



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16476 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Sd/-

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

M/S EDUCATIONAL INITIATIVES PVT. LTD.

Versus

UNION OF INDIA

Appearance:

MR J.K.MITTAL, SR.ADVOCATE with MR HARDIK P.MODH, ADVOCATE for the Petitioner.

MR PRIYANK LODHA, STANDING COUNSEL for the Respondent.

MR UTKARSH R SHARMA, ADVOCATE for the Respondent.

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 18/02/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs :



“(a) That this Hon’ble Court may be pleased to issue writ of certiorari or a writ in the nature of certiorari, or any other appropriate writ, quash and set aside the impugned order and decision dated 07.09.2021 passed by the Gujarat Appellate Authority for Advance is erroneous in law;

(b) This Hon’ble Court may declare that the services provided by the petitioner to school/educational organization in relation to ASSET examination is exempted from payment of GST under Entry No.66(b)(iv) of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as well as equivalent SGST Notification and Entry No.69(b)(iv) of Notification No.9/2017-Integrated Tax (Rate) dated 28.06.2017 and not liable to pay GST is just and proper;

(c) That this Hon’ble Court may be pleased to issue a writ of prohibition, or a writ in the nature of prohibition, or any other appropriate writ, order or direction, directing the respondents, their officers, employees not to initiate any actions for recovery of GST or any other liability on account of services provided by the petitioner to school/educational organization in relation to ASSET examinations for non-payment of GST;

(d) Ad-interim relief in terms of prayer C above;

(e) costs of the petition be provided for;



(f) for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case may require.”

2. The facts giving rise to this writ-application may be summarised as under :

2(1) The writ-applicant is a private limited company registered under the provisions of the Companies Act, 1956 (for short, the 'Act 1956'). The company has been registered under the Goods and Services Tax Act, 2017 (for short, the 'Act 2017'). The company deals in the products and solutions mainly intended to be used by the K-12 education segment, i.e. the primary and secondary schools for the assessment and learning. The company has been working with the private schools, public schools and organizations like the World Bank, Google, Azim Premji Foundation, etc. and has undertaken large scale assessment projects with various State Governments.

2(2) The writ-applicant filed an application under Section 97 of the CGST Act, 2017 and Section 96 of the GGST Act, 2017 respectively for Advance Ruling in the Form GST ARA-01.

2(3) The writ-applicant sought a declaration from the Gujarat Authority for the Advance Ruling that the services provided by it to the schools/education organizations in relation to the ASSET examination is exempted from the payment of the GST under the Entry No.66(b)(iv) of the



Notification No.12/2017-Central Tax (Rate) dated 28th June 2017 as well as the equivalent SGST under the Entry No.69(b)(iv) of the Notification No.9/2017-Integrated Tax (Rate) dated 28th June 2017.

NATURE OF THE BUSINESS TRANSACTIONS :

2(4) The writ-applicant has entered into contracts with various schools to provide education upto the higher secondary school. The schools have made it mandatory for their students to take up the Assessment of Scholastic Skill Through Educational Testing (ASSET) exams, which are being conducted by the schools in their own premises and the marks obtained in the ASSET are considered and given due weightage to the students ASSET score in the semester and the final examination results. The writ-applicant would set and prepare the question papers which are either paper version or online version. The evaluation of the answers is done by the writ-applicant. The students are enrolled with the schools.

2(5) The Notification No.12/2017-Central Tax (Rate), dated 28th June 2017 reads thus :

***“Government of India
Ministry of Finance
(Department of Revenue)***

G.S.R.....(E).—*In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on*

being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:—

Table

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
66	Heading 9992	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 students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State	Nil	Nil



(1)	(2)	(3)	(4)	(5)
		Government or Union territory; (iii) security or cleaning or house-keeping services performed in such educational institution; <u>(iv) services relating to admission to, or conduct of examination by such institution;</u> [* * *]; (v) supply of online educational journals or periodicals:] 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: 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.]		



2(6) The operative part of the order passed by the Gujarat Authority for Advance Ruling reads thus :

“RULING

(i) Whether the educational assessment examination (ASSET) with its variants) provided by the applicant to school/educational organization is exempted from payment of GST under Sr. No. 66(b)(iv) of the Noti. No.12/2017-CT (rate) dated 28.06.2017 and entry No. 69(b)(iv) of Noti. No.9/2017-Integrated Tax (Rate) dated 28.06.2017 as well as equivalent SGST Notification.

Ans. Yes, exemption is available in view of the above discussion in respect of ASSET services provided to educational institution.”

2(7) The aforesaid order passed by the Gujarat Authority for Advance Ruling came to be challenged by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad South Commissionerate, Ahmedabad, before the Gujarat Appellate Authority for Advance Ruling.

2(8) The appellate authority allowed the appeal, holding as under :

“10. It appears from the entire scheme of the ASSET that the schools have the minimal role in it. In the terms and conditions attached with the School Summary Form (EB/ARO) 2019 submitted by the applicant, one of the conditions is that, “Fees from the

students should be charged as per the offer availed by your school". It therefore appears that the schools are required to collect the fees for ASSET from the students, as determined by the applicant and remit the same to the applicant. As mentioned in the School Summary Form (EB/ARO) 2019, it appears that the schools are offered 10% Discount towards Administration cost. (The applicant has not submitted any details/documents in respect of other discount in respect of which it is mentioned to refer to the Offer and Discounts section). It is therefore evident that the schools are not conducting the ASSET, rather the schools are facilitating the applicant to conduct ASSET for which the schools get some amount towards administration cost.

11.1 It is the contention of the applicant that the department has made submissions on the basis of the website content. It has been contended that the web contents are designed on the marketing front whereas the actual activity needs to be assessed in terms of the agreement entered into with the schools. However, the applicant has specifically not controverted any submission made by the appellant department or it has not been submitted which part of their website content is at variance with the actual activity carried out by them in relation to conduct of ASSET.

11.2 The applicant has submitted that ASSET is used by the schools registered with them to evaluate the performance of students for giving internal marks,

which bears 20% weightage in the standard X Board Examination. The moot question is whether the ASSET can be said to be conducted by schools, even if it is used to evaluate the performance of students for giving internal marks by the schools. The answer to this is obviously no. Furthermore, the applicant has not submitted whether the ASSET is conducted as substitute for any regular/periodic examination to be conducted by the schools. There is also no submission by the applicant clarifying whether respective Boards (State Board, CBSE, ICSE etc.) recognize ASSET as internal examination conducted by the schools. As already noted, the ASSET may be taken for the group of subjects viz. English, Mathematics and Science and other optional subjects viz. Social Studies and Hindi. It is not forthcoming how the performance of students can be evaluated for giving internal marks in case where the students have taken ASSET only for group of subjects viz. English, Mathematics and Science and not for optional subjects viz. Social Studies and Hindi.

11.3 The applicant has also contended that ASSET is conducted by the schools by using their infrastructure and the applicant merely provides the question papers and test materials. We observe that the physical infrastructure of the schools is used to conduct various examinations, however, such usage of physical infrastructure of schools cannot be the basis to determine who conducts examination. Even the Central and State Educational Boards which conduct Standard X and XII examinations (prepares and get



printed question papers, gets the answer sheet evaluated and declares the results) use the infrastructure of various schools. However, in such cases also, the examinations are said to be conducted by the Central and State Educational Boards, and not by the schools. For the same reason, explanation IV inserted to Notification No. 12/2017-Central Tax (Rate) provides that Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students. This argument of the applicant further weakens when one considers the another submission of the applicant that the ASSET can also be taken online.

11.4 The applicant has submitted that as per terms and conditions of agreement with schools, it is mandatory for schools to take ASSET for all the students in a class and they are not at liberty to take it for a few students only. In our considered view, even this aspect would not change the basic characteristics of ASSET that it is conducted by the applicant and not by the schools. The schools may find ASSET to be a good tool to evaluate students' level of understanding of different subjects and may also find the detailed reports given by the applicant to be useful for devising future course of action by the schools. Therefore, schools may enter into agreement with the applicant with a condition that all students in a class would take ASSET. The condition of the agreement only leads to a conclusion that unless the school agrees to take



ASSET for all the students in a class, the applicant would not enter into a contract with that school to conduct ASSET. However, such condition in an agreement cannot change the nature of ASSET and it will not make ASSET an examination conducted by the schools.

11.5 A reference has also been made to a ‘Flyer’ issued by the Central Board of Excise & Customs (CBEC, now Central Board of Indirect Taxes & Customs – CBIC). In the said ‘Flyer’, it has been inter-alia mentioned as follows –

“Taxing the Education Sector has always been a sensitive issue, as education is seen more as a social activity than a business one. The Government has a constitutional obligation to provide free and compulsory elementary education to every child. Thus, to promote education, it would be beneficial if educational services are exempted from tax. However, commercialisation of education is also a reality. The distinction between core and ancillary education is blurring and education is now an organised industry with huge revenues. The GST Act tries to maintain a fine balance whereby core educational services provided and received by educational institutions are exempt and other services are sought to be taxed at the standard rate of 18%.”



We find that the aforesaid 'Flyer' echoes the spirit behind exemption granted to various specified educational services and levy of Goods and Services Tax on other educational services. Sl. No.66 of Notification No.12/2017-Central Tax (Rate) grants exemption to various educational services. We have elaborately discussed hereinabove whether the services provided by the applicant in the form of ASSET is covered under the said Sl. No. 66 of Notification No.12/2017-Central Tax (Rate). Obviously, each and every educational service has not been exempted from the Goods and Services Tax. Therefore, reliance placed by the GAAR on the said 'Flyer' highlighting the content which says that "Auxiliary services received by such educational institutions for the purpose of education up to Higher Secondary level is also exempt from GST", to arrive at the conclusion that the services have been provided to the schools in relation to conduct of examination of students by such educational Institutes, is found to be misplaced.

11.6 Further, when the ASSET is found to be conducted by the applicant and not by the schools, the phrase "relating to" used in sub-clause (iv) of clause (b) of Sl. No.66 of Notification No.12/2017-Central Tax (Rate) cannot be so interpreted as to enlarge the scope of the said entry to include ASSET in its scope, which otherwise is not covered under the scope of the said entry.



12. *In view of foregoing, we hold that ASSET being held by the applicant cannot be said to be service provided to schools, much less services relating to conduct of examination by such schools. Therefore, exemption from payment of Goods and Services Tax, as provided under Entry at Sl. No.66(b)(iv) of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended and corresponding Notification No.12/2017-State Tax (Rate) dated 30.06.2017, as amended, is not available to ASSET.*

14. *In view of the foregoing discussion, we allow the appeal filed by the department, modify the Advance Ruling No. GUJ/GAAR/R/27/2020 dated 02.07.2020 of the Gujarat Authority for Advance Ruling and hold that ASSET (Assessment of Scholastic Skills through Educational Testing – with its variants) conducted by M/s. Educational Initiative Private Limited is not covered within Entry at Sr. No. 66(b)(iv) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended and corresponding Entry of Notification No. 12/2017-State Tax (Rate) dated 30.06.2017, as amended and hence not exempted from payment of Goods and Services Tax.”*

3. Being dissatisfied with the aforesaid order passed by the Gujarat Appellate Authority for Advance Ruling, the writ-applicant is here before this Court with the present writ-application.



SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANT :

4. Mr.J.K.Mittal, the learned senior counsel assisted by Mr.Hardik Modh, the learned counsel appearing for the writ-applicant, vehemently submitted that the impugned order passed by the Gujarat Appellate Authority for Advance Ruling is erroneous in law. The principal argument of the learned senior counsel is that the appellate authority erroneously interpreted the relevant entry of the exemption notification, i.e. Entry No.66(b)(iv) of the Notification No.12/2017-Central Tax (Rate) dated 28th June 2017 referred to above as well as the equivalent SGST Notification and Entry No.69(b)(iv) of the Notification No.9/2017-Integrated Tax (Rate) dated 28th June 2017.

5. The learned senior counsel would submit that the two entries referred to above clearly exempt the services relating to the conduct of the examinations by the educational institutions.

6. The learned senior counsel would submit that there is no dispute that the services provided by the writ-applicant to the educational institutions fall within the ambit of the aforesaid two notifications. It is submitted that the Gujarat Appellate Authority for Advance Ruling misdirected itself by formulating an incorrect question before itself as contained in para 8 of the impugned order, which reads thus :

“8. We are, therefore, of the view that this matter can be decided by determining whether it can be said that ASSET is conducted by the schools or otherwise without going into the question whether the ASSET is ‘examination’ or

assessment and without deliberating upon the difference between the terms ‘examination and assessment’ ?”

7. It is submitted that the aforesaid was not the question to be decided. The learned senior counsel would submit that the appellate authority introduced new facts which were not even pleaded by the respondent herein in its appeal before the appellate authority.

8. It is submitted that the appellate authority has wrongly drawn the conclusion in para 11.6 of the impugned order that the ASSET examination is conducted by the writ-applicant and not by the schools.

9. The interpretation placed by the appellate authority while passing the impugned order completely defeat the intent of the Government to provide exemption to schools providing education upto the higher secondary to keep them free from the GST while availing various services, as education itself has been kept out of the GST, and the schools will not be in a position to avail the input tax credit too. The respondent No.1, through its Board (CBIC), in the E-Flyer on the education services, has clarified that the services which are obtained by schools have been exempted from the GST under the aforesaid Notification No.12/2017-Central Tax (Rate) by stating that:

“.....GST law recognizes this and provides exemption to educational institutions, providing education upto higher secondary school or equivalent, from the levy of GST.



Auxiliary services received by such educational institutions for the purpose of education upto Higher Secondary levy is also exempt from GST.”

10. In the CBIC Circular No.151/07/2021-GST dated 17.06.2021, in para 4, it has also clarified that :

“GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards.” [under S. No.66(b)(iv) of notifi No. 12/2017-CT(R)].

11. In such circumstances referred to above, the learned senior counsel prays that there being merit in his writ-application, the same be allowed and the impugned order passed by the appellate authority be quashed and set-aside.

SUBMISSIONS ON BEHALF OF THE REVENUE :

12. Mr.Priyank Lodha, the learned standing counsel, on the other hand, has vehemently opposed the present writ-application. Mr.Lodha would submit that no error, not to speak of any error of law, could be said to have been committed by the appellate authority in passing the impugned order. According to Mr.Lodha, the appellate authority could be said to have considered all the relevant aspects of the matter while determining, whether the writ-applicant is entitled to seek the benefit of exemption of the GST under the two notifications



referred to above. Mr.Lodha would submit that the appellate authority is absolutely right in taking the view that the ASSET could be said to be conducted by the writ-applicant and not by the schools. He would submit that the words “relating to” used in sub-clause (iv) of clause (b) of Sl. No.66 of the Notification No.12/2017 cannot be interpreted in a manner so as to enlarge the scope of the said entry to include the ASSET within its scope.

13. Mr.Lodha would submit that the ASSET is an assessment programme which evaluates the performance of the students based on the assessment test and accordingly prescribes the schools the personalized feedback and practice questions for learning process.

14. In such circumstances referred to above, Mr.Lodha prays that there being no merit in the present writ-application, the same may be rejected.

ANALYSIS :

15. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the supply of services as detailed by the writ-applicant can be treated as services to an educational institution relating to conduct of examination by such institution so as to get covered under Entry Serial No.66 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.02/2018-Central Tax (Rate) dated 25.01.2018.

16. We find that the said notification also provides the definition of the term ‘educational institution’ which reads as follows:

“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;”

17. The term ‘education’ has not been defined. The Supreme Court, in the case of Sole Trustee, Loka Shikshana Trust vs. CIT, (1976) 1 SCC 254 : AIR 1976 SC 10, has explained the term ‘education’ as a process of training and developing knowledge, skill, mind and character of students by formal schooling.

18. We are of the view that the word ‘education’ cannot be given a natural meaning by restricting it to the actual imparting of education to the students but should be given a wider meaning which would take within its sweep all the matters relating to imparting and controlling education. Examination is an essential component of education as it is one of the major means to assess and evaluate the skills of a candidate and the



knowledge, be it a school test, university examination, professional entrance examination or any other examination. As held by the Supreme Court, the examination is considered as a common tool around which the entire education system revolves. In State of Tamil Nadu vs. K.Shyam Sunder (2011) 8 SCC 737, the Supreme Court held thus :

“21. There has been a campaign that right to education under Article 21-A of our Constitution be read in conformity with Articles 14 and 15 of the Constitution and there must be no discrimination in quality of education. Thus, a common syllabus and a common curriculum is required. The right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of its economic, social and cultural background.”

19. Thus, the Supreme Court, in the above decisions, has held that :

- the expression ‘education’ is of wide import and includes all matters relating to imparting and controlling education;
- the examination is always considered as one of the major means to assess and evaluate candidate's skills and knowledge be it a school test, university examination, professional entrance examination or any other examination.



- the candidate's fitness for his/her further assignment whether in studies or employment is, therefore, judged on the basis of his/her performance in the examination. It is for this reason, the examination is considered as a common tool around which the entire education system revolves.

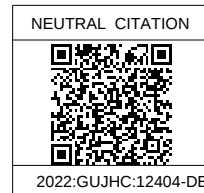
- For the purpose of bringing the right to education under Article 21 of the Constitution in conformity with the Articles 14 and 15 respectively, there must be no discrimination in the quality of education, which requires a common syllabus and a common curriculum.

20. The learned senior counsel appearing for the writ-applicant is justified in submitting that the appellate authority misdirected itself while formulating the question, whether the ASSET could be said to be conducted by the schools or otherwise without going into the question whether the ASSET is 'examination' or 'assessment'.

21. At this stage, we deem fit to look into the line of reasoning assigned by the Gujarat Authority for Advance Ruling. However, before we quote the relevant observations, we must take notice of the fact as to what did the Gujarat Authority for Advance Ruling look into. We quote the relevant observations thus :

SALIENT FEATURES OF ASSET :

- For student of classes 3-10;
- Core subject: English, Maths and Science;



- Optional Subjects: Social Studies and Hindi;
- Asset is skill-based exam;
- Provides details customised skill-wise Examination Reports highlighting strengths and weaknesses;
- Benchmarks the student's performance against peers all over the country;
- The ASSET exam is conducted at school and the school based on their internal policy makes ASSET a part of their examination evaluation system;
- Schools choose to take the ASSET exam in summer (July-August) or winter (December).

BENEFIT OF ASSET/ASSET Dynamic :

- Provide feedback/Detailed examination Reports on real learning;
- Allows students to know they stand and pinpoints areas of strengths and weaknesses;
- Allows schools to benchmark themselves against the best and identify areas requiring improvement;
- Provides teachers with insights into where exactly their students stand compared to the national average or another section or school

ASSESSMENT OF SCHOLASTIC SKILLS THROUGH EDUCATIONAL TESTING (ASSET) :

- The ASSET is an examination tool for educational assessment of students of class 3-10 in schools across India and outside India.



- Under the ASSET, a set of questions is provided on various subjects which are set based on the class level, board (like State or CBSE or ICSE, etc) and the methodology adapted by the school for teaching. These set of questions are either provided in hard copy or also through online mode.

- Under the ASSET, no any pre or post exam teaching is provided to the students. Once the class takes the test under the ASSET, then the answers are evaluated and student wise and class wise results are provided. The exam is conducted at school, and based on their internal policy, all schools make the ASSET mandatory for evaluation of the student and the ASSET results are included in the overall evaluation system of the school. This is confirmed by the agreement-cum-application form for the ASSET also.

22. We now proceed to quote the relevant observations :

“18.2 The term, ‘Educational Institution’ has been defined vide clause (y) of Paragraph 2 of the said Notification No.12/2017-Central Tax (Rate), as below:-

(y) “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;

19. *In view of above, the applicant has to satisfy following two conditions in order to be eligible for exemption under Sr.No. 66(b)(iv):*

(i) The recipient of the services should be 'Educational Institution' as defined under the clause (y) of Paragraph 2 of the said Notification No. 12/2017-Central Tax (Rate).

(ii) the supply of service should be in relation to the examination conducted by the educational institution.

20. *We find that the applicant has stated that they are supplying "ASSET" multiple question to the Schools for the students of 3rd to 10th Standard. Therefore, such schools are already covered under the definition of 'Educational Institution', as provided under sub-clause (i) of clause (y) of Paragraph 2 of the said Notification No. 12/2017-Central Tax (Rate). We find that schools are providing education to the students up to higher secondary standard and therefore fall under the definition of Educational Institution as defined vide clause (y) of Paragraph 2 of the said Notification. In this regard, we refer to a sample copy of agreement held between applicant i.e. Educational Initiative and B R Birla*



Public School, Jhawar Road, Jodhpur submitted by the applicant. Upon perusal of the said agreement and web site of said School <http://brbirlaschool.org/>, it is observed that the said school is providing education up to Higher Secondary and affiliated to Central Board of Secondary Education (CBSE). Further, the terms and condition of the said agreement reveal that the applicant has made an agreement with School for supply of ASSET multiple question paper. Accordingly, we hold that the first condition has been fulfilled in respect of claim of subject exemption.

21. It is now to be seen whether the conditions mandated by entry 66 (b) (iv) of notification 12/2017-Central Tax as reproduced are fulfilled or not as far as the services relating to conduct of examination by, such institution; up to higher secondary. We find from the submissions of the applicant that they are supplying ASSET multiple questions to the School for taking the examination on students on yearly basis. Sample agreement submitted by the applicant vide clause 8 stipulates as under:

“It is expressly agreed that test undertaken by school under ASSET FS/FC are mandatory part of the examination and evaluation of the students and ASSET results will be taken into account for overall assessment done by the school. If the need arises the school shall issue a certificate to EI in this regards”

21.1 On reading the above, it comes out that schools taking ASSET will use its results for its examination process and



overall assessment of the students. The Schools uses ASSET for the purpose of assessment and diagnostic assessment of its students. ASSET uses multiple-choice question to focus on measuring how well SKILLS and CONCEPTS have been understood by the students. The basic nature of ASSET service is an examination to be conducted by Education Institution (School) but outsourced to the Educational Initiatives (EI). We also find from the submissions of applicant that ASSET is an educational assessment exam taken at school and it does not envisage any kind of coaching and/or training of teachers or administrators. We also find that applicant has submitted that the exam is conducted at school and schools, based on their internal policy, make ASSET a part of their evaluation system. They also give student wise appropriate weightage to ASSET score. In view of above, we find that under ASSET, they provide a set of questions on various subjects which are set by them based on the class level, board (like state or CBSE or ICSE etc) and the methodology adapted by the school for teaching. We find from the sample copies of agreements submitted by the applicant that they make contract with the Schools for supply of ASSET multiple questions of various subjects to their students.

21.2 Term, 'in relation to' has been a matter of discussion in many judgements, Applicant has relied upon the Supreme Court judgement in the case of Doypack Systems (P) Ltd Vs UOI 1988 (36) ELT 201 SC, wherein it was held by the Hon'ble Apex Court that the expressions "in relation to" is a very broad expression and has a very wide meaning, it pre-



supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context. The term “relating to” has been held to be equivalent to or synonymous with as to “concerning with” and “pertaining to”. Exemption entry uses this term ‘relation to’ and therefore we are of the opinion that any service provided which helps the education institution in its act of examination will be covered and shall be eligible for exemption from levy of GST.

21.3 Further, GST flyer 40 dated 1.01.2018 was issued for explaining taxability of education sector where the issue of taxability of auxiliary services procured by educational institutions was clarified as under:

“Education is fundamental to the nation building process. Right to Education is now a fundamental right of every child in India. GST Law recognises this and provides exemption to educational institutions, providing education up to higher secondary school or equivalent, from the levy of GST. Auxiliary services received by such educational institutions for the purpose of education up to Higher Secondary level is also exempt from GST. Other services related to education, not covered by the exemption, would be taxed at a standard rate of 18% with full admissibility of ITC for such taxable services in cases where the output service is not exempt. In a nutshell, every attempt is made to ensure that the core educational



services are fully exempt from GST.”

21.4 Therefore, we hold that services have been provided to the schools in relation to conduct of examination of students by such educational Institutes. We also take cognizance of case laws, CCE V/s Rajasthan State Chemical Works 1999(55) ELT 444 (SC); Union of India V/s Ahmedabad Electricity Co. Ltd. 2003(158) ELT 3(SC) and M/s. Doypack Systems (P) Ltd. Vs UOI 1988 (36) ELT 201, cited by the applicant, wherein Honorable Supreme Court, while interpreting the term ‘relating to’ and ‘in relation to’, has assigned wide and broad view of the term. Therefore, we hold that second condition for availing the exemption has also been satisfied in the instant matter.

22. The applicant has also placed reliance on the decision in the case of West Bengal AAR in case of Ashok Kumar Basu reported at 2018 (10) TMI, wherein it was held that service to such Educational Institution relating to conduct of examination, as described in 66(b) (v) of Noti. 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. The said Authority has passed their rulings with respect to eligibility of GST on supply of printing question paper to the educational institute with respect to conducting the examination recognized by education Board. The applicant has also placed reliance on the ruling of M/s.Edutest Solutions Pvt. Ltd., Gujarat AAR (2018 (10) TMI 201) and M/s.The Bangalore Printing and Publishing Co. Ltd., Karnataka AAR (2019 (11) TMI 157), wherein it was

held that supply of printing question paper is eligible for exemption under Sr. No. 66(b)(iv) of Noti. No. 12/2017-CT (Rate) dated 28.06.2017, as amended. In these cases, the supplier received orders for printing of question papers, with the content of questions provided to them. However, in the instant case, the applicant has been preparing the questions too apart from printing them. Therefore, we find that in the above cases too, similar kind of service was provided by the service provider to Educational Institutions.”

WHAT IS THE APPELLATE AUTHORITY TRYING TO CONVEY IN ITS IMPUGNED ORDER ?

23. When the appellate authority says that the schools are not conducting the ASSET, or rather, the schools are facilitating the writ-applicant to conduct the ASSET, for which the schools get some remuneration towards the administration cost, it is thereby trying to erroneously convey that instead of the writ-applicant providing services to the schools, the schools are providing services to the writ-applicant, for which the schools receive ‘administration cost’.

24. Indisputably, the question papers are set by the writ-applicant and the answers given by the students are assessed by the writ-applicant and the result of the ASSET is also prepared by the writ-applicant. The basic nature of the ASSET service is an examination to be conducted by the Educational Institution (School) but outsourced to the Educational Initiatives (EI). The observations made by the AAR in para 21.1 of its order clinches



the issue.

25. It is now well-settled that even in tax statutes, an exemption provision should be liberally construed in accordance with the object sought to be achieved if such provision is to grant incentive for promoting education or otherwise has some beneficial reason behind it. The exemption notification should be given a literal meaning. The recourse to other principles or canons of interpretation of statute should be resorted to only in the event the same give rise to anomaly or absurdity. As observed earlier, the exemption notification must be construed having regard to the purpose and object it seeks to achieve. The notification in the case on hand should be read as a whole.

26. We are of the view that there need not be any further debate on the question, whether the services provided by the writ-applicant to the schools, which are educational institutions, fall within the meaning of the aforesaid notifications. The services, definitely, in our view, fall within the two notifications referred to above.

27. In the overall view of the matter, we are convinced that the impugned order passed by the Gujarat Appellate Authority for Advance Ruling is not sustainable in law.

28. In the result, this writ-application succeeds and is hereby allowed. The impugned order passed by the Gujarat Appellate Authority for Advance Ruling dated 7th September 2021 is quashed and set-aside. The order passed by the Gujarat



Authority for Advance Ruling dated 2nd July 2020 is hereby affirmed.

(J. B. PARDIWALA, J.)

(NISHA M. THAKORE, J.)

/MOINUDDIN