MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		**27BFCPM0243P1ZA**
Legal Name of Applicant		**M/s. SHALINI MANISH MITTAL**
Registered Address/Address provided while obtaining user id		401, Sankalp CHS, Plot No-55, Sector-2a, Koparkhairne, Thane, Maharashtra, 400709
Details of application		GST-ARA, Application No. 64 Dated 21.11.2019
Concerned officer		**Division IV, Range-V, Commissionerate Belapur**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Service Provision**
B	Description (in brief)	Online or Telephonic Educational coaching from India for corporate, individuals or any other entities residing outside India.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (ii) Applicability of a notification issued under the provisions of this Act (iii) determination of time and value of supply of goods or services or both (iv) Admissibility of input tax credit of tax paid or deemed to have been paid (v) Determination of the liability to pay tax on any goods or services or both (vii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as

"the CGST Act and MGST Act" respectively] by **M/s. SHALINI MANISH MITTAL ,** the applicant, seeking an advance ruling in respect of the following question.

"Whether online or telephonic educational coaching from India for corporate, individuals or any other entities residing required outside India is subject to GST and if so under which category is it taxed and section/notification covered for the same"?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant is as under:-

2.1 Ms. Shalini Manish Mittal, the applicant, is rendering online or telephonic IT coaching services to corporates, individuals or any other entities who are outside India and since the services are provided to clients outside India and amount is realized in foreign exchange the said services will be considered as export of service and hence it is a zero rated service under GST.

03. CONTENTION – AS PER THE CONCERNED OFFICER

3.1 Services provided by the applicant fall under SAC Code 998313 - Information Technology (IT) consulting and support services as per Notification No. 11/2017-C.T.(Rate). The place of supply of IT/ITES services is the location of the recipient in terms of Section 13 of the IGST Act, 2017. However, if the recipient is not registered and his address is not available on the records of the supplier, the place of supply would be the location of the supplier. Based on the location of supplier and place of supply appropriate amount of SGST/CGST or IGST shall be paid. GST rate for all kinds of IT Software supply: services, products, supply on media, electronic download and temporary transfer of Intellectual Property (IP) is 18%.

3.2 The jurisdictional officer has cited the provisions of Sections 13 and 15 of Central Goods & Service Tax Act, 2017, Sections 16 and Section 2(6) of IGST Act, 2019 and has submitted that Export of IT services is treated as zero rated supply. The jurisdictional

officer has also cited Rule 96 of the CGST Rules 2017 provides for procedure of export of services. However the jurisdictional officer has not offered any comments on the questions raised by the applicant.

04. HEARING

Preliminary hearing in the matter was held on 07.01.2020. Ms. Shalini M Mittal, Proprietress along with Mrs. Shivashankari, C.A. appeared, and requested for admission of their application. They have not submitted any further written contention in this respect. Jurisdictional Officer Ms. Reena George, Supdt., appeared and made written submissions.

Final hearing was held on 11.02.2020 and was attended by Mrs. Shivashankari, C.A., Authorized Representative of the applicant. Jurisdictional Officer Ms. Reena George, Supdt., appeared. We heard both the parties.

05. OBSERVATIONS AND FINDINGS

5.1 We have gone through the facts of the case and the written submissions made by both, the applicant and the departmental authority. The issue put before us is in respect of taxability of online or telephonic educational coaching rendered from India by the applicant to corporate, individuals or any other entities residing outside India. is subject to GST and if so under which category is it taxed and section/notification covered for the same"

5.2 We find that Applicant is registered under the GST ACT and engaged in supply of Online or Telephonic IT Coaching services to the Corporates, Individual or any other Entities situated abroad. For such supply, the consideration is received by them in Foreign Exchange.

5.3 The first part of the question raised by them is whether online or telephonic educational coaching from India for corporate, individuals or any other entities residing abroad is subject to GST. The second part of the question arises only if the answer to the first part is in the affirmative.

5.3 As per Section 95 of the CGST Act, 2017, this authority can only pass a ruling on matters or questions specified in subsection 2 of Section 97 of the CGST Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5.4 For the sake of better understanding Section 97 is reproduced as below:

Section 97:

(1) an applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

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

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

5.4 Before we decide the question raised in this application it is essential that it be first determined whether or not the activities undertaken by the applicant pertains to matters or questions specified in Section 97(2). Applicant wishes to seek advance ruling in terms of Section 97(2) (b) and (e) of the CGST Act 2017.

5.5 From a perusal of transaction as discussed above in their submissions, we observe that the supply of services is to entities situated outside India and therefore to answer their question we will be required to discuss the provisions of Section 13 and Section 2(6) of IGST Act, 2019, pertaining to place of supply of services.

5.6 As per the Section 97(2) of CGST Act, the questions on which advance ruling is sought under this Act, shall be in respect of, matters or issues mentioned in Section 97 (2) (a) to (g) only. We find that, "place of supply of services" does not find mention in the said Section 97 mentioned above.

5.7 Further, the Appellate Authority of Advance Ruling (AAAR), Maharashtra State, in the case of M/s. NES Global Specialist Engineering Services Pvt. Ltd., in its Order No. MAH/ AAAR/55-R/03/2019-20 dated 02.08.2019 has made observations as under:-

16: On perusal of the provision of section 97(2), we find that the question on the determination of place of supply has not been covered in the above set of questions, on which advance ruling can be given. Therefore, we do not have jurisdiction to pass any ruling on such questions which involve the determination of the place of supply of goods or services or both.

19: Thus, in view of the provision under section 2(6) of IGST ACT laid down in respect of export of services and above discussed provision laid down in section 97(2) of the CGST Act, 2017 encompassing the specific questions, which are sought under advance ruling, it can decisively be inferred that the questions raised by the respondent before Advance Ruling Authority were beyond the scope and jurisdiction of Advance Ruling, and hence do not warrant any ruling thereon.

5.8 We also find that Appellate Authority of Advance Ruling, Maharashtra State (AAAR) has taken the same views on the similar matters before them namely, M/s Micro Instrument (Mrs. Vishakha Prashant Bhave), vide appeal order no. MAH/AAAR/SS-RJ/26/2018-19 dt. 22.03.2019, M/s Sabre Travel Network India Pvt. Ltd., vide appeal Order No. MAH/AAAR/SS-RJ/30/2018-19 dt. 10.04.2019, M/s Asahi Kasei Pvt. Ltd., vide appeal Order No. MAH/AAAR/SS-RJ/01/2019-20 dt. 19.06.2019, and in the case of M/s Segoma Imaging Technologies India Pvt Ltd , vide appeal order no. MAH/AAAR/SS-RJ/28/2018-19 dt. 03.04.2019.

5.9 Relying on the abovementioned decisions of the Appellate Authority for Advance Ruling (AAAR) and in view of the provisions of Section 97 of the CGST Act, 2017, we find that this authority is not allowed to answer the subject question.

5.10 During the course of the final hearing, the authorized representative of the applicant also agreed that, to answer their question, this authority would have to discuss the place of supply, which is beyond the jurisdiction of this authority.

5.10 In view of the above discussions, we hold that the subject application is not maintainable and thus liable for rejection.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 64/2019-20/B- 21 **Mumbai, dt.** 25/02/2020

For reasons as discussed in the body of the order, the questions are answered thus –

"The present application filed for advance ruling is rejected, as being non-maintainable as per the provisions of law."

PLACE - Mumbai

DATE - 25/02/2020

MEMBER ADVANCE RULING AUTHORITY MAHARASHTRA STATE, MUMBAI

—sd—
A.A.CHAHURE
(MEMBER)

—sd—
P. VINITHA SEKHAR
(MEMBER)

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021.