

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata – 700015

Name of the applicant	Ashok Kumar Basu, carrying on business under the trade name “Manali Enterprise”
Address	101/1A Karaya Road, Park Circus, Kolkata - 700017
GSTIN	19ADZPB9755F1ZU
Case Number	19 of 2018
Date of application	July 04, 2018
Order No. & date	18/WBAAR/2018-19 dated 28.09.2018
Applicant’s representative	Sri Tirthankar Banerjee, Advocate

1. The Applicant, stated to be, inter alia, supplier of printed question papers for various examinations conducted by the Government/Government aided Educational Boards/ Councils/ Universities etc is seeking a Ruling on whether GST is to be charged on such supply and, if so, at what rate and under what HSN or SAC code is the GST to be charged?

The Applicant also wants to know whether credit of the GST paid on the inputs used for provisioning the supply can be availed.

Advance Ruling is admissible on these questions under Sections 97(2)(a),(d)&(e) of the CGST/WBGST Acts, 2017 (hereinafter referred to, collectively, as “the GST Act”).

The Applicant further submits that the question raised in the Application is neither decided by nor pending for decision before any authority under any provisions of the GST Act.

The officer concerned raises no objection to admission of the Application.

The Application is, therefore, admitted.
2. The Application states that the Applicant is registered under HSN 4901 under GST and is providing services by way of printing question papers for various examinations, conducted by the Council of Higher Secondary Education of various States, Joint Entrance Boards, various UGC granted Universities in India and by various authorities of vocational educations. The Councils/Boards/Universities/Institutions are supplying the matter to be printed to the Applicant, who is providing the paper, ink, other inputs, manpower, machinery, etc to print the given matter in appropriate question paper format as provided by the Councils/Boards/Universities/Institutions supplying the matter.

The Application also states that the Applicant’s customers, being either Government organisations or Government aided organisations, are not paying GST on the services so provided, which is rendering them unable to take credit on the GST paid during purchase of inputs.
3. It is necessary to determine whether the Question Papers supplied by the Applicant are “goods” or “services” before considering the other questions on which Ruling has been sought.

Under Section 2(52) of the GST Act, “goods” is defined as “*every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply*”.

“Property” is not defined under the GST Act. However, the lexicon meaning of “property” is “a thing or things belonging to someone.”

Under Section 2(102) of the GST Act, “services” is defined as “*anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged*”.

For the purpose of the question raised in the Application “under what HSN or SAC code is the GST to be charged” it is, therefore, necessary to consider whether question papers are to be considered as “goods” or, if not, if the act of printing the question paper, albeit with the supply of necessary raw material, manpower and machinery being provided by the Applicant, is to be considered as “service”.

4. Section 7 of the GST Act lays down the conditions for scope of supply, both for goods and services.

Under sub-section (1), consideration, or in the absence of any consideration, Schedules I and II to Section 7, are to be referred to in order to determine whether or not the supply is of “goods” or of “services”.

Under sub-section (2) conditions, (as listed in Schedule III to Section 7 or undertaken by Governments or authorities and local bodies as may be notified by the Government, on recommendations of the Council) under which the supply is to be considered as neither “goods” nor “services” are laid down.

Under sub-section (3) it is stated that the Government may, on recommendations of the Council, specify, by notification, whether certain transactions are to be treated as supply of goods or services.

5. No Notification has been issued regarding the status of supply of Question Papers. Hence, Section 7(3) of the GST Act is not relevant for consideration.

The Applicant has neither been notified to be an authority under Section 7(2) of the GST Act, nor is the activity of supplying printed question papers listed in the said Schedule III.

Section 7(1) along with the relevant portions of Schedules I and II clearly state that transfer of title in goods is a supply of goods and in the absence of such transfer, even in the future, is to be considered as supply of services.

6. As stated in the Application and in the arguments of the Applicant at the time of Personal Hearing the content of the matter printed referred to above, is being provided to the Applicant, and to print the same, i.e to convert the matter into a tangible form, necessary raw material, manpower and machinery is being provided by the Applicant.

In other words, the content of the printed matter is *specific* to the customer, and, neither is the matter pre-printed, nor has the Applicant any ownership to the content at any point of time, and, therefore, cannot transfer title of the above printed matters.

In other words, Question Papers are not the property of the Applicant.

Furthermore, the Question Papers supplied by the Applicant to their customers are not marketable commodities in the open market and as goods they have *no legitimate value to persons other than the specific customer who provides the input content*.

The Applicant, therefore, cannot be said to be supplying Question Papers as “goods” under the GST Act, but to be supplying the service of printing.

Hence, the SAC is to be determined and not the HSN.

Again, every transaction is a contract, but open market transactions in Question Papers as goods, being illegal, are not enforceable by law and void contracts in terms section 2(g) of the Indian Contract Act, 1872, and, therefore, beyond the ambit of the GST Act. It follows that classification under the Tariff Act, for the purpose of the GST Act, is also not applicable in such cases.

7. The Applicant is procuring the inputs required for provisioning the service of printing Question Papers. The content for printing, of course, is provided by the Boards / Institutions. The Applicant does not hold the right to the property of the printed question papers. The Boards/ Institutions prepare the question papers for conducting examinations and also fix the format in which the applicant is required to print the content.

Section 8 of the GST Tariff-Services deals with Business and Production Services which include printing services under Heading 9989 where “only content is supplied by the publisher and physical inputs including paper used for printing belongs to the printer”. The service is taxable under serial no. 27 of Notification No. 11/2017-CT (Rate) dated 28/06/2017, as amended from time to time, *provided the materials being printed are goods classifiable under Chapter 48 or 49 of the Tariff Act and taxable under the GST Act*. As transactions in Question Papers as goods is beyond the ambit of the GST Act, they are neither classifiable under Chapter 48 or 49 nor taxable under the GST Act. Service of printing Question Papers is not, therefore, classifiable under Heading 9989.

8. Section 9 of the GST Tariff-Services deals with Community, Social and Personal Services and other miscellaneous services which include Education Services (covering services related to admission to or conduct of examination by Educational Institutions) under Heading 9992. Since the Applicant has specified the printing of question papers for Educational Institutions, supply of service under Section 9 of the GST Tariff is found to be appropriate.

9. GST Rates for services whether or not exempt are governed by Notifications No. 11/2017-CT (Rate) and 12/2017-CT (Rate) dated 28/06/2017, as amended from time to time.

No exemption is granted for supply of printing services to Government/Government aided Educational Boards/Councils/Universities/Institutions merely by virtue of being Government/ Government-aided Institutions. Notification No. 12/2017-CT.(Rate) dated 28/06/2017, however, deals with Educational Board/Councils/Universities etc whether or not they are Government/ Government-aided.

10. Serial No. 66(b)(iv) of Notification No. 12/2017-CT(Rate) dated 28/06/2017, as amended from time to time, as applicable, wholly exempts services provided to an Educational Institution *relating to* conduct of examination. The phrase ‘relating to’ expands the scope of this entry to include such support services without which conduct of the examination is not possible, unless they are specifically mentioned under any other entry.

Question papers can have no use other than in conducting a specific examination, and the supply of service of printing such question papers is a supply related to conduct of that examination.

Explanation (iv) to Notification No. 12/2017-CT (Rate) dated 28/06/2017, inserted vide Notification No. 14/2018-CT(Rate) dated 26/07/2018, clarifies that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of services by way of conducting examinations. Serial No. 66(b)(iv) above, therefore, includes services provided to such Boards relating to the conduct of examinations.

The Applicant is, therefore, not liable to pay tax on the service of printing question papers provided to the Educational Boards/Councils/Universities/Institutions relating to the conduct of examination.

11. Section 17(2) of GST Act states that “Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.”

Since the supply of Question Papers to Educational Institutions if provided, for a particular examination is an exempt supply under Serial No. 66(b)(iv) of Notification No. 12/2017-CT (Rate) dated 28/06/2017, as amended, as applicable, the Applicant is not eligible to avail of Input Tax Credit.

In view of the foregoing we rule as under

RULING

- a) Service of printing Question Papers for Educational Institutions [as defined under clause 2(y) read with Explanation (iv) to Notification No. 12/2017-CT (Rate) dated 28/06/2017] for specific examination is classifiable under SAC 9992.
- b) Service to such Educational Institutions relating to conduct of examination, as described in 66(b)(iv) of Notification No.12/2017-CT(Rate) dated 28/06/2017, includes supply of the service of printing question papers, and is exempt under the GST Act.
- c) Being an exempt supply, the Applicant cannot claim credit of the GST paid on the inputs used for provisioning the service of printing question papers provided to the Boards / Educational Institutions relating to conduct of examination.

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.

Sd-

(VISHWANATH)

Member

West Bengal Authority for Advance Ruling

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(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling