	<p align="center">KERALA AUTHORITY FOR ADVANCE RULING</p> <p align="center">GOODS AND SERVICES TAX DEPARTMENT</p> <p align="center">TAX TOWER, THIRUVANANTHAPURAM</p>	<p align="center">KERALA GST</p> <p align="center"><small>State Goods & Services Tax</small></p>
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BEFORE THE AUTHORITY OF: Dr. S.L. Sreeparvathy, IRS &
: Shri Abraham Renn S, IRS

Legal Name of the applicant	M/s CHOICE FOUNDATION
GSTIN	32AAATC1588P1ZG
ARN No.	AD321121005147X
Address	Choice House, PV Sreedharan Road, Kumbalam, Kochi, Kerala – 682506.
Advance Ruling sought for	<p>i) Vis-a-viz the applicant, who would be the recipient of service in the proposed joint venture?</p> <p>ii) Vis-a-viz Choice Estates and Constructions Private Limited, who would be the recipient of service in the proposed joint venture?</p> <p>iii) Whether the amount which would be paid by the students to the educational institution proposed to be jointly operated by the applicant and Choice Estates and Constructions Pvt. Ltd. by way of the proposed joint venture would be liable to GST?</p>



	<p>iv) Whether the applicant's share in revenue from the educational institution would be liable to GST?</p> <p>v) Whether Choice Estates and Constructions Pvt Ltd's share in revenue from the educational institution would be liable to GST?</p> <p>vi) Whether the interest free refundable deposit proposed to be made by the applicant with Choice Estates and Constructions Private Ltd., (CECPL) would be liable to GST?</p>
Date of Personal Hearing	20.07.2022
Authorized Representative	Adv. Jose Jacob

ADVANCE RULING No.KER/10/2023 Dated 10.03.2023

1. M/s. Choice Foundation (hereinafter referred to as the applicant) is a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 possessing the expertise and experience in operating premier educational institutions in the State of Kerala.

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 made hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. M/s. Choice Estates and Constructions Pvt. Ltd. (hereinafter referred to as "CECPL") is a private limited company engaged in the business of construction, development and maintenance of infrastructure. CECPL is the owner of property consisting of land and building situated in Thiruvalla, Kerala, India (hereinafter referred to as the 'Property').

4. The applicant proposes to enter into a joint venture agreement with CECPL, with the intention to combine the individual expertise of the applicant and CECPL for the joint operation of an educational institution on the Property.

5. As per the proposed terms of the joint venture, each of the parties, i.e., the applicant and CECPL shall be individually responsible for areas within their expertise and shall be jointly responsible for the operation of the educational institution. The proposed terms of the joint venture are brief as follows:

5.1. The applicant shall be responsible for the academic operations of the educational institution and undertake the day-to-day administration and operation of the educational institution purely from an academic perspective.

5.2. CECPL would be responsible for the entire infrastructural requirements of the educational institution.



5.3. A four-member strategic committee consisting of equal representatives of the applicant and CECPL would be responsible for taking strategic and operative decisions pertaining to the running and operation of the educational institution. All decisions relating to the educational institution including the quantum of fees to be collected from the students of the educational institution shall be decided by the strategic committee.

5.4. The revenue generated from the operation of the educational institution shall be shared between the applicant and CECPL in a fixed ratio to be decided subsequently.

5.5. The applicant and CECPL shall open and maintain a joint bank account with any nationalized bank or other banks as mutually agreed which shall be jointly operated by the authorized signatories of the applicant and CECPL.

5.6. All revenue accruing relating to the educational institution shall be deposited into the joint account maintained by the applicant and CECPL and shall be shared in the agreed revenue share ratio.

5.7. The applicant and CECPL may draw revenue from the joint account on a monthly/quarterly basis for meeting their respective expenses incurred for carrying out their responsibilities towards the educational institution, subject to approval in writing by the strategic committee.

5.8. Drawings from the joint account shall be permitted only with the prior written approval of the strategic committee.

5.9. Considering that CECPL has made the entire initial investment towards the property and infrastructure of the educational institution proposed to be operated by the applicant and CECPL, the applicant shall towards such investment pay to CECPL an interest free refundable



deposit of a mutually agreed fixed amount which shall be held by CECPL during the term of the proposed agreement. The said deposit shall be repayable by CECPL to the applicant upon expiry or termination of the proposed agreement, whichever is earlier.

5.10. The applicant and CECPL shall work towards the common objective of successfully operating the educational institution and in furtherance of mutual benefit and interest.

6. In light of the evolving provisions of GST, the applicant has certain queries regarding the implication of GST under the CGST Act, 2017 and Kerala SGST Act, 2017 on the joint venture arrangement proposed to be entered into with CECPL for the operation of an educational institution.

7. The applicant requested an advance ruling on the following:

1. Vis-a-viz the applicant, who would be the recipient of service in the proposed joint venture?
2. Vis-a-viz Choice Estates and Constructions Private Limited, who would be the recipient of service in the proposed joint venture?
3. Whether the amount which would be paid by the students to the educational institution proposed to be jointly operated by the applicant and Choice Estates and Constructions Pvt Ltd by way of the proposed joint venture would be liable to GST?
4. Whether the applicant's share in revenue from the educational institution would be liable to GST?



5. Whether Choice Estates and Constructions Pvt Ltd.'s share in revenue from the educational institution would be liable to GST?
6. Whether the interest free refundable deposit proposed to be made by the applicant with Choice Estates and Constructions Private Ltd (CECPL) would be liable to GST?

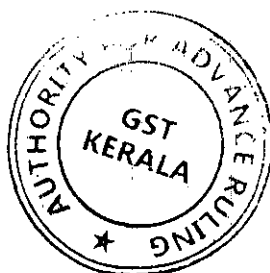
8. Contentions of the Applicant:

8.1. Regarding questions 1 and 2, the applicant and CECPL propose to combine their individual areas of expertise in the form of a joint venture to jointly operate an educational institution in the Property for rendering of educational service. In the proposed transaction, the applicant and CECPL would be the service providers who jointly render education services to the students enrolled with the educational institution jointly operated by the applicant and CECPL.

8.2. Section 2(93) of the CGST Act defines "recipient" of supply of goods or services or both as follows:

"Section 2(93) "recipient" of supply of goods or services or both, means, -

- (a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) Where no consideration is payable for the supply of a service, the person to whom the service is rendered,



and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.”

8.3. It may be understood from the emphasised portion of the above extracted definition of ‘recipient’ that in the case where consideration is payable for the supply of goods or services or both, the recipient of goods or services shall be the person who is liable to pay that consideration.

8.4. In the proposed transaction, the applicant and CECPL would jointly render services by operation of an educational institution in consideration for a fee payable by the students enrolled in such educational institution. Therefore, by virtue of the definition of ‘recipient’ as per Section 2(93) of the CGST Act, the applicant is of the understanding that the recipient of service vis-a-viz the applicant and vis-a-viz CECPL in the instant case would be the student who is liable to pay such fee.

8.5. Regarding question 3, the proposed transaction involves the applicant and CECPL jointly operating an educational institution by which they would jointly render education service to the service recipient, who in the instant scenario would be the student enrolled in the educational institution.

8.6. The service in question would be a service rendered by an educational institution to the students enrolled with it, which for the purpose of determining GST liability is covered under Notification No.12/2017-Central Tax (Rate) dated 28.06.2017. The relevant portion of the said notification is extracted below:



Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per cent)	Condition
	Heading 9992 or Heading 9963	<p><i>Services provided –</i></p> <p>(a) <i>by an educational institution to its students, faculty and staff;</i></p> <p>(aa) <i>by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;</i></p> <p>(b) <i>to an educational institution, by way of-</i></p> <p>(i) <i>transportation of students, faculty and staff;</i></p> <p>(ii) <i>catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</i></p> <p>(iii) <i>security or cleaning or housekeeping services</i></p>	Nil	Nil



		<p><i>performed in such educational institution.</i></p> <p><i>(iv) Services relating to admission to, or conduct of examination by, such institution;</i></p> <p><i>(v) Supply of online educational journals or periodicals.</i></p> <p><i>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 pre-school education and education up to higher secondary school or equivalent.</i></p> <p><i>Provided further that nothing contained in sub-item(v) of item (b) shall apply to an institution providing services by way of,-</i></p> <p><i>(i) pre-school education and education up to higher</i></p>		
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		<i>secondary school or equivalent; or</i>		
		<i>(ii) education as a part of an approved vocational education course.</i>		

8.7. It is clear from Entry 66 of Notification No.12/2017-CT (R) dated 28.06.2017 that as regards services provided by an educational institution to its students, the rate of GST would be NIL. Therefore, as regards the amount to be paid by the students to the educational institution, the same being towards education service would be exempt from GST.

8.8. Regarding questions 4 and 5, the applicant along with CECPL proposes to enter into a joint venture agreement which would lay out the terms and conditions for joint operation of an educational institution. It is proposed that the applicant and CECPL would individually be responsible for areas within their expertise and shall work towards the common objective being operation of the educational institution.

8.9. Though individual obligations have been carved out with respect to each of the parties, as per the proposed terms of the joint venture, it is agreed that the applicant and CECPL shall both be equally responsible for strategic management and decision making as regards the educational institution. Consequently, the applicant and CECPL are both suppliers of service to the recipient student and not suppliers of service / recipients of service inter se.

8.10. The revenue from operation of educational institution is nothing but the fees collected by the educational institution from the students enrolled in it. Further, amount so collected from the students would be



exempt from GST by virtue of Entry 66 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

8.11. In view of the above, it is the understanding of the applicant that the respective share of revenue drawn by the applicant and CECPL from the joint bank account maintained for the same, would not be liable to GST as the same is nothing but fee collected from students of the educational institution in consideration for rendering of education service, which in itself is not liable to GST.

8.12. The applicant places reliance on the ruling of the Hon'ble Mumbai CESTAT in the case of B.G. Exploration & Production India Ltd. Vs Commissioner of CGST & Cex., Navi Mumbai [2021-VIL-507-CESTAT-MUM-ST] wherein under similar factual background, the Hon'ble CESTAT has held that where the parties have come together by way of a joint venture where each co-venture has their own set of responsibilities, the responsibilities discharged by each of them shall not be treated as service rendered to the joint venture liable to service tax. The relevant portion of the said ruling reads as follows:

"33. It can safely be concluded that the Government of India with the appellant, RIL and ONGC had entered into a joint venture agreement, where under each co-venturer had its own set of obligations and the responsibility discharged by each of the co-venturers towards the venture was not by way of any service rendered to the joint venture, but in their own interest in the furtherance of the common objective of the joint venture. Service tax liability, therefore, could not have been fastened upon the appellant."



8.13. The applicant is therefore of the understanding that the share of revenue from joint operation of the educational institution shall not be liable to GST.

9. 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 offered any comments 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 on the issue against the applicant.

10. Personal Hearing:

The applicant was granted an opportunity for personal hearing on 20.07.2022. Shri. Jose Jacob, Advocate represented the applicant for personal hearing. He reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application.

11. DISCUSSION AND FINDINGS:

11.1. The matter was examined in detail. Before proceeding to answer the questions raised in the application, it is necessary to decide the admissibility of the application for Advance Ruling. The taxation of services provided by the members of a joint venture to the joint venture and vice versa and inter between the members of the joint venture is always a delicate one and has to be determined on a comprehensive examination of the various terms and conditions of the joint venture agreement.

11.2. As per Section 2(84) of the CGST Act 2017, 'person' includes:



(a) an individual; (b) a Hindu Undivided Family; (c) a company; (d) a firm; (e) a Limited Liability Partnership; (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013; (h) any body corporate incorporated by or under the laws of a country outside India; (i) a co-operative society registered under any law relating to co-operative societies; (j) a local authority; (k) Central Government or a State Government; (l) society as defined under the Societies Registration Act, 1860; (m) trust; and (n) every artificial juridical person, not falling within any of the above;

11.3. From the aforesaid provisions of Section 2(84), it may be seen that a Joint Venture would be covered under clause (f) of Section 2(84), as an association of persons or AOP, for short.

11.4. Meaning of the term 'Association of persons':

11.4.1. The meaning of the term 'Association of persons' or 'AOP' is to be discussed for a better comprehension. As per the Law Lexicon by P.Ramanatha Aiyer p.158, the term "AOP" has been defined as follows:-

(i) An association of persons must be one in which two or more persons join in a common purpose or common action.

11.4.2. In the case of *Commissioner of Income-Tax Vs C. Karunakaran and Ors.* [1988] 170 ITR 426, 429-430 (Ker.), It was held by the Honourable High Court of Kerala that wherever individuals employ their assets in a joint enterprise with a view to make profit, though not as partners, they constitute an association of persons by reason of their common purpose or common action. In such an enterprise, the distinction between a firm and an association of persons may often be thin and sometimes very obscure.



11.4.3. The Supreme Court in the matter of *G Murugesan and Brothers* [(1973) 4 Supreme Court Cases 211] has held that for forming an 'association of persons', the members of association must join together for the purpose of producing income. An 'association of persons' can be formed only when two or more individuals voluntarily combine together for a certain purpose. Hence, the Court held that volition on the part of the member of the association is an essential ingredient. The mere fact that the members jointly own one or more assets and share the income does not show that they acted as an 'association of persons'.

11.4.4. The Supreme Court in another occasion in the matter of *New Horizons Limited* [1995 SCC (1) 478] stated that the expression 'joint venture' connotes a legal entity in the nature of partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses.

11.4.5. The Supreme Court in the matter of *Faqir Chand Gulati* [2008 (7) TMI 159 - SC] dealing with the nature of the relationship between the land owner and developer in the context of a development agreement, while interpreting the question, whether a land owner can be called as recipient of service under Consumer Protection Act, stated that where the contract is a true joint venture, the land owner is a true partner or co-adventurer in the venture where the land owner has a say or control in the construction and participates in the business and management of the joint venture, and has a share in the profits/loss of the venture. In such a case, the land owner is not a consumer and is the co-adventurer



in the venture, a service provider, where the land owner himself is responsible for the construction as a co-adventurer in the venture.

11.5. From the aforesaid discussion, it may be seen that an 'association of persons' means an association in which two or more persons join in a common purpose or common action. From the above judgments, it is evident that a volition is required to form an association of persons and not just sharing the assets and profits. On the other hand, once the entities come together with volition to achieve a profit out of a business enterprise, the said entity would be different from the constituent entities. The word 'person' herein is very significant, as 'person' may mean any entity as defined in Section 2(84) of the CGST Act. In other words, individuals, HUFs, companies or firms, etc may be members of such A.O.P.

11.6. From the submissions of the applicant, it is clear that the arrangement amongst the applicant and its counterpart are not independent of each other and they share the risk/revenue/profit/loss/liability of the other as a joint venture by joining hands for mutuality of interest and share common risk/profit together.

11.7. An unincorporated joint venture will exist only if the agreement entered into between the two independent persons is also recognized as a 'person'. Taking support from the General Clauses Act, it can be stated that 'person' includes an association or body of individuals, whether incorporated or not and accordingly concluded that an unincorporated association is also a person. Also, reliance can be placed on the judgment of Supreme Court in the matter of New Horizons 1995 SCC (1) 478, wherein it was held that 'joint venture' connotes a legal entity in nature of partnership engaged in joint undertaking of a particular transaction



for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. Further, reliance can be placed on Gammon India Limited [2011 (12) SCC 499], wherein the Supreme Court upheld the denial of exemption to joint venture as the goods were directly imported by constituent member, thereby recognising the joint venture as a separate legal entity from its constituent members. When two or more individual, independent entities enter into an agreement with an understanding to share revenue/profits, a new entity emerges, distinct from its constituents. As the new entity acquires the character of 'person', the transaction between it and other independent entities namely the applicant and its counterpart can be a taxable service also wherever applicable.

11.8. The agreement between the applicant and its counterpart is in the nature of a joint venture where two parties have got together to carry out a specific economic venture on a revenue sharing model. These are arrangements in the nature of partnership with each co-venturer contributing in some resource for the furtherance of joint business activity. Reliance can be placed on the decision of Supreme Court in the matter of Faqir Chand Gulati vs. Uppal Agencies Private Limited [2008 (12) STR 401 SC], to drive home the meaning of expression 'joint venture' and from the decision it would be evident that the obvious feature of joint venture would be that parties participate in such a venture not as independent contractors but as entrepreneurs desirous to earn profits, the extent whereof may be contingent upon the success of the venture, rather than any fixed fees or consideration for any specific services.

12. Now coming to the scope of Advance Ruling, Section 95 (a) of the CGST Act is reproduced below.



Definition of Advance Ruling — In this Chapter, unless the context otherwise requires, — (a) “advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

12.1. Now, it has to be noted that the applicant, in the case at hand, has stated that they require the ruling in their individual capacity of M/s The Choice Foundation, Kochi, a Society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. The applicant has stated that they offer their expert services and undertake the day-to-day administration and operation of the educational institution purely from an academic perspective which is going to be run and managed by the newborn JV. The moot point to be deliberated is whether the applicant is the 'Person' to whom the 'Project' is extended and the one providing the service. It is very clear that the project is executed by the 'Joint Venture. The applicant in its individual capacity is different from the JV, in which the applicant is a member. The 'project' is executed by the JV and not by the applicant.

12.2. As per Section 95(a) of the CGST Act read with Section 103 of the Act, the term 'advance ruling' means a decision provided by this authority to the applicant on matters or questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant and the ruling is applicable to only such person and the jurisdictional officer of such person. Thus, it is seen that only an applicant who satisfies the condition mentioned in Section 95 can apply for Advance Ruling.



12.3. From the submissions made by the applicant it can be seen that it is the Joint Venture in which the applicant is a member who is going to run and manage the 'Project' and not the applicant. As discussed supra, a Joint Venture Company, which is formed by two or more entities, has a separate existence than that of the said entities. Therefore, supply of goods or services or both, being undertaken or proposed to be undertaken in respect of the 'Project' will be by the Joint Venture Company, and not by the applicant.

12.4. Sub section (2) of 97 of the CGST/ KSGST Act, 2017 states that the questions on which advance ruling is sought shall be in respect of the following;

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

12.5. As far as the first two questions on which advance ruling is sought are concerned, they do not fall under the purview of any of the clauses of section 97 (2) of the CGST/KSGST Act, 2017. Moreover, in case of second question, the applicant is neither a supplier nor a recipient.



12.6. The third and fifth questions are not at all in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Hence as per the definition of Advance Ruling, these questions are not 'qualified' to be included in the application for Advance Ruling.

12.7. The fourth question; "whether the applicant's share in revenue from the educational institution would be liable to GST?" falls under the purview of clause (g) of subsection (2) of Section 97 of the CGST/KSGST Act, 2017, i.e., "whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."

13. With regard to this, the following questions have to be answered. Who is the supplier? Who is the recipient? What is being supplied and what is the consideration?

14. As per section 2(105) of the CGST/KSGST Act, 2017 "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

15. As per Section 7 of the CGST/ KSGST Act, 2017,

(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;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.



Explanation. -For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

16. Hence, the person supplying the goods or services or both is the supplier and supply is a broader term which inter alia includes the transaction by a constituent to the person formed by such constituents. And also, as per the explanation to the clause (aa) of Section 7 (1), such person and its constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

17. As per clause (93) of Section 2; "recipient" of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

18. As per the submissions of the applicant, "In the proposed transaction, the applicant and CECPL would jointly render services by operation of an educational institution in consideration for a fee payable by the students enrolled in such educational institution."

19. From this submission it is explicit that, it is the education institution, which is the 'person' formed as an outcome of the joint venture, that supplies 'educational services' to the students enrolled for which the students in turn pay the fees which is the revenue of the 'educational institution'. To provide the education services by this educational institution, it mainly makes use of two input services, viz,



- a) the expertise and experience of the applicant, M/s. Choice Foundation, in academic operations, day to day administration and operation;
- b) infrastructural requirements satisfied by M/s. Choice Estates and Constructions Pvt. Ltd.

20. The students enrolled in the educational institution pays fees as consideration to the educational institution for the educational services provided to them. As per the applicant, this revenue is shared between him and CECPL, who being the providers of input services to the educational institution which being a separate person as discussed supra. Hence that part of the total revenue received by the educational institution, which is paid to the applicant is the consideration received by the applicant for the service they provide to the educational institution. Hence this transaction is taking place from one such person to another and hence it constitutes a supply under the CGST/KSGST Act, 2017. This service falls under the Heading 9983 - Other professional, technical and business service - of scheme of classification of services and is taxable @ 18% (CGST-9% & SGST-9%) as per Sl. No. 21(ii) of the Notification No. 11/2017-Central Tax (Rate) dated 28 /06/ 2017 and S.R.O 370/2017dated 30/06/2017 of Government of Kerala.

21. The sixth question; *"whether the interest free refundable deposit proposed to be made by the applicant with Choice Estates and Constructions Private Ltd, (CECPL) would be liable to GST?"* falls under the purview of clause (e) of sub section (2) of Section 97 of the CGST/KSGST Act, 2017, i.e., *"determination of the liability to pay tax on any goods or services or both"*.

22. As per the applicant, considering that CECPL has made the entire initial investment towards the property and infrastructure of the educational institution proposed to be operated by the applicant and



CECPL, the applicant shall towards such investment pay to CECPL an interest free refundable deposit of a mutually agreed fixed amount which shall be held by CECPL during the term of the proposed agreement. The said deposit shall be repayable by CECPL to the applicant upon expiry or termination of the proposed agreement, whichever is earlier.

23. Interest free refundable deposit proposed to be made by the applicant 'falls within the purview of the *Heading – 9971 - Financial and related services* under the Scheme of classification of services. To answer the question of the applicant, whether their activity is liable to GST; it has to be determined whether this constitutes a 'supply' under the CGST/KSGST Act, 2017?

24. As per Section 7 of the CGST/ KSGST Act, 2017 "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;
- (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
- (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;

25. The deposit is made by the applicant in the course or furtherance of business. In the above clauses (a) to (b), 'consideration' is another requirement for a transaction to qualify as a 'supply'.



As per Sub – section (31) of Section 2 of the CGST/KSGST Act, “consideration” in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

26. From the definition, ‘consideration’ means the payment made in money or otherwise in response to supply of goods or services. Here the applicant provides an interest free refundable deposit to CECPL repayable by CECPL to the applicant upon expiry or termination of the proposed agreement, whichever is earlier. Hence no monetary or other consideration is there for this deposit made.

27. The activities specified in Schedule I of the CGST / KSGST Act, 2017 is to be treated as supply even if made without consideration. As per Para (2) of Schedule I; *Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is to be treated as supply even when made without consideration.*

28. As per explanation to sub –section (5) of Section 15 of the CGST/KSGST Act, 2017,

a) persons shall be deemed to be "related persons" if



- i. *such persons are officers or directors of one another's businesses;*
- ii. *such persons are legally recognised partners in business;*
- iii. *such persons are employer and employee;*
- iv. *any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;*
- v. *one of them directly or indirectly controls the other;*
- vi. *both of them are directly or indirectly controlled by a third person;*
- vii. *together they directly or indirectly control a third person; or*
- viii. *they are members of the same family;*

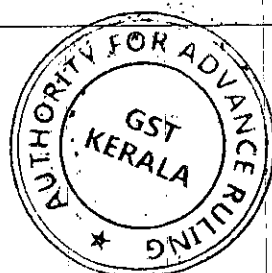
(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

29. In this case, the applicant and CECPL together controls a third person i.e., the Joint Venture. Hence as per (vii) above of the explanation, the applicant and CECPL are 'related persons' and as per Para 2 of Schedule I of the CGST/KSGST Act, 2017, the supply between them even without consideration is to be treated as supply.

30. The entry in Sl. No. 27 of the Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 and S. R. O. No. 371/2017 dated 30/06/2017 of Government of Kerala reads as follows,

Heading	Description of Services	Rate (Per cent.)	Condition



9971	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.	Nil	Nil
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31. As per Rule 28 of the CGST/KSGST Rules, 2017, Value of supply of goods or services or both between distinct or related persons other than through an agent, be the open market value of such supply. In the open market, the consideration for services of extending deposits is normally 'interest'. Hence the exemption under the above entry in Sl.No. 27 is pertinent to the supply made by the applicant also.

32. In the view of the foregoing observations and findings, the following rulings are issued:

RULING

Question 1. *Vis-a-viz the applicant, who would be the recipient of service in the proposed joint venture?*

Ruling No ruling can be given since the question on which advance ruling is sought does not fall under the purview of any of the clauses of section 97 (2) of the CGST/KSGST Act, 2017.

Question 2. *Vis-a-viz Choice Estates and Constructions Private Limited, who would be the recipient of service in the proposed joint venture?*



Ruling No ruling can be given since the question on which advance ruling is sought does not fall under the purview of any of the clauses of section 97 (2) of the CGST/KSGST Act, 2017 and also this question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Question 3. *Whether the amount which would be paid by the students to the educational institution proposed to be jointly operated by the applicant and Choice Estates and Constructions Pvt. Ltd. by way of the proposed joint venture would be liable to GST*

Ruling No ruling can be given since the question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Question 4. *Whether the applicant's share in revenue from the educational institution would be liable to GST?*

Ruling Yes, the service supplied by the applicant to the educational institution i.e., the joint venture is liable to Goods and Services Tax as per Notification No. 11/2017-Central Tax (Rate) dated 28 /06/ 2017 and S.R.O 370/2017dated 30/06/2017 of Government of Kerala.

Question 5. *Whether Choice Estates and Constructions Pvt. Ltd.'s share in revenue from the educational institution would be liable to GST?*

Ruling No ruling can be given since the question is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Question 6. *Whether the interest free refundable deposit proposed to be made by the applicant with Choice Estates and Constructions Private Ltd., (CECPL) would be liable to GST?*



Ruling It constitutes a supply under the CGST/KSGST Act, 2017 but exempted from GST as per Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 and S. R. O. No. 371/2017 dated 30/06/2017.


Dr S.L. Sreeparvathy, IRS

Additional Commissioner, Central Tax
Member


Abraham Renn S, IRS

Additional Commissioner, State Tax
Member

To

M/s. Choice Foundation

Choice House, P V Sreedharan Road,

Kumbalam, Kochi,

Kerala – 682506.

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: cccochin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The Deputy Commissioner-3, Special Circle-2, Ernakulam.

