

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore

2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	
Name and address of the applicant	M/s. Directorate of Skill Development Global Skill Development Park ITI Building, Raisen Road Govindpura, Bhopal 452001
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	e) determination of the liability to pay tax on any goods or services or both
Present on behalf of applicant	Shree Navneet Garg , CA
Case Number	09/2019
Order dated	18/07/2019
Order Number	10/2019

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST Act and MPSGT Act respectively) by M/s. Directorate of Skill Development (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

1. M/s. Director of Skills Development Department of Technical Education Skill Development and Employment Govt of Madhya Pradesh (hereinafter referred to as 'the Applicant'), having their registered office at Global Skill Park ITI Buliding Raisen Road Govindpura Bhopal Madhya Pradesh is unregistered in GST.
2. The project for the Establishment of Centre for Occupational Skills Acquisition within the Global Skills Park (herein after referred as GSP) in Bhopal, Madhya Pradesh was awarded to Directorate of Skill Development, Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh.
3. The said Project will assist the Government of Madhya Pradesh (GOMP) in transforming its technical and vocational education and training (TVET) system to create a skilled workforce that meets the evolving development needs of the state.
4. The project will establish a new advanced TVET Institute of international standards to introduce high quality, technology oriented skills training for the state's priority sectors.
5. ITE Education Services Pte. Ltd, a Singapore based Consultancy Company having its registered office at ITE Headquarters, Blk A, A2-01, 2 Ang Mo Kio Drive, Singapore 567720 is to provide certain Consulting Services to the Directorate of Skill Development for the said Project.
6. An agreement was executed on 28.09.2018 between Directorate of Skill Development, Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh ("Client ") and ITE Education Services Pte. Ltd, a Singapore based Consultancy Company.
7. The Project is to be executed by the ITE Education Services Pte. Ltd, Singapore between Nov 2018 to May 2023 the total consideration has been decided to be USD \$ 38,12,740/- .Which is to be paid in 11 installments.
8. In this regard applicant reproduce the Clause 38.1 of the Agreement describing the consideration agreed between the parties: -
9. The Contract price is US \$3,812,740 (inclusive of Consultant country taxes). The lump sum amount is exclusive of provisional sums and contingency, which will be covered separately under the project, if required.
10. The lump sum amount is exclusive of all Indian taxes, levies and duties imposed by the Applicable Law. If the Applicable Law requires any Indian taxes, levies or duties to be paid, the Consultant shall be entitled to invoice the Client for a higher amount such that, after the payment/withholding of the relevant Indian taxes, levies or duties, the Consultant shall receive the original amounts state in Appendix C.
11. The GSP would benchmark quality skills training institutions in order to arrive at desired competency standards with an appropriate assessment mechanism and offer market responsive employability skills training across various learner segments leading to -
 - a. Wage Employment - Regional, National & International



- b. Self-Employment
 - c. Group Entrepreneurship
 - d. Incubation of ancillary start-ups
12. The Global skill park will impart Training to 10,000 students every year by trainers of international standard, The park will function on the spirit of 'With Industry-For Industry' and the Trained students will be given placement in India and outside India at international level.
13. **Some Key features of GSP: -**
- a. International Training Method with On-Job trainings.
 - b. World Class Industrial Machinery, Tools & Equipment's.
 - c. State of art classrooms, workshops and other facilities for students.
 - d. Partnership with Institute of Technical Education Singapore for course curriculum and teacher training.
14. Global Skills Park (GSP), is a new-age world class technical training institution for providing career cluster curriculum skilling courses and opportunities of overseas employment, is getting established in Bhopal, Madhya Pradesh, India.
15. GSP will provide world-class technical training in precision engineering sector with six career oriented trades namely Conventional Lathe, Conventional Milling, CNC Milling, CNC Turning, Surface Grinding and Machining and Metrology with soft skills add on courses like IT Skills and Communication Skills.
16. As the state of Madhya Pradesh is developing state of India and mainly dependent of agricultural activities hence government wants to stimulate the industrial growth in the state of MP.
To promote this objective skilled manpower is the need of the hour keeping this objective in mind the Global skill Park is being established, There is no commercial or business motive behind establishment of this GSP hence the activity being performed by the Directorate of Skill development is the execution of functions entrusted to the government hence it cannot be considered as Business Activity.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The applicant desired to know, whether the services received by it from a provider of service located in a non taxable territory would attract the provision of sec 5(3) read along with Notification No 10/2017 IT(R). In other words, whether applicant is liable to pay tax under reverse charge mechanism on the transaction mentioned above?

5. CONCERNED OFFICER'S VIEW POINT:

The Concerned Officer Submitted that Applicant shall be liable to pay IGST on import of services under Reverse Charge Mechanism in terms of Notification No.10/2017 dated 28th June 2019- IT (Rate) and Notification No.8/2017 dated 28th June 2019 - IT(Rate).

6. **RECORD OF PERSONAL HEARING:** Shree Navneet Garg , CA of the applicant for personal hearing .He reiterated submissions already made in the application. The argument in brief are as follows-



6.1 Directorate of Skill Development (herein after referred as Applicant) is part of Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh hence the applicant is a government department.

6.2 The project for *the Establishment of Centre for Occupational Skills Acquisition within the Global Skills Park in Bhopal, Madhya Pradesh* was awarded to Directorate of Skill Development, Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh.

6.3 The said Project will assist the Government of Madhya Pradesh (GOMP) in transforming its technical and vocational education and training (TVET) system to create a skilled workforce that meets the evolving development needs of the state.

6.4 The project will establish a new advanced TVET Institute of international standards to introduce high quality, technology oriented skills training for the state's priority sectors.

6.5 ITE Education Services Pte. Ltd, a Singapore based Consultancy Company having its registered office at ITE Headquarters, Blk A, A2-01, 2 Ang Mo Kio Drive, Singapore 567720 is to provide certain Consulting Services to the Directorate of Skill Development for the said Project.

6.6 An agreement was executed on 28.09.2018 between Directorate of Skill Development, Department of Technical Education, Skill Development & Employment, Government of Madhya Pradesh ("Client ") and ITE Education Services Pte. Ltd, a Singapore based Consultancy Company.

6.7 The Project is to be executed by the ITE Education Services Pte. Ltd, Singapore between Nov 2018 to May 2023 the total consideration has been decided to be USD \$ 38,12,740/- .Which is to be paid in 11 instalments.

6.8 In this regard we would like to reproduce here the Clause 38.1 of the Agreement describing the consideration agreed between the parties: -

The Contract price is US \$3,812,740 (inclusive of Consultant country taxes). The lump sum amount is exclusive of provisional sums and contingency, which will be covered separately under the project, if required.

The lump sum amount is exclusive of all Indian taxes, levies and duties imposed by the Applicable Law. If the Applicable Law requires any Indian taxes, levies or duties to be paid, the Consultant shall be entitled to invoice the Client for a higher amount such that, after the payment/withholding of the relevant Indian taxes, levies or duties, the Consultant shall receive the original amounts state in Appendix C.

6.9 The ITE Education Services Pte. Ltd, Singapore shall raise invoices as per the applicable taxation laws of the Singapore against the services provided to the Department of Skill Development in respect of the said Project in India.

1. The consideration is to be paid in foreign Currency (i.e. US Doller).
2. The Department of Skill Development is **recipient of services** and ITE Education Services Pte. Ltd, Singapore is **supplier of services**.
3. Section 2(11) of The IGST Act 2017, define the word Import of Services as follows

import of services" means the supply of any service, 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.

6.10 Place of supply of services where location of supplier or location of recipient is outside India is defined in Sec 13 of IGST Act, 2017:

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

6.11 As the case do not fall under any of sub sections (3) to (13) of section 13 of IGST Act, 2017 the Place of supply shall be the state of Madhya Pradesh. (i.e. Place of recipient).

6.12. Hence considering the above mentioned points services being availed by the Department of Skill Development from ITE Education Services Pte. Ltd, Singapore can be said to Import of services within the meaning of 2(11) of IGST Act 2017.

6.13. Sec 5(3) of IGST Act, 2017 read along with Notification NO 10/2017 Integrated Tax (Rate) dated 28th June 2017 provide for the tax to be paid on Reverse Charge Basis in case of Import of service by any person located in the taxable territory other than non-taxable online recipient

Sec 5(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Extract from Notification No. 10/2017 Integrated Tax (Rate) dated 28th June 2017

Table Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient

6.14 Extracts of Notification No 9/2017 dated 28th June 2017, exempts certain services received from a provider of service located in a non taxable territory by the State Government in relation to any purpose other than commerce, industry or any other business or profession;



	Chapter 99	<p>Services received from a provider of service located in a non- taxable territory by –</p> <p>(a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;</p> <p>(b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or</p> <p>(c) a person located in a non-taxable territory: Provided that the exemption shall not apply to –</p> <p>(i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or</p> <p>(ii) services by way of transportation of goods by a vessel from a place outside</p>		
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Mr. Garg further argued that-

- 6.15 The service recipient is department of Government of Madhya Pradesh.
- 6.16 The Supplier of services is located in Singapore i.e. non taxable territory and the recipient is located in Madhya Pradesh.
- 6.17 The Place of Supply of Service is state of Madhya Pradesh
- 6.18 The transaction mentioned above is the transaction of import of Services as defined under section 2(11) of the IGST Act, 2017.
- 6.19 As per Entry no 10 of Notification No 9/2017 Integrated Tax (Rate) datd 28th June 2017, there has been an exemption on services received by the government from the provider of service located in a non taxable territory. Hence the above mentioned transaction is exempted by said notification.
- 6.20 Section 5(3) of the IGST Act 2017 read along with Notification No10/2017 provide for payment of tax on Reverse Charge Mechanism on **“Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient”**.
- 6.21 However, as discussed in the point no 5 above, as the services being received by the directorate of skill development are exempt vide Entry no 10 of Notification No 9/2017 Integrated Tax (Rate) hence the liability of payment of Tax u/s 5(3) of IGST Act 2017 does not arise and hence directorate of Skill development is not liable to make the payment under reverse charge mechanism.
- 6.22 The applicant desired to know, whether the services received by it from a provider of service located in a non taxable territory would attract the provision of sec 5(3) read along with Notification No 10/2017 IT(R). In other words, whether applicant is liable to pay tax under reverse charge mechanism on the transaction mentioned above?



7. DISCUSSIONS AND FINDINGS:

7.1 According to Section 7 of CGST Act

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

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

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

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

So there are 2 important elements to categorise any transaction as a supply i.e.

- Consideration and
- in the course or furtherance of business.

7.2 According to Section 2(17) of CGST Act "business" includes—

(a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) Admission, for a consideration, of persons to any premises;

(g) Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) Activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and

(i) Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

As per Order dated 8th August 2018, Global Skill Park is constituted as a Society under Madhya Pradesh Firms and Societies Act 1973 which is running under MP Technical Education Skills development and employment department. This scheme is a Joint Asian Development Bank and MP State. म.प्र. शासन तकनीकी शिक्षा कौशल विकास एवं रोजगार विभाग मंत्रालय के आदेश क्रमांक एफ 4-1/2018/42 (2) भोपाल, दिनांक 08 अगस्त, 2018 के द्वारा मंत्री परिषद् की बैठक दिनांक 30/07/18 को लिए गए निर्णयानुसार ग्लोबल स्किल्स पार्क, भोपाल की स्थापना, प्रशासन एवं प्रबंधन के लिए मध्यप्रदेश फर्म्स एवं सोसायटी अधिनियम, 1973 के अंतर्गत "ग्लोबल स्किल्स पार्क समिति" का गठन "मध्यप्रदेश स्किल्स डेवलपमेंट प्रोजेक्ट" के अंतर्गत स्थापित किया गया है। ग्लोबल स्किल्स पार्क समिति, म.प्र. शासन तकनीकी शिक्षा कौशल विकास एवं रोजगार विभाग के अंतर्गत संचालित है। उक्त योजना में एशियन डेवलपमेंट बैंक ऋणांश एवं मध्यप्रदेश राज्यांश सम्मिलित है।



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7.3 As per the Order dated 8th August 2018, main object of **Global Skills Park** is **Followings are the objective for establishment of this project :-**

- Establish internationally recognized standards in management, teaching quality, training infrastructure, and curriculum content in Madhya Pradesh and use it as a model to stimulate improvement in all TVET institutions;
- Produce occupation-ready skilled workers in accordance with cluster- sector approach in design, thinking and delivery;
- Strengthen linkages and cooperation with industries through either partnership training in GSP and / or various structured apprenticeship programs; and
- To be truly global in perspective, GSP will stimulate and enhance innovations in skills development through international and national research, analysing future skills need, introducing lifelong learning concepts, and improve productivity through innovative training in products and processes

Therefore we can say that applicant is engaged in Business or profession as defined in the Section 2(17) of CGST Act. Further the supply might be chargeable to tax if it is falling under Notification No 11/2017 – Central Tax (Rate) dated 28th June 2019 (Similar Notification No 08/2017 – Integrated Tax (Rate)].

Or vice versa exempt from tax if the outward supply of service falling under Notification No 12/2017 – CT (R) dated 28th June 2019 [Similar Notification No 09/2017 – IT (R)].

7.4 Applicability of Reverse Charge under IGST for Import of Services

The applicant desired to know, whether the services received by it from a provider of service located in a non-taxable territory would attract the provision of sec 5(3) read along with Notification No 10/2017 IT(R). In other words, whether applicant is liable to pay tax under reverse charge mechanism on the transaction mentioned above?

According to Section 5(3) of IGST Act, the Government may, on the recommendations of the Council, by notification, **specify categories** of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

7.5 Applicability of Reverse Charge on Import of Services

Relevant Extract of Notification No 10/2017 – Integrated Tax (Rate) are produced as under –

S.No	Category of Supply of Services	Supplier of service	Recipient of Service
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient

Now we need to determine whether the service is falling under exemption notification if yes then recipient **need not to pay GST** under RCM.

7.6 Exemption from Tax on Import of Services



Relevant Extract of Exemption Notification No.9/2017-Integrated Tax (Rate) dated: June 28, 2017 -

	Chapter, r, Section, Headin g	Description of Services	I a t e	Con dition
	Chapte r 99	<p>Services received from a provider of service located in a non- taxable territory by –</p> <p>(a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose <u>OTHER THAN</u> commerce, industry or any other business or profession;</p> <p>(b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or</p> <p>(c) a person located in a non-taxable territory: Provided that the exemption shall not apply to –</p> <p>(i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or</p> <p>(ii) Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.</p>	I L	NIL

7.7 As per the above entry clause (a), we need to ensure that service is exempt only if following conditions are satisfied –

1. Supplier is located in a non-taxable territory
2. Recipient is Central Government, State Government, Union territory, a local authority, a governmental authority or an individual
3. Purpose of service is OTHER THAN commerce, industry or any other business or profession
4. Service is not in the nature of Online Information and Database Access and retrieval services (OIDAR)

7.8 **So now we need to focus on specially point no 3. We can say if the service is imported for the purpose of business or commerce even by the Govt then exemption would not be available and Govt need to pay GST under Reverse Charge.**

7.9 This can be further substantiated as per Q No 14 of GST Sectorial Series on Government Service.

Question 14: Would services received by Government, a local authority, a governmental authority from a provider of service located outside India be taxable?

Answer: No tax is payable on the services received by the Government / local



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authority/governmental authority from a provider of service located outside India. However, the exemption is applicable to only those services which are received for the purpose other than commerce, industry or any other business or profession. In other words, if the Government receives such services for the purpose of business or commerce, then tax would apply on the same.

7.10 As analysed above in para no 7.1 and then 7.2 that applicant is engaged in activities which is to be treated as Business or profession as defined in the Section 2(17) of CGST Act. Further applicant is taking the service from non taxable territory for the purpose of business or profession therefore exemption provided in the Notification No.9/2017-Integrated Tax (Rate) dated June 28, 2017 would not be available to the applicant. Therefore the applicant needs to pay the IGST under Reverse Charge.

8. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

8.1. The Applicant shall be liable to pay IGST on import of Service under Reverse Charge Mechanism in terms of Notification No.10/2017-IT(R).

8.2. This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

SK
RAJIV AGRAWAL
(MEMBER)

NO. 09/2019/A.A.R/R-28/23
Copy to:-

1. Applicant
2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

SK
MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE dt. 18/07/2019

सत्यप्रतिलिपि

