may be deemed fit in the interest of justice.

5. Discussion and Findings:

We have gone through the entire submission made by the appellant along with the Ruling pronounced by the Authority for Advance Ruling. On perusal of the appeal and submission made by the appellant at the time of Personal Hearing, it is observed that the main issue of contention is whether the appellant is an educational institution or not.

In order to resolve the contentions, it is necessary to look at the scheme of education for CA/CMA as detailed under;

- a)** Chartered Accountant is a designation given to an accounting professional who has received certification from a statutory body that he/she is qualified to take care of the matters related accounting and taxation of a business, like file tax returns, audit financial statements and business practices, maintaining records of investments, preparing and reviewing financial reports and documents. A Chartered Accountant is also qualified to offer advisory services to clients which include companies and individuals.
- b)** Becoming a certified Chartered Accountant requires completing three levels of training designed by the Institute of Chartered Accountants of India (ICAI). The ICAI, is a statutory body which regulates and maintains the profession of chartered accountancy in India.
- c)** Under the Scheme of Education and Training, a candidate can pursue Chartered Accountancy Course either through, Foundation Course Route or Direct Entry Route.
- d)** Foundation course is the entry point into the course after Class XII, while Direct Entry is for those who have completed Graduation.
- e)** A candidate can choose to pursue a Chartered Accountant (CA) course after completion of the 12th through the Foundation course option. If a person opts to pursue a Chartered Accountant course after graduation, they can directly register for the Intermediate course through Direct Entry option.

- f) The Registration Fee prescribed for foundation course is Rs.9000/-, for Intermediate Course is Rs.18000/-and Rs22000/- for Final Course.
- g) There is no defined course duration to complete CA course, however, ideally all courses of CA are completed within 5 years. The course is considered complete only after a student clears all papers of Chartered Accountancy courses.
- h) There is no maximum age limit for the CA course. However, minimum age should be 17 years (Class 12 pass).
- i) The major difference between the CA and CMA courses is that - CA degree is a core study of accounting, taxation, auditing, and finance whereas CMA degree is the study of managing budgets, costing/ pricing, assets, liabilities, analysis, and much more.
- j) The Board of Studies, ICAI is responsible to provide high quality theoretical education to students of Chartered Accountancy course. As a part of the Scheme of Four Weeks Integrated Course on Information Technology and Soft Skills (ICITSS) consisting Course on Information Technology for Chartered Accountancy Course, a student has to mandatorily complete the Course on Information Technology from any of the ITT Centers established at Regional Offices/ Branches/ Chapters of ICAI before commencement of Practical Training.
- k) As a part of the Scheme of Four Weeks Advanced Integrated Course on Information Technology Training and Soft Skills (AICITSS) for Chartered Accountancy Course, a student undergoing practical training shall be required to do AICITSS during the last 2 years of practical training but to complete the same before being eligible to appear in the Final Examination. A student can complete the Course on Advanced Information Technology (AICITSS) from any of the ITT Centers established at Regional Offices/ Branches/ Chapters of ICAI.
- l) Similarly, **ICMAI** is the Institute of Cost Accountants of India (ICAI), which was previously known as the Institute of Cost and Work Accountants of India (ICWAI). There are three stages to be pursued to become a Cost and Management Accountant. The First stage is the Foundation Course, the second stage is the Intermediate Course and the last stage is the Final course. The Admission/Registration for the CMA course is open throughout the year, however, the candidates need to complete the registration process before the cutoff date. Candidates after passing the CMA Final exam are eligible for Membership of ICAI.

The above findings reveal that the Board of Studies (BOS in short) is a wing created by the Institute of Chartered Accountants of India (ICAI in short). The BOS is imparting theoretical education for CA through online courses, Journals etc., to the enrolled candidates. Similarly the ICWAI is conducting classes through the counselors appointed on Honorarium as well as computer soft skills to the registered candidates.

Basing on the above discussions the findings are

1. The ICAI or ICMAI does not affiliate nor recognize any other education institutions for the purpose of Theoretical education, Practical training. The BOS /Counselor is imparting Theoretical education through online lectures, Practical training to

the registered candidates.

2. The registered candidate is eligible to appear for the examinations conducted by the said Institutes at various level of entry points.
3. Age has no bar to pursue the course.
4. There is no prescribed duration of Course to complete like intermediate, Graduation/Post Graduation or technical education like B.Tech, B.E. ETC.,
5. There are no different streams like Regular or Private Students.
6. Regular Attendance is not necessary in any college or Institution. The registered/enrolled candidate need not pay any additional fee in lieu of attendance for appearing examinations in Intermediate, graduation etc.,

In the aforesaid back ground, let us verify the contentions of the appellant basing on the decisions rendered by the various Honourable Courts.

In the case of Sole Trustee Loka Shikshana Turst vs. Commissioner Of Income Tax, (1976 AIR 10, 1976 SCR (1) 461) the Honourable Supreme Court held the meaning of "Education" under the section 2(15) of the Income Tax Act, 1961 as under:

"The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

The Supreme Court in the case of Nidhi Kaim v. State of M.P., (2016) 7 SCC 615, *"for the proposition that the examination is considered as a common tool around which the entire education system revolves"*

As indicated herein before, the institution is being run for a specific purpose to the extent to cover the topics in the subjects of the prescribed Syllabus for CA/CMA, namely, to prepare the students for appearing in various level of theoretical examinations for the said qualification, but it itself appears to be not

authorized, there for, nor can it be said to be sufficient to complete the Curriculum by the candidates to qualify as CA/CMA.

If such a wide meaning is given to the word "education" so as to bring within its purview the coaching institutions, it will defeat the Purpose of the Act.

The CBIC vide its Flyer on "GST on Education Services" has clarified as under:

"Thus, services provided by an educational institution to students, faculty and staff are exempt. 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.*

Within the term "educational institution", sub-clause (ii) covers institutions providing services by way of education as a part of curriculum for obtaining a qualification recognised by any law for the time being in force. This is an area where doubts have persisted as to what would be the meaning of "education as part of curriculum for obtaining qualification recognised by law". GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 can be gainfully referred to understand the meaning of the term which reads as under;

What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'?

It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification

Added to this, the Chartered Accountants Act as well as the Cost and Works Accountants Act, both clearly do not recognize the "education" imparted by Universities or affiliated bodies towards the award of any degree, diploma or certificate as given by such Institutes. In fact, such Universities and Bodies are not even permitted to use any name or nomenclature which is in any way similar to that of the said Institutes. In this context, Section 15 A of the Chartered Accountants Act, 1949 and Section 15 B of the Cost and Works Accountants Act, 1959 regarding imparting education by Universities and other bodies were

incorporated in the respective Acts in the year 2006. The sections have identical wordings and are reproduced hereunder for reference:

15A. (ICAI Act) Imparting education by Universities and other bodies

(1) Subject to the provisions of this Act, any University established by law or any body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute.

(2) The Universities or bodies referred to in sub-section (1) shall, while awarding degree, diploma or certificate or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Institute.

(3) Nothing contained in this Section shall enable a University or a body to adopt a name or nomenclature which is in any way similar to that of the Institute.

15B. (ICWAI) Imparting education by Universities and other bodies

(1) Subject to the provisions of this Act, any University established by law or any body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute.

(2) The Universities or bodies referred to in sub-section (1) shall, while awarding degree, diploma or certificate or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Institute.

(3) Nothing contained in this section shall enable a University or a body to adopt a name or nomenclature which is in any way similar to that of the Institute.]

Therefore, the "education" imparted by the Appellate would not lead to the obtaining a qualification recognised by the said Institutes. Needless to say that the Appellant is not an affiliate of the said Institutes and hence would only be referred to as a coaching institute and not an educational institution.

The Acts, Rules and Regulations that govern the said two Institutions, ICAI and ICWAI lays down an elaborate system of education, practical training, special courses and multi-level examination system that finally leads to the qualification under the said Acts. As such, the candidate has to even complete the Integrated course of Information Technology i.e. ICITSS and AICITSS and practical training and clear all the Examinations conducted by the BOS.

1. The Institution is not having any recognition or affiliation to ICAI OR ICMAI.
2. The candidates enroll directly with the BOS through online and pay the registration fee directly to ICAI or ICMAI.
3. Admission to the Appellant's Institution or to any other college/Institution is not mandatory to complete the CA/CMA Course.
4. It is the choice left to the students for admission in the Appellant's Institution.
5. The coaching provided by the Institution is not the essential part of the curriculum.
6. Regular attendance is not the essential part for qualifying as CA/CMA.

In view of the above findings, the Appellant cannot claim the benefit of exemption as an Educational Institution providing *Education as a part of a*

curriculum for obtaining a qualification recognized by any law for the time being in force under the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.

Thus the order is issued.

ORDER

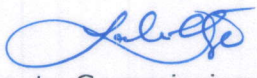
We do not find any reason to interfere with the ruling pronounced by the Authority for Advance ruling vide their Order No. AAR No.08/AP/GST/2020 dated 05.03.2020 Authority for Advance Ruling, Andhra Pradesh.

Sd/- Peeyush Kumar
Chief Commissioner (State Tax)
Member

Sd/-Naresh Penumaka
Chief Commissioner (Central Tax)
Member

//t.c.f.b.o//




Deputy Commissioner (ST)

DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

TO

M/s. Master Mind, D. No. 5-25-72, 3/11 Brodipet, Guntur, Andhra Pradesh. **(By Registered Post)**

Copy to:

- 1) The Joint Commissioner (ST), Narasaraopet Division, Guntur. **(By Registered Post)**
- 2) The Deputy Commissioner (Central Tax), O/o the Assistant Commissioner of Central Tax, Guntur Division, 2/17, Brodipet, Guntur – 522 002. **(By Registered Post)**
- 3) The Assistant Commissioner (ST) Brodipet Circle, Narasaraopet Division, Guntur. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. **(By Registered Post)**