
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Smt. Rajeswari.R.Nair, IRS &
: Shri Abdul Latheef K

Legal Name of the applicant	M/s. Additional Skill Acquisition Programme Kerala
GSTIN	32AAUCA6891N1ZT
ARN No.	AD320922006051S
Address	TC 15/1666, Trans Towers, 3 rd Floor, Vazhuthacaud, Thiruvananthapuram, 695014.
Advance Ruling sought for	In view of the Notification no.12/2017-CT(Rate) dated 28/06/2017, the applicant would like to get clarification as to whether the educational courses which are conducted by the 'Additional Skill Acquisition Programme Kerala' falls under the taxable service or not?
Date of Personal Hearing	14.09.2023
Authorized Representative	Shri. Jamsheed Adam, FCA

ADVANCE RULING No. KER/28/2023 Dated 06/10/2023

1. M/s. Additional Skill Acquisition Programme Kerala (hereinafter referred to as the applicant) is an undertaking of the Higher Education Department, Government of Kerala, that focuses on skilling students and general community to enhance their employability. Instituted in 2012, ASAP converted into ASAPK as a company under section 8 of the Companies Act 2013, fully owned by Government of Kerala and was incorporated on 22.01.2021.

2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala



State Goods and Services Tax Act, 2017 (*hereinafter referred to as KSGST Act*) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and Notifications issued thereunder shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued thereunder.

3. The applicant requested advance ruling on the following:

In view of the Notification No.12/2017- Central Tax(Rate) dated 28/06/2017, the applicant would like to get clarification as to whether the educational courses which are conducted by the 'Additional Skill Acquisition Programme Kerala' falls under the taxable service or not?

4. Contentions of the Applicant:

4.1. The main objectives of the applicant are to design and implement relevant interventions within the educational and training systems to enhance the social and economic relevance and employability of youth, to offer and implement solutions for skill training, Science & Technology, Engineering and Mathematics (STEM) education and to build capacity of key stakeholders and institutions, to promote and facilitate implementation of apprenticeship and internships through schemes like National Employability Enhancement Mission (NEEM), National Apprenticeship Promotion Schemes (NAPS) etc and to provide skill training (foundation and vocational skills) and STEM education to the students studying and passing out from schools and colleges, youth not in education, employment or training, workers, returnees from overseas employment, women and other disadvantaged groups.

4.2. The applicant designs various relevant courses, duration, conduct of examinations and certification, and implements the courses and provides training through various accredited agencies to students across Kerala. Students pay fees directly to the applicant and then the applicant pays the service charges to the accredited agencies. On successful completion of the courses, the certificates shall be issued by ASAPK.



4.3. Prior to incorporation of the ASAPK in 2021, the Higher Education Department constituted the Empowered Committee on State Skill Development Project for the implementation of ASAP and later converted into ASAPK as a company owned by Govt. of Kerala and transferred all the assets and liabilities to the newly incorporated company.

4.4. The applicant has instituted Community Skill Park (CSP) across the state in 16 locations, which are exclusive skill-development centres designed to enhance the employability of educated job aspirants in the state. ASAP Kerala is setting up state of the art labs and workshops as Centre of Excellence to train the youth, professionals and In-service professionals of industries in cutting edge technologies and established, Centre of Excellence for AR/ VR technology at CSP Kalamassery, the construction of three more such Centre of Excellence at CSP Pandikkad, CSP Pampadi and CSP Kazhakuttom are in pipeline. All these Centre of Excellences shall be featured with Green Screen Studio - Virtual Production Labs. In July 2022, the applicant has been recognised as an awarding body and assessment agency by National Council for Vocational Education and Training (NCVET) of Ministry of Skill Development & Entrepreneurship, Government of India. Thus, the applicant is recognised to award certification to trainees for NCVET approved qualifications by ensuring quality and reliable training.

4.5. The applicant is of the view that courses conducted by it to the students falls under the entry number 66 of the notification number 12/2017-Central Tax (Rate) dated 28/06/2017 which reads as follows:

66. Services provided –

- (a) by an educational institution to its students, faculty and staff;
- (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;
- (b) to an educational institution, by way of,-
 - (i) transportation of student, faculty and staff;
 - (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union Territory;



(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;

Provided that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of preschool education and education up to higher secondary school or equivalent.

Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of-

(i) Pre-school education and education up to higher Secondary school or equivalent; or

(ii) Education as a part of an approved vocational education course

(v) supply of online education journals or periodicals

4.6. Now the question arises, whether the applicant falls under the category of definition of "educational institution". As per para 2(y) of the said notification "educational institution" means an institution providing services by way of,-

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

4.7. As per para 2(h) of the notification "approved vocational education course" means,

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or



(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship;

4.8. As stated earlier, the Government of Kerala established the Additional Skill Acquisition Programme in July 2012 as a separate project under the Department of higher Education to impart life skills, English language proficiency, computer skills and domain skills to students, in addition to their school and college education, to enhance their employability. On 19/01/2021 Higher Education Department, Government of Kerala vide order number G.O.(Ms)No.28/2021/HEDN sanctioned to convert ASAP into a company under section 8 of the Companies Act, 2013 and approved the Memorandum of Association (MOA) and the Articles of Association (AOA) for the sustainability of activities under the project. Later, Government of Kerala sanctioned to transfer all the assets and liabilities of the erstwhile ASAP projects to the newly incorporated company vide order number G.O.(Ms)No.387/2021/HEDN dated 21/09/2021 and then vide order number G.O.(Ms)No.211/2022/HEDN dated 30/04/2022 sanctioned to take over the task of completion of components of ASAP project by ASAP Kerala Company.

4.9. From going through above referred government orders, it can be concluded that the applicant is a Government-owned institute and the activities and courses of the applicant are approved by the Government of Kerala. Hence, the applicant will squarely fall into the definition of “educational institution” under sub-clause (ii) of clause (y) of para 2 of notification number 12/2017-CT(R) dated 28/06/2017.

4.10. The applicant submits that the courses offered by the applicant are accredited by the National Council for Vocational Education and Training (NCVT) of Ministry of Skill Development & Entrepreneurship, Government of India. Hence, the courses provided by the applicant to its trainees are “approved vocational education course” within the meaning of para 2(h)(ii) of notification number 12/2017-Central Tax (Rate) and hence, the applicant is an “educational institution” also under sub-clause (iii) of clause (y) of para 2 of the notification. Thus, the services provided by the applicant to its

students, faculty and staff are exempt from GST as per entry at serial number 66 of Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has not submitted any remarks and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that there are no proceedings pending or decided proceedings on the issue against the applicant under any provisions of GST Act 2017.

6. Personal Hearing:

The applicant was granted an opportunity for personal hearing on 12.06.2023 through Virtual Mode. Shri. Jamsheed Adam, FCA, Chartered Accountant, represented the applicant. Another opportunity for personal hearing in view of the change in constitution of the Advance Ruling Authority was granted on 14/09/2023. The authorized representative reiterated the contentions already made in the application. They also submitted a copy of the Ruling dated 31.05.2021 of the Advance Ruling Authority of Kerala in the application of M/s Uralungal Labour Contract Co-op Society Ltd. He also requested to issue the ruling on the basis of the submissions made by them in the application and during the personal hearing.

7. Discussion and Conclusion:

7.1. We have carefully examined the statement of facts, the oral submissions made during virtual hearing. The applicant is an undertaking of the Higher Education Department, Government of Kerala and is a fully owned company of Government of Kerala meant for students in School, Higher Secondary and Degree level classes to encourage them to acquire additional skills and also that focus on skilling students and general community to enhance their employability.



7.2. The main objectives of the applicant are to design and implement relevant interventions within the educational and training systems to enhance the social and economic relevance and employability of youth, to offer and implement solutions for skill training, Science & Technology, Engineering and Mathematics (STEM) education and to build capacity of key stakeholders and institutions, to promote and facilitate implementation of apprenticeship and internships through schemes like National Employability Enhancement Mission (NEEM), National Apprenticeship Promotion Schemes (NAPS) etc. and to provide skill training (foundation and vocational skills) and STEM education to the students studying and passing out from schools and colleges, youth not in education, employment or training, workers, returnees from overseas employment, women and other disadvantaged groups.

7.3. The applicant conducts various relevant courses, duration, conduct of examinations and certification, and implements the courses and provides training through various accredited agencies to students across Kerala. Students pay fees directly to the applicant and then the applicant pays the service charges to the accredited agencies. On successful completion of the courses, the certificates shall be issued by ASAPK.

7.4. Prior to incorporation of the ASAPK in 2021, the Higher Education Department constituted the Empowered Committee on State Skill Development Project for the implementation of ASAP and later converted into ASAPK as a company owned by Govt. of Kerala and transferred all the assets and liabilities to the newly incorporated company.

7.5. The question now arises for consideration is whether the courses conducted by the applicant to the students falls under the exemption provided under Entry number 66 of the Notification 12/2017- Central Tax (Rate) dated 28/06/2017. On examination of the submissions of the applicant, it is clear that to be eligible for the exemption provided under Entry number 66 of the Notification 12/2017- Central Tax (Rate) dated 28/06/2017, the applicant should be covered under the definition of Educational Institution as per para 2(y) of the Notification which defines an "educational institution" means an institution providing services by way of, - (i)

pre-school education and education up to higher secondary school or equivalent; (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; (iii) education as a part of an approved vocational education course. The claim of the applicant that they are covered under the definition of 'Educational Institution' under para 2(y) has been examined in detail. To be qualified as an Educational Institution under para 2(y) (ii), the applicant is required to establish that the courses provided are part of a curriculum for obtaining a qualification recognised by any law for the time being in force. In this regard, the applicant has not produced the required details/documents in support of their contention that the courses are recognised by law. In the absence of relevant facts or materials, the claim of the applicant to consider them to cover under this definition may not be appropriate.

7.6. Further, as per para 2(h) of the Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017, an "approved vocational education course" means, - (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. On going through the above entry it is evident that the applicant is eligible for exemption, only when the services provided by them are in relation to either of the items listed under clause 2 (h) (i) or (ii) above. The submission of the applicant is that they are eligible for the exemption from GST as the courses conducted by them are vocational courses and that they have also obtained the necessary certificate of approval from the NCVET for conducting the specified vocational skill development courses. They have furnished a copy of the agreement dated. 05.07.2022 entered by the applicant with the NCVET. As per para 3.1 of the said agreement, NCVET granted the 'Awarding Body' recognition to discharge the functions and obligation of an Awarding Body to operate in the jurisdiction as per the terms of the agreement. Further, as per para 1.2 of the said agreement, the

Awarding Body is an entity duly recognised by NCVET which awards or proposes to award certification to trainees for an NCVET approved qualification by ensuring quality training and reliable assessments. As per para 8.1.7 of the agreement, the 'Awarding Body' shall enter into an agreement with the training bodies to offer Vocational Education and Training in the National Skill Qualifications Committee (NSQC) approved qualifications. However, the exemption under clause 2 (h) (ii) of the notification is available only to the Modular Employable Skill Courses, approved by the National Council of Vocational Training (NCVT), run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. Though the applicant has been recognised by NCVET, the benefit of the said notification could not be availed by them as they have not registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. In the absence of supporting documents proving that they are registered with the Directorate General of Training, as required under the exemption notification, their claim cannot be considered to be covered under this definition.

7.7. The Hon'ble Supreme Court of India, vide Order dated 30th July, 2018, in the case of the Commissioner of Customs (Import) Vs M/s. Dilip Kumar and Company in Civil Appeal No. 3327 of 2007, held that, *"a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject / assessee by applying the principle that an obscure and /or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored."*

To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue".



7.8. Thus, for the reasons discussed hereinabove, based on the facts and materials available on record and as settled by judgments of the Hon'ble Apex Court, we conclude that the issue raised by the applicant do not sustain to avail exemption under entry no. 66 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time.

RULING

Question-1: In view of the Notification no.12/2017- CT(Rate) dated 28/06/2017, the applicant would like to get clarification as to whether the educational courses which are conducted by the 'Additional Skill Acquisition Programme Kerala' falls under the taxable service or not?

Answer: Based on the facts and materials available on record and as settled by judgment of the Hon'ble Apex Court, the issue raised by the applicant does not sustain to avail exemption under entry no. 66 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time.

Rajeswari
6.10.2023
Rajeswari.R.Nair.

Additional Commissioner of Central Tax
Member

Abdul Latheef K
Abdul Latheef K
Joint Commissioner of State Tax
Member

To,

M/s. Additional Skill Acquisition Programme Kerala,
TC 15/1666, Trans Towers, 3rd Floor,
Vazhuthacaud, Thiruvananthapuram, 695014.

Copy to,

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin- 682018. [E-mail ID: cccocchin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
3. The State Tax Officer, Tax Payer Services Circle, Kowdiar Thiruvananthapuram.

