



ODISHA AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICE TAX

GST & CENTRAL EXCISE, RAJASWAVIHAR, BHUBANESWAR-751007 (ODISHA)

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members present are:

1. Sri Anand Satpathy, OFS(SAG), Addl. Commissioner of CT & GST
Office of the Commissioner, CT & GST, Odisha Banijyakar Bhawan,
Old Secretariate Compound, Cuttack-753001-Odisha.
2. Sri Nilanjan Pan, IRS, Joint Commissioner, Office of the Audit Commissionerate
GST & Central Excise, Bhubaneswar

1	Name and Address of the Applicant	M/s Telecommunication Consultants India Ltd., TCIL Bhawan, Greater Kailash I, New Delhi-110048.
2	GSTIN or User ID	21AAACT0061H1Z0
3	Date of Filing of Form GST ARA-01	21.08.2018
4	Present for the Applicant	Sandeep Chilana, Advocate
5	Date of Personal Hearing	19.09.2018

ORDER NO.03/ODISHA-AAR/2018-19 DATED 09.10.2018

Subject: GST Act, 2017-Advance Ruling U/s 98 - Applicability of Entry No. 72 of Notification No.12/2017-Central Tax read with Entry No. 72 of Notification SRO No. 306/2017-Finance Department, to the services provided by the applicant under the ICT @ School Project.

1.0 M/s Telecommunication Consultants India Ltd (hereinafter referred to as the 'Applicant') assigned with GSTIN 21AAACT0061H1Z0 having registered address at TCIL Bhawan, Greater Kailash I, New Delhi-110048, have filed an application on 21.08.2018 under Section 97 of CGST Act, 2017 & OGST Act, 2017 read with Rule 104 of CGST Rules 2017 & OGST Rules, 2017 in Form GST ARA-01 seeking an Advance Ruling on the applicability of Entry No. 72 of Notification No.12/2017-Central Tax read with Entry No. 72 of Notification bearing SRO No. 306/2017-Finance Department, Government of Odisha to the services provided by them under the ICT @ School Project. The applicant enclosed copy of challan as proof of payment of Rs.10,000/-bearing CIN No.HDFC18062100044438 dated 19.06.2018 towards the fee for Advance Ruling. After due verification of the application and other aspects, the application is admitted.

1.1 Entry No. 72 of Notification No 12/2017-Central Tax being relevant is quoted below

SI No	Chapter Heading, Group of Service	Description of service	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
72	Heading 9992	Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.	NIL	NIL

Entry No. 72 of Notification SRO No. 306/2017-Finance Department is identical to the Entry No. 72 of Notification No.12/2017-Central Tax Notification bearing SRO No. 306/2017- of Finance Department, Government of Odisha and Notification No.12/2017-Central Tax of Government of India have been issued u/s 11 of the OGST Act and CGST Act respectively exempting the notified services from levy of GST. Entry SI No. 72 of the said two Notifications exempts services provided to the Central Government or any State Government or any Union Territory Administration under any training program for which the total expenditure is borne by the Central Government or State Government or Union Territory Administration. By seeking an advance ruling on the applicability of Entry 72 to the business transactions of the applicant, they implicitly seek a ruling on exemption of such transaction from the levy of GST.

1.2 As per the Scheme of Classification of Services, under the heading 9992 education services have been classified. This implies that the intended exemption vide Entry SI No 72 relates to educational training only. Again, under the heading 9992, the following services are also included under the detail head 999294 which is quoted below.

999294 Other education and training services n.e.c.

This service code includes:

- training for car, bus, lorry and motorcycle driving licences

- training for flying certificates and ship licences
- computer training services
- management training services
- services provided by music camps, science camps, computer camps and other instructional camps, except for sports
- education services not definable by level

This service code does not include:

- services related to literacy programmes for adults, cf. 999220, 999231
- higher education services comparable to the regular education system, cf. 99924, 99925
- cultural education services, cf. 999291
- education services provided by instructors, coaches, etc., as part of sporting activities, cf. 999292

Thus education and training services are also included under the head 9992.

2.0 The applicant, while filing the Application seeking the Advance Ruling, explained the facts and circumstances under which the supply order was received and how, as per their understanding, Entry 72 of Notification No.12/2017-Central Tax is applicable to their case. It was submitted that Odisha Madhyamik Shiksha Mission (OMSM), Government of Odisha, had mandated the Odisha Knowledge Corporation Limited (OKCL) to implement ICT project in 4000 government and government aided higher secondary schools across the State of Odisha. Accordingly, OKCL floated a tender notice on e-tendering portal of Secured e Tendering system (SeTs). The said tender was for Supply, Installation, Maintenance and Commissioning of Projection system, Interactive White Board, Computer Hardware, Connected Accessories, Installation of Software and other allied accessories, site preparation (i.e. vinyl flooring, furniture and fixtures, electrical fittings, power backup facilities, LAN, etc.), maintenance of equipment and provision of computer training services for 5 years in 4000 schools divided in 6 zones on the BOOT Model basis. The Applicant was the successful bidder and was awarded the tender *vide* Letter of Award No. OKCL/SME/47/05 dated 2nd August, 2013 to execute the contract in 1(one) zone. Accordingly, the Applicant entered into an agreement with OKCL on 7th October, 2013.

2.1 The Applicant has further submitted that in terms of the agreement and as per the specifications laid down in the tender document and the decision of the technical committee, all activities i.e. site preparation, installation and commissioning are to be completed in the time prescribed in the agreement, i.e. 4 months from the date of handing over of the sites by OKCL. Once the labs are ready, the Applicant shall operate the same for imparting computer training. For this, they are required to provide one teacher having specified qualifications and experience, to each school. The teachers so appointed would utilize the available ICT infrastructure (i.e. the ITC lab so created by the Applicant) for imparting computer training to the students in accordance with the curriculum developed in this regard by the Board of Secondary Education. After the expiry of the contract period (i.e. 5 years), the entire infrastructure (supplied and installed) will be transferred to the School and Mass Education Department (SMED), Government of Odisha at zero transfer value.

3.0 The Applicant, in their application raised the following question to be determined by the Authority for Advance Ruling:-

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

3.1 The Applicant submits that they are carrying out various activities viz. installation, commissioning, site maintenance, operation, etc. to implement ICT Projects in the government schools and government aided schools in the state of Odisha. All the activities undertaken under ICT Projects are naturally bundled. Further, the national level policy framed by the Central Government for implementation of ICT Projects provides that the State Government(s) should preferably follow BOOT model. This suggestion of the Central Government is in fact being followed by the State Governments. Multiple state governments are awarding the contracts for implementing ICT Projects on BOOT model only. In all such cases, the private parties are implementing ICT Projects under BOOT Model, wherein, all the activities including supply, installation, commissioning, operation, maintenance, and computer training are to be performed by such private parties. It is a matter of fact that competitors of Applicant are also providing similar bundle of services to other State Governments under ICT in school scheme. Under such contracts all activities are to be undertaken by a single vendor and there is no possibility of performance of

different activities by different vendors. This practice is being followed by the industry since the introduction of ICT Projects. The perspective of recipient of supplies here i.e. the Government of Odisha or other state governments in other states, is to receive everything together as a bundle in all the cases. In other words, the state governments want one private party to implement ICT project in a wholesome manner. Therefore, in view of the industry practice and the expectation of state governments as recipient of supply, the Applicant is of the understanding that all the activities performed by the private parties under the BOOT model are naturally bundled.

3.2 The applicant further submits that the infrastructure built is used by the teachers appointed by the Applicant to provide computer training to students as well teachers of the government aided schools. The entire infrastructure is being developed for imparting computer training and that the Applicant is engaged in single supply of computer training services to the state of Odisha.

3.3 It was also stated that in terms of the agreement, during the period of contract (i.e. 5 years), the operation and maintenance of the entire IT infrastructure, equipment is to be carried out by the Applicant on its own cost. During this period, the ownership of the equipment and infrastructure remains with the Applicant. In fact, the repair and maintenance of the equipment and infrastructure is performed by the Applicant, so that it may continue to provide computer training during the contract period in a smooth manner without any obstruction.

3.4 The activities undertaken are under BOOT model basis and therefore, the ownership in the infrastructure developed by it would be transferred after the expiry of the contract period (i.e. 5 years). They stated that the details in this regard are provided in the agreement that the ownership of the entire hardware, software, other equipment etc. will be transferred at zero value at the end of the contract period and therefore, they are not engaged in the supply of goods in as much as supply of goods is taking place after the expiry of 5 years. As regards supply of goods, they submitted that even if some value is to be attributed towards supply of goods (equipment / infrastructure), the supply of goods here is ancillary to the principal supply of computer training service and as discussed above, the basic idea of the ICT project implementation is provision of computer training to specific schools in the state of Odisha and not procurement of equipment / mere creation of infrastructure. Further, the agreement between OKCL and OMSM clearly provides that OKCL would be merely an implementing agency and would carry out the implementation work as per the guidelines/instructions of OMSM. Thus, it would be

incorrect to say that the Applicant is providing services to OKCL which, in turn, is providing services to OMSM, Government of Odisha. It is abundantly clear that the applicant is engaged in providing computer training services to OMSM, Government of Odisha through OKCL.

4.0 The Personal Hearing was fixed on 19.09.2018 under due intimation to the Applicant, the Jurisdictional Officer of State GST & the Jurisdictional Officer of Central GST (intimated through their respective Commissionerate along with a copy of the application and the written submission of the Applicant). The Applicant appeared through its Advocate and the Jurisdictional Officer of State GST & the Jurisdictional Officer of Central GST appeared in person. During personal hearing, the applicant re-iterated the earlier submissions made in the application and he once again added that the ultimate service receiver is Government of Odisha (not M/s OKCL).

5.0 We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by the representatives during personal hearing. We also considered the question & issues on which advance ruling is sought for by the applicant, relevant facts having bearing on the question / issue raised, the Applicant's understanding/interpretation of law in respect of the issue. The Jurisdictional Officer of State GST, i.e. DCCT, Bhubaneswar III Circle stated that the facts of the present case are identical to the case already decided vide Order No.1/Odisha-AAR/18-19 dated 20.06.2018 in the case of M/s IL&FS and hence, the decision/ruling provided by the Learned AAR-Odisha in IL&FS is applicable to this case.

5.1 The applicant has sought advance ruling and filed Form GST ARA-01 before the Odisha Authority for Advance Ruling on 21.08.2018. The only question asked in the application is as to whether the supplies made by the Applicant to the Government and Government aided higher secondary schools in Odisha under the ICT Project, are covered under the scope of Entry No. 72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

5.2 For deciding the issue i.e. applicability of "Entry at SI No.72 of the Notification No. 12/2017 dated 28.06.2017 and similar Notification issued by Government of Odisha, it is necessary to examine the nature of supply made by the applicant.

On plain reading of the entry, it is clear that following three pre-requisites are to be satisfied in order for the supply to qualify for the notified exemption.

- a. The supply has to be a supply of Service provided to the Central

- Government, State Government or Union Territory administration
- b. Such Service must be 'under any training program'
 - c. The total expenditure of such Service is borne by the Central Government, State Government or Union territory administration

5.3 Before taking a final view on whether Supply has been provided by the Applicant to the State Government, we examined the relevant documents and found that work order has been issued by the Odisha Knowledge Corporation Limited (OKCL) in their own capacity and the Applicant has signed agreement with OKCL on 07.10.2013 for implementation of the ICT @ school project in Government and Government aided higher secondary schools across the State of Odisha. When the contract is made between OKCL and M/s IL & FS, it is also necessary for us to see the legal status of OKCL. From the contract/agreement deed, it is obvious that OKCL is a public limited company incorporated and registered under the Companies Act, 1956 and having its registered office at Jaydev Vihar, Bhubaneswar-751013, Odisha. Thus OKCL is a company and not State Government/Central Government or Union Territory. The status of OKCL is not disputed.

5.4 Further, we also see that OKCL had invited a tender for supply of goods and various services and the applicant had been selected in the tender and awarded the contract by OKCL. Thus, as per the Contract, the Supply is being made to OKCL which is a body corporate and not to the State Government. Admittedly, the Government of Odisha is the ultimate service beneficiary but Entry at Sl No.72 of the notification No. 12/2017 is very specific and it cannot be stretched or construed otherwise. Thus, the commercial Supply by the applicant is not to Government of Odisha but to OKCL, a separate distinct entity created by the Government of Odisha.

5.5 Coming to the second pre-requisite of the entry whether the service provided by the applicant merits 'under any training programme'.

We see that the applicant has entered into a contract with Odisha Knowledge Corporation Ltd.(OKCL) for implementation of the ICT @ school project in Government and Government aided higher secondary schools across the State of Odisha. The project aims to create digital literacy among students and teachers of government and government aided schools by setting ICT (Information & Communication Technology) Labs and providing manpower services to manage them for a period of five years. We also refer to Clause-8 of

the agreement dt.07.10.2013 between the applicant and OKCL at Annexure-D of the Application which enumerates the Roles and Responsibilities of the applicant. As enumerated therein, the Applicant, in fulfillment of its contractual obligations, has to prepare the site (flooring, furniture and fixtures) to be used as an ICT Lab, procure, supply and install requisite number of IT equipment i.e. computer hardware, software(provided by OKCL), Integrated Computer cum Projector, Interactive white Board, webcam, multi- functional printer, UPS, Servo, Generator etc. in the ICT Lab, to maintain and upkeep the ICT Labs in proper working conditions for the entire contract period along with deployment of manpower in the ICT Labs of Govt. and Govt. Aided High Schools to impart computer knowledge to the students and teachers in accordance with the curriculum developed by BSE, Odisha for a contract value of Rs 107.14 Crore. Thus, the applicant is contractually obliged to make taxable supply of goods and services to the contracting party OKCL during the contract period. Further, the intention of the parties to the contract is not confined to provisions of rendering service under any training programme, but to create necessary infrastructure in schools for implementation of ICT project to help teachers in using smart boards and e-contents and promote e-literacy among students. Further, as forthcoming from the terms of the Contract, the intended Supplies are not just supply of Service but rather a composite supply of Goods i.e. hardware and network equipments, power equipments, maintenance of the computer hardware and network equipments and also imparting training on use of such equipments as per the syllabus prescribed by the Board of Secondary Education of Odisha. Thus, it will be incorrect to dub the entire project as a training programme. It is rather a composite supply of goods and services, not naturally but artificially bundled having distinctly separate components with distinct value attributable to each of the components.

5.6 We have carefully examined the submissions and documents provided by the applicant. We see that the contract is for supply, installation, maintenance and commissioning of projection system, interactive white board, computer hardware, connected accessories, installation of soft ware and other allied accessories, site preparation, maintenance of equipment and provision of computer education services for 5 years in 591 Govt. and Govt. aided high schools of Odisha under ICT@school project in the state of Odisha. The total contract value is Rs.107,14,83,000/-. Thus, the contract is clearly for supply of goods and services including training. It is a composite supply having distinctly

identifiable components with distinct value attributable to each of the components. As clearly mentioned in para 3.1 of the agreement, 44.66 % of the total contract value represents the amount payable for supply of hardware and connected accessories and the balance amount is on account of different services to be provided which includes maintenance of the hardware and network equipments, up keeping of the ICT lab, telephone and internet charges, electricity charges and fuel for generator. No doubt, the applicant has provided computer training service as part of the contract, but the said service is not pre-dominant or principal supply. In fact the contracted supply has three distinct supply components out of which training is a small component.

5.7 It has also been contended that during the period of contract, the infrastructure built by the Applicant remains property of the Applicant and in no case, the ownership of the infrastructure is transferred to the school or OMSM during the period of the contract. Even after the expiry of contract period, ownership of the entire infrastructure (supplied and installed) will be transferred to the School and Mass Education Department (SMED) but at zero transfer value. In the absence of consideration such transfer will not be a taxable supply. Thus, there was no supply of goods either during or after the contract period. The aforesaid contention of the applicant lacks credence and acceptability for the reason that, as per the payment schedule agreed upon between the contracting parties, the applicant will receive the entire consideration for supply and installation of goods in installments before expiry of the contract period. Thus, it is not a case of transfer of goods without consideration but rather a case of supply of goods on consideration payable in installments agreed between the contracting parties. Besides, as per para 1(c) of Schedule II of the OGST/CGST Act, any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods and not a service. In view of this, the second condition/pre-requisite is not satisfied.

5.8 As regards expenditure borne by the Central Government, State Government or Union territory administration, it is quite clear that as per the contract, payment for the work done is to be made by OKCL and not the state government, though the source of funding the expenditure is by the State Government. It may be profitable to refer the judgement of the Hon'ble Supreme Court in the case of CIT v. Ajax Products Ltd. (1965) 55 ITR, 741, where it is held by the Hon'ble Court that:

"In a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing to be implied. One can only look at the language used. "

Thus, it may be affirmed that when the language of a taxing statute is clear, if the conditions of supply falls within the four corners of statute allowing exemption, it is to be exempted. If not, tax is to be levied. No exemption can be granted by inference or analogy. No supply can be taxed or excluded from tax on the basis of intention or scheme of the Act.

In view of the foregoing discussions, we pass the following. RULING

- a) Recipient of the service OKCL is a body corporate which cannot be regarded as Government.
- b) The supply undertaken by the applicant is in the nature of composite supply. It includes supply of goods and services which are not naturally bundled. Each of the components of the composite supply are distinctly identifiable both in terms of quantify and value. The service provided or to be provided is not exclusively in the nature of training programme.
- c) Though the source of funding for the service is the State Government and Central Government, yet, as per the contract, the payment responsibility is vested on OKCL.

Therefore, the activities of the applicant by way of supply of goods and services under the ICT project are not covered under Entry 72 of the notification no.12/2017 dated 28.06.2017, to be entitled to the benefit of exemption from GST.

The applicant or the jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for Advance Ruling under Section 100 of the OGST/CGST Act, 2017 within 30 days from the date of receipt of the Advance Ruling.


9/10/18
Nilanjan Pan
Member CGST


9.10.18
Anand Satpathy
Member SGST

File No. V(1)ARA/Odisha/BBSR/03/2018/11212 to 214A

Dated- 09.10.2018

To

M/s Telecommunication Consultants India Ltd , GA-II, Sec-1, Phase-2, Niladri vihar,
Chanderashekharpur, BBSR, Odisha- 751021

Copy Forwarded to :-

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2. The Commissioner, GST Odisha, Banijyakar Bhawan, Old Secretariat Compound, Cuttack, Odisha, 753001.
3. Office Copy



Adhir Kumar Das
(Adhir Kumar Das) 9.10.18

Superintendent (CGST),
Advance Ruling, Odisha.

o/c