


<b>GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
---	---

ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2019/1  
(IN APPLICATION NO. Appellate Advance Ruling/SGST & CGST /2018/AR/4)

Date : 02.01.2019

Name and address of the Appellant	:	M/s. Omnisoft Technologies Private Limited 2 <sup>nd</sup> Floor, Fatehgunj Main Road, The Emperor, Fatehgunj, Vadodara – 390 002..
GSTIN of the Appellant	:	24AAACO3894M1Z1
Advance Ruling No. and Date	:	GUJ/GAAR/R/2018/15 dated 23.8.2018
Date of filing appeal	:	06.10.2018
Date of Personal Hearing	:	19.12.2018 01.01.2019 02.01.2019
Present for the applicant	:	Shri Dhruvank Parikh, CA

The appellant M/s. Omnisoft Technologies Pvt. Ltd. (OTPL) submitted that with products like UC-MAS, UC-DinoArt, and UC-MLS from UCMAS Education Group Malaysia, the appellant has ensured that with the medium of using tools like ABACUS, Arts, Various Memory enhancing Techniques (like mental mapping, mnemonics, etc.), a child's mental abilities faculties like concentration power, memory, alertness, imagination skills (visualization power), and focus can be enhanced.

2.1 The appellant submitted that UCMAS (Universal Concept Mental Arithmetic System) is a product of UC International Corp., headquartered in Kuala Lumpur, Malaysia who has awarded the National Franchisee for the whole of India to the appellant. It has been submitted that UCMAS is a progressively leveled program, wherein students in the age group of 4 to 13 years join in and take about 3 years to complete the program.

2.2 It has been submitted that UCMAS is a child development program based on Visual Arithmetic and Abacus that boosts brainpower in children aged 4-13 years. Along with strengthening math skills, the UCMAS approach promotes whole brain development and establishes foundational building blocks like memory, concentration, creativity and problem solving – core skills that inspire greater confidence and success in all subject areas and in life. The program equips them with the skills they need to improve overall academic achievement and to confidently meet life's challenges and achieve greatness. It has been submitted that UCMAS is much more than developing number skills. Using Math as a medium and Abacus as a tool, this program helps developing basic cognitive skills and cognitive Executive Functions of a child.

3. The appellant raised the following question for advance ruling before the Gujarat Authority for Advance Ruling (herein after referred to as the 'GAAR') -

*“The activity provided by UCMAS using abacus whether qualifies for exemption from the payment of GST?”*

4. The GAAR, vide Advance Ruling No. GUJ/GAAR/R/2018/15 dated 23.08.2018, ruled as follows :-

*“ M/s. Omnisoft Technologies Private Limited (GSTIN 24AAACO3894MIZI) is not entitled to the exemption provided vide Sl. No. 80 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 issued under the CGST Act, 2017 and corresponding Notification issued under the GGST Act, 2017 and Sl. No. 83 of Notification No. 9/2017-Integrated Tax (Rate) issued under the IGST Act, 2017. Hence the activity provided by UCMAS using abacus does not qualify for exemption from the payment of Goods and Services Tax.*

5. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal on 06.10.2018.

6. We have considered the submissions made by the appellant in the appeal as well as at the time of personal hearing held on 02.01.2019.

7.1 The appellant has submitted the date of communication of the Advance Ruling as 07.09.2018, whereas records of postal authorities indicate that the said Advance Ruling was delivered to the appellant on 31.08.2018.

7.2 Thus, there is delay of 6 days in filing of this appeal. Though, the appellant has not submitted any reason for delay in filing of present appeal or any request for condonation of delay, we take into consideration the fact that the Goods and Services Tax is a new tax regime and there may be *bona-fide* mistake on the part of registered person. Therefore, the delay in filing of appeal in this case is condoned in exercise of the powers contained in proviso to the sub-section (2) of Section 100 of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017').

8.1. The appellant has submitted that the decisions in the case of Fast Arithmetic Vs. Assistant Commissioner of Central Excise & Service Tax, Mangalore (Final Order No. 548/2009 dated 01.05.2009 in appeal No. ST/29/2006), K.K. Academy Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai (Final Order No. 1075-1076/2011 dated 07.07.2011 in Appeal Nos. ST/226/2007 and ST/10/2008) and Abacus Brain Study (P) Ltd. Vs. Commissioner of Central Excise (A), Hyderabad (Final Order No. 63/2011 in Appeal No. ST/349/2010), whose facts are exactly similar to the appellant's, should have been followed. It has also been submitted that the judicial discipline requires that Tribunal's decision should be followed, even if it is appealed.

8.2 It is observed that the appellant has relied upon these orders even before the GAAR. GAAR has held that decisions of Hon'ble CESTAT cited by the appellant pertains to interpretation of Notification No. 9/2003-Service Tax and 24/2004-Service Tax issued under the Finance Act, 1994 whereas the present issue pertains to the applicability of Entry No. 80 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. It was held that Notification No. 9/2003-Service Tax and 24/2004-Service Tax are not *pari-material* to Entry No. 80 of Notification No. 12/2017-Central Tax (Rate).

8.3 We have examined this issue. Notification No. 9/2003-Service Tax dated 20.06.2003 and Notification No. 24/2004-Service Tax dated 10.09.2004 provided exemption from taxable services provided in relation to commercial training or coaching by a recreational training institute. 'Recreational Training Institute' was defined in those Notifications as a commercial training or coaching centre which provides coaching or training relating to recreational activities such as dance, singing, martial arts, hobbies. Hon'ble CESTAT in the case of Fast Arithmetic case (*supra*) held that the abacus training programme imparted is mainly to create interest in children for mathematics and also to enhance their thinking capacity. It is held that the entire thing is done by employing methods of play so as to make the whole thing interesting and by no means, this activity could be compared with the activities undertaken by commercial coaching or training centre. It was further held that Notification Nos. 9/2003-Service Tax dated 20.06.2003 and Notification No. 24/2004-Service Tax provided specific exemption for recreational training institute and vocational training institute. It was held that the activities of the appellant therein would more appropriately be classified as recreational. The said decision was followed by Hon'ble CESTAT in the cases of K.K. Academy Pvt. Ltd. (*supra*) and Abacus Brain Study (P) Ltd. (*supra*).

8.4 In Notification No. 12/2017-Central Tax (Rate), the relevant entry at Sr. No. 80 is – "Services by way of training or coaching in recreational activities relating to – (a) arts or culture, or (b) sports by charitable entities registered under section 12AA of the Income Tax Act." Thus, it is clear that the scope is different. Only recreational activities relating to arts or culture are given exemption. As such, the Tribunal orders cited by the appellant and covering a different scope are not applicable automatically in the present case. Besides, the Order of Hon'ble CESTAT in the case of Abacus Brain Study (P) Ltd. (*supra*) has been challenged before the Hon'ble Supreme Court also.

8.5 The moot point is whether the activities of the appellant can be considered as recreational activities relating to art or culture. The GAAR has relied upon the dictionary meaning of 'Art', whereby " 'Art' is the expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power". It was held that the activities of the appellant do not fall within the term 'Art'. These findings of the GAAR have not been challenged. On merit, we find that the activity of the appellant cannot be construed as training or coaching in recreational activities relating to art.

9.1. The appellant has also submitted that the GAAR misinterpreted the classification as provided for in the GST regime. It has been submitted that Service Accounting Code 9996 in Entry No. 80 of Notification No. 12/2017-Central Tax (Rate) provides specific exemption to services by way of training or coaching in recreational activities relating to art.

9.2 The appellant has merely contended that the GAAR has misinterpreted the classification as provided for in the GST regime, however, the appellant has not elaborated how the activities carried out by them are covered under Heading 9996 and under Entry No. 80 of Notification No. 12/2017-Central Tax (Rate).

10. It is settled principle of law that exemption notification has to be read strictly so far as the eligibility is concerned. When the wordings of the Notification are clear and unambiguous, they must be given effect to. By a strained reasoning, benefit cannot be given when it is clearly not available. The appellant has failed to establish that activities carried out by them are covered under Entry No. 80 of Notification No. 12/2017-Central Tax (Rate).

11. In view thereof, we confirm the Advance Ruling No. GUJ/GAAR/R/2018/15 dated 23.08.2018 of the Gujarat Authority for Advance Ruling and reject the appeal filed by M/s. Omnisoft Technologies Private Limited.

**(Ajay Jain)**  
Member

**(Dr. P.D. Vaghela)**  
Member

Place : Ahmedabad  
Date : 02.01.2019.