

# GUJARAT-AAAR

**Advance Ruling No. GUJ/GAAAR/APPEAL/2021/29**

**Educational Initiative Pvt. Ltd. -Appellant**

**J.P. Gupta and Seema Arora, Member**

**Date of order: 07/09/2021**

**Case referred/cited :-**

1. [Educational Initiative Pvt. Ltd.](#)

## JUDGMENT

At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (herein after referred to as the ‘CGST Act, 2017’) and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the ‘GGST Act, 2017’) are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. M/s. Educational Initiative Private Limited (herein after referred to as “the applicant”) raised the following question for advance ruling in the application for Advance Ruling filed by it before the Gujarat Authority for Advance Ruling (herein after referred to as the ‘GAAR’).-

” 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 [Not. No. 12/2017-CT \(rate\) dated 28.06.2017](#) and entry No. 69(b)(iv) of [Not. No. 9/2017-Integrated Tax \(Rate\) dated 28.06.2017](#) as well as equivalent SGST Notification “.

2.1 The applicant submitted in the application for Advance Ruling that it deals in the products and solutions mainly intended to be used by primary and secondary schools for the assessment and learning. ASSET is examination tool for educational assessment of student in class 3rd-10th Standards across India and outside India. They provide the question bank of various subjects which are set by them based on the class level, board (like state or CBSE or ICSE etc.) and the methodology adopted by the school for teaching, to the Schools and it is called “ASSET” which stands for “Assessment of Scholastic Skills through Educational Testing”. The applicant submitted that it is a scientifically designed, skill-based assessment Exam. Rather than testing rote learning, it 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) i.e. to the applicant. The assessment generates examination reports for students, indicative of their progress and topics that require attention and improvement. 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. ASSET exam is conducted without any pre / post teaching business relation with the school. 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. ASSET also offers a dynamic online Exam, apart from the pen and paper version. It has all the advantages of ASSET with some additional benefits like – immediate reports, easy online access to report, increased accuracy in reporting, faster remediation, flexible test dates, fewer logistics hassles etc.

2.2 The applicant has submitted that they provide the service of diagnostic assessment examination of students of educational institutions. The educational institutions which avail the said service, conduct tests/ examination on students on a yearly basis. The said technique of examination helps assess the student learning and it also aid teachers in identifying the focus areas to support students. Educational institution gets insights about the students learning levels and accordingly plans the remediation for the identified learning gaps.

2.3 The applicant submitted that services provided by them to the educational institution are services relating to conduct of examination by educational institution and it is exempted under Sr. No. 66 of [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#) and corresponding Entry of Notification No. 12/2017-State Tax (Rate) dated 30.06.2017 (herein after reference to Central Tax (Rate) Notification includes reference to corresponding State Tax (Rate) Notification). As per Entry No. 66 of the said Notification, various specified services provided by/ to an educational institution are exempt. Service specified under Entry No. 66(b)(iv) reads as under, “**Service Provided (b) to an educational institution, by way of,–**

**(iv) services relating to admission to, or conduct of examination by, such institution, up to higher secondary.**

As per the above mentioned entry, services are exempt only when the same are provided by/ to an institution which qualifies the definition of an ‘educational institution’. Further, it is submitted that the service provided by the applicant is in relation to conduct of online examination by schools and it does not have any other use than in conducting a specific examination. The applicant is, therefore not liable to pay tax on the service provided to the Educational institution.

2.4 The applicant submitted that every activity of educational institution by which it examines progress or test qualification or knowledge of student would fall under meaning of examination by the educational institution. In the instant case, applicant is providing contents to the school for conducting examinations and after examination, provides reports on performance of students. These reports are used by the schools for evaluation of the students. Thus in view of the above, service provided by the applicant is in relation to conduct of examination.

3. The GAAR, vide [Advance Ruling No. GUJ/GAAR/R/27/2020 dated 02.07.2020](#), inter-alia observed that, the applicant is supplying “ASSET” multiple question to the Schools for the students of 3<sup>rd</sup> to 10<sup>th</sup> Standards and such schools are providing education to the students up to higher secondary

standard. Therefore these schools fall under the definition of Educational Institution as defined under sub-clause (i) of clause (y) of Paragraph 2 of the [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#). Further, it is observed that the applicant is supplying ASSET multiple questions or 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 adopted by the school for teaching, to the School for taking the examination on students on yearly basis. 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. The exam is conducted at schools, based on their internal policy, make ASSET a part of their evaluation system. They also give student wise appropriate weightage to ASSET score.

3.1 GAAR has further observed that 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 they were of the opinion that any service provided which helps the educational institution in its act of examination will be covered and shall be eligible for exemption from levy of GST. In this regard, GAAR has relied upon the Hon’ble 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.

3.2 Further, it is observed that in GST flyer 40 dated 01.01.2018 issued for explaining taxability of education sector, it has been clarified that, Auxiliary services received by such educational institutions for the purpose of education up to Higher Secondary level is also exempt from GST. Therefore, GAAR has held that the services have been provided to the schools in relation to conduct of examination of students by such educational Institutes. The GAAR has also placed reliance on the ruling of M/s. Edutest Solutions Private Limited, Gujarat AAR (2018 (10) TMI 201) and M/S. The Bangalore Printing And Publishing Co. Limited, 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 [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#), as amended. In the instant case, the applicant has been preparing the questions too apart from printing them, accordingly similar kind of service was provided by the service provider to Educational Institutions. In view of the foregoing, the GAAR has ruled as follows :-

Question : .....

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

4. Aggrieved by the aforesaid ruling, the Assistant Commissioner, Central Goods and Services Tax, Division – VII, Ahmedabad – South Commissionerate (Jurisdictional Officer) (herein after referred to as the “appellant” or the “Department”) has filed the present appeal.

4.1 It has been submitted in the grounds of appeal that the aforesaid Advance Ruling is based on erroneous interpretation that the appellant provides service to an educational institute by way of service related to admission or conduct of examination by, such institute, up to higher secondary. Thus Authority of Advance Ruling has erroneously granted the benefit of Exemption of GST under Sr. No. – 66(b)(iv) of the Notification No. – 12/2017-Central Tax (Rate) dated 28.06.2017 and Entry No. – 69(b)(iv) of [Notification No. – 9/2017-Integrated Tax \(Rate\) dated 28.06.2017](#) as well as equivalent SGST Notification. In terms

of the entry Sr. No. 66(b)(iv) of the [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#), as amended vide clause (o) of [Notification No. 2/2018-Central Tax \(Rate\) dated 25.01.2018](#), Service provided to an educational institution, by way of, -services relating to admission to, or conduct of examination by, such institution; up to higher secondary will attract NIL rate of GST.

4.2 It has been further submitted that as per applicant company's profile available on linkedin i.e. in.linkedin.com/company/educational-initiatives, their goal is to reach a multitude of children across different strata of society, irrespective of the kind of education they are receiving today or the curriculum they are following. They achieve this goal by building products that focus on diagnostic assessment and personalized learning. They believe in a scientific approach to conceptualizing, designing and building their products. This stems from a dream to discover SCIENCE OF LEARNING that can systematically be made available to teachers. The appellant in their ASSET Broucher 2018 (available on website) has mentioned that ASSET is "India's No. 1 Assessment Programme, recognized by the world." The meaning of term "Examination" "Assessment" and "Programme" has been taken from the Collins dictionary :

**Examination:** An Examination is a formal test that you take to show your knowledge or ability in a particular subject or to obtain a qualification

**Assessment –** An assessment is a consideration of someone or something and judgment about them

**Programme –** A programme of actions or events is a series of actions or events that are planned to be done.

It has been submitted that the combined reading of meaning of Assessment Programme reveals that it means, Based on the consideration of someone or something and judgment about them, a series of actions of event that are planned to be done. ASSET assessment programme fits into the above definition i.e. ASSET evaluate the students' performance based on the assessment test and accordingly prescribe students, teachers and management, personalized feedback, personalized report, benchmarking, practice question for learning purpose and other number of series of events and actions as mentioned below,-

- (i) It provides insight on the performance of the entire school on all subjects at a national, state and city level.
- (ii) It provides in depth of section's performance, skill analysis highlights areas of improvement for section.
- (iii) Assess and inform students understanding of concepts and about critical learning gaps.
- (iv) What should teachers do to improve classroom instruction.
- (v) Provides insight more in Mybooks i.e. Student Mybook, Teacher Mybook and Management Mybook.
- (vi) Student Mybook consists of following : Response Sheet, Skill Profile and Remediation target, Strength and Weakness with remediation planning, Practice question for learning check.
- (vii) Teacher Mybook consist performance table for student responses, Skill summary for remediation target, CWA question with remediation planning, practice question for learning check.

(viii) Management Mybook offers benchmarking of the whole school at city, regional and national level.

(ix) POST ASSET analysis with a focused 1 day workshop is conducted by special trainers.

4.3 It has been submitted that as per the dictionary meaning of Examination, “Examination is a formal test that you take to show your knowledge or ability in a particular subject or to obtain a qualification.” However, the ASSET being an Assessment Programme, has not just the formal test but much beyond that. ASSET is an assessment programme which evaluates the student performance based on the assessment test and accordingly prescribes them personalized feedback and practice question for learning purpose. ASSET provides the number of educational services referred above to the School. ASSET is not limited to above but also further provides the opportunities for gifted students. Students of grades 5 to 8 who **perform exceptionally well in the ASSET test** are invited to appear for ASSET Talent Search — a two-level above test designed to identify academically gifted students. The top-performing students in ASSET Talent Search then get an opportunity to participate in various gifted programme offered by ASSET & their partner universities & research institutes. Such services by way of ASSET are provided to Schools by the applicant and they are not at all concerned with the core education of Schools. In view of the above discussion, it is clear that the applicant M/s Educational Initiatives Private Limited deals in the business of **building products that focus on diagnostic assessment and personalized learning and not in preparation of examination papers and** supplying the same to schools for examination purpose. As per the information available on their website i.e. [www.ei-india.com/downloads](http://www.ei-india.com/downloads), ASSET is a tool designed by the applicant for personalized learning by the users.

4.4 It has been submitted that applicant has explained in Management Mybook 2018 as to why ASSET should be used by the schools, which is as follows –

#### **Why ASSET?**

A one of its kind, national level **benchmarking test**, Assessment of Scholastic Skills through Educational Testing (ASSET) **provides feedback on real learning to students. It pinpoints their academic strengths and weaknesses thereby giving them an accurate picture of where they stand** with respect to their peers.

It helps improve the overall perspective of a school by pointing out skills that need improvement. **The reports provide better directions for programmes like teacher training and capacity building.**

It provides key insights to teachers about where their students stand with regards to the different skills, when compared with other sections and other schools. **It also provides practice questions that can be used to reinforce concepts in weak skills.**

Students get a **personalised report which highlights their strong and weak skills. Practice questions for the weak skills are also provided.**

4.5 From the above referred information, ASSET is a benchmarking test for school and not examination conducted by the school in respect of their core activity i.e. Education upto the level of higher Secondary. Further, GAAR has observed that “ASSET exam is conducted without any pre /post teaching business with the school” and”under ASSET, they do not provide any pre or post exam teaching to the students”, whereas in Management Mybook 2018, it has

been mentioned that the ASSET provides ‘feedback’ on real learning to student. They also provide them personalized report which highlights their strong and weak skills and practice question for weak skill in order to reinforce concepts in weak skills.

4.6 Further, it has been submitted that the applicant, in Student Mybook 2018 explained to parents, “what is ASSET”. Content of the Student Mybook 2018 is reproduced below for ready reference –

### **Make ASSET your child’s ASSET !**

Dear parent,

This Mybook is a personalized and comprehensive tool that will not only help you understand your child’s performance but will also help him/her improve on the weak areas. We urge you to go through this Mybook, along with your child. You can use this Mybook in the following ways :

- Identify the strength and areas of improvement.
- See the performance history table to keep a tab on progress over years.
- Go through the questions answered incorrectly and understand the reasons behind the answer chosen.
- Solve the practice question and on completion verify the answer given.

### **PERSONALISED STUDENT FEEDBACK**

#### **Congratulations on taking the ASSET test!**

ASSET is a diagnostic test that tells you which skills you are strong at and which skills you should work on to develop further, the analysis given here is for all the subjects for which you have taken the ASSET test.

| <b>Subject</b> | <b>Highest-performing Skills</b>                           | <b>Lowest-performing Skills</b>                                       |
|----------------|--|---|
| English        | Identifies synonyms, antonyms and other words              | Knows correct spellings and phonics in words                          |
|                | Deduces word meanings from contextual clues                | Understands the usage of grammar concepts                             |
| Maths          | Applications in daily life: word/visual problems           | Arithmetic operations: multiplication                                 |
|                | Number sense, related concepts and basic number competency | Basic shapes and geometry   |
| Science        | Hypothesis formulation or prediction of outcome            | Complex analysis, data interpretation, integrating different concepts |
|                | Recollection or recognition of science facts and concepts  | Classification/comparison of organisms/processes; giving examples     |

#### **Practice questions compiled especially for you!**

This My Book will guide you to improve those areas where your performance was low! In each subject, we have chosen two skills which includes at least one skill in which you have not performed well, and provided practice questions for the same. Answers to all these questions with explanations are provided at the end of this booklet.

Remember, this is YOUR practice book – no other student taking ASSET would get exactly the same set of questions! So do them carefully. Also write to us and tell us if you found the questions helpful. Email us at [Feedback@ei-india.com](mailto:Feedback@ei-india.com) to share your comments and suggestions.

As you know, ASSET is offered in English, Maths and Science in classes 3-10, and in Hindi in classes 4-8, and Social Studies in classes 5-10. Practice questions are provided in all the subjects in which you took ASSET.

Read through your analysis carefully to know how you did on each skill and question. By working on areas that need attention, you can easily improve and do better!

Best of luck!

Regards,

Srini Raghavan

Chief Executive Officer, Educational Initiatives

The applicant addressing to the Parents of students has mentioned ‘This is their practice book – no other student taking ASSET would get exactly the same set of question! So do them carefully ‘ and read through their analysis carefully to know how they did on each skill and question. By working on areas that need attention, they can easily improve and do better. In Student My Book, students receive personalized practice questions which are different for each student. In ASSET assessment programme, POST ASSET analysis with a focused 1 day workshop is conducted by special trainers. The report under ASSET provides better directions for programme like teacher training and capacity building. Thus, Such Programme is chain of events with continuous academic support team to help the school teachers make the most out of the insights derived, plan remedial measures and to make necessary adjustments to their teaching plans. Therefore, such activity is not merely in relation to conduct of examination but education service to such educational institute. Members of the GAAR have erred in considering that ASSET does not envisage any kind of coaching and / or training or administrators.

4.7 It has been submitted that the Hon’ble Supreme Court Judgement in the case of Doypack Systems (P) Ltd Vs UOI [1988 (36) ELT 201 SC], relied upon by the Members of the GAAR, is not applicable in the instant case, as it is applicable only when the service provider has provided the service to the educational institute in relation to conduct of examination but in the case at hand the applicant is involved in the business of building products that focus on diagnostic assessment and personalized learning.

4.8 It has been submitted that in case of advance ruling of M/s Edutest Solution Private Limited, by Gujarat AAR (2018 (10) TMI 201) and M/s The Bangalore Printing and Publishing Co. Limited, by Karnataka AAR (2019 (11) TMI 157), it was held that supply of printing question papers is eligible for exemption under Sr. No. 66(b)(iv) of [Notification No. 12/2017-Central Tax \(Rate\) 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. Further, the applicant’s activity is not limited to that extent and they are further involved in chain of events like providing reports to students, teacher and management, personalized practice questions to the students and continuous academic support team to help the school teachers make the most out of the insights derived, plan remedial measures and to make necessary

adjustments to their teaching plans. Thus they are not merely involved in providing the question papers to the schools.

4.9 It has been submitted that in view of the above, the ASSET Assessment Programme of the applicant does not satisfy the condition that the supply of service (ASSET) provided by them is in relation to the examination conducted by the educational institution. Therefore they are not eligible for exemption under Sr. No. 66(b)(iv) of the [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#), as amended.

4.10 The appellant has further submitted that the C.B.E. & C. Flyer No. 40 dated 01.01.2018 may be referred, which states “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%.”

4.11 As per C.B.E. & C. Flyer No. 40, dated 01.01.2018, ‘Education Services’ are classified in heading 9992 (as per notification no. – 11/2017-C.T. (Rate). The Entry (Sr.) No. 30 of [Notification No. 11/2017-Central Tax \(Rate\) dated 28.06.2017](#) reads, as below:

| Sl No. | Chapter, Section or Heading | Description of Service | Rate (per cent.) | Condition |
|--------|-----------------------------|------------------------|------------------|-----------|
| (1)    | (2)                         | (3)                    | (4)              | (5)       |
| 30     | Heading 9992                | Education services     | 9                | –         |

Thus applicable GST is – (9% Central Tax + 9% State Tax) i.e. Total 18%.

4.12 In terms of the C.B.E. & C. Flyer No. 40, dated 01.01.2018 and Notification No. -11/2017 – Central Tax (Rate) dated 28.06.2020, such programme (ASSET) supplied by the applicant is to be classified as ‘Education Service’ under chapter heading 9992 attracting GST at the rate of 18% (9% CGST and 9% SGST) in terms of Sr. No. – 30 of the Notification No. – 11/2017 – Central Tax (Rate) dated 28.06.2020, as amended, as well as corresponding IGST and SGST notification.

4.13 It has further been submitted that ASSET being assessment programme provided by the appellant to school/ educational organization is not exempted from payment of GST under Sr. No. 66(b)(iv) of the [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#) and entry No. 69(b)(iv) of [Not. No. 9/2017-Integrated Tax \(Rate\) dated 28.06.2017](#) as well as equivalent SGST Notification and shall attract GST at the rate of 18% (9% CGST and 9% SGST) in terms of Sr. No. – 30 of the Notification No. – 11/2017 – C.T. (Rate) dated 28.06.2020, as amended, as well as equivalent IGST and SGST notification.

5. The applicant has also made written submissions vide letter dated 05.11.2020 against the Appeal filed by the Department.

5.1 Apart from reiterating the submissions made in the Application for Advance Ruling filed before the GAAR, the applicant has submitted that the dictionary meaning are guided by the general linguistic principles however when the terms are used in relation to a particular subject, the essence of the meaning is to be construed in view of the subject in relation to which the meaning are narrated. Therefore, the term ‘examination’ and ‘assessment’ when viewed from the



academic perspective indicate that the same are synonyms and both the terms indicate that the subject is put to attest or like tool which would help in ascertaining the knowledge level of the subject in a particular subject. The department's view that they have provided an 'assessment programme' instead of 'examination' by using so many words, falls flat inasmuch as 'assessment' and 'examination' in academic perspective mean one and the same thing.

5.2 The applicant has submitted that Examination does not start and end with just writing answers to set questions, but it also involves analyzing the result in details so as to offer the student, parents and the entire class a structured report. Schools are free to choose when and how to take these exams and whether to outsource some or whole part of it to agencies like them. Further, Section 29(2) (h) of the Right to Education Act stipulates that while laying down the curriculum and evaluation procedure, the academic authority should take into consideration the comprehensive and continuous evaluation of child's understanding of knowledge and his/her ability to apply the same. The schools opting for such comprehensive and continuous evaluation by adopting ASSET, include the performance of the child in the Annual Report Card. It is also 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.

5.3 The appellant has referred to point No. 4 of the terms and conditions which read as under:-

ASSET question paper will be shipped only after full payment has been received by EI. Please make the payments before the date mentioned in the offers section in this form. Delayed payments may result in late delivery of test material and EI won't be responsible for such delays

The applicant has submitted that the above clearly points out to the fact that they are providing question papers and test materials to the schools who have subscribed to their services. The question papers are supplied to the Schools for the purpose of conducting an examination from the academic perspective. This portrays the true nature of their service and by no stretch of imagination can one say that the above activity is not in relation to conduct of an examination by a school. Another fact is that the examination by virtue of the ASSET tool is being solely conducted by the schools by using their infrastructure. They merely provide the question papers and test materials.

5.4 The applicant has submitted that department's contention that ASSET being an Assessment Programme, is not just the formal test but much beyond that is based on two points :-

a. ASSET is an assessment programme which evaluates the students' performance based on the assessment test : This statement merely points out to the fact that the performance of a student is evaluated by use of ASSET. This fact establishes the fact that ASSET is a test that measures the academic acumen of a student which is nothing but an examination looking from the perspective of academics.

b. Prescribing personalized feedback and practice question for learning purpose:

Providing practice question is merely aimed at getting the students acquainted with the methodology of the test. A simple act of providing practice question does not take away the point that ASSET is an examination.

5.5 The applicant has submitted that providing full time support for school and teachers with regard to ASSET tool does not change the fact that they are

rendering service in relation to conducting an examination. Further, it is submitted that one day workshop is conducted for the sole purpose of explaining to the teachers as to how to analyse the reports generated after the class has taken ASSET exam. This is required because the reports are very detailed and it is important that the teachers need to be trained on how to analyze it. They don't have any kind of interaction with the students whatsoever hence the question of providing training to students does not arise.

5.6 The applicant has submitted that department has raised another observation that the company is into building products that focus on diagnostic assessment and personalized learning and not in preparation of examination. In this regard, it is submitted that ASSET does not have any trait of rendering personalized training and department does not bring any evidence whatsoever on record to prove that ASSET is personalized training of students. The content on the website is a combined narrative of all the products and reliance on such combined narrative has resulted in a fallacious analysis of facts.

5.7 The applicant has submitted that in the grounds of appeal, it is mentioned that the ruling is flawed because it says that "Asset exam is conducted without any pre/post teaching business with the school". In this regard it is submitted that the applicant don't provide any pre or post teaching service to schools who opt for ASSET. Providing detailed personalized results to each student or conducting one day workshop with teachers to explain the reports cannot be termed as providing pre or post teaching services, they have no interaction with students in any manner whatsoever. These minor services do not dilute the fact that ASSET is an exam tool employed by school to achieve the goal of evaluating the Child's academic acumen.

5.8 The applicant has submitted that service provided by them in ASSET is providing subject wise exam papers and evaluate the result of students who take these exam and these are composite in nature. They relied upon the Ruling pronounced by AAR Maharashtra in the case of Attest Testing Service Ltd.

5.9 The applicant has submitted that in the grounds of appeal, it has been argued that the Advance ruling order is merely based on the fact that ASSET is regarding supplying of question paper to school to conduct examination thereof. The fact is that they have not misrepresented or suppressed any fact in their submission, the fact that ASSET is diagnostic test and they provide the detailed result has been explained in detail before the Advance Ruling Authority.

5.10 The applicant has submitted that the entire exercise undertaken by the department is merely on the basis of the website content which is not legally tenable as such the website is marketing tool and the contents displayed thereon is more with a view to get maximum publicity mileage. The website contents portray the array of products and services offered by the applicant of which only one particular activity is under dispute. 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.

5.11 The applicant has submitted that the department had not taken into consideration the point number 8 of the terms and condition of the agreement which states that, ASSET shall form mandatory part of their examination and evaluation of the students. Schools have themselves agreed that ASSET shall form part of their examination system. The fact that they provide question paper in physical as well as online format to the school and also the other fact that if any school took ASSET, it is mandatory to take for all the students in a class and they are not at a liberty to take it for few students only, have not been taken into consideration.

5.12 The applicant has submitted that the above facts clearly point out that they have provided service to schools in relation to conduct of examination and as such the service is squarely covered under Sr. No. 66 of [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#). Further, it is submitted that they provide ASSET package which is mandated by the schools to be used in their examination system. ASSET test the skill of all the students in the class and provides a detailed report card like the exam results with percentile etc. Entry 66 does not say that exemption shall be available to a person who provides only exam papers, it sanctions the exemption to ALL services provided in relation to conduct of examination. Providing results and remedies is a part of the process of examination and therefore the ruling of the Authority of Advance Ruling is correct in the eyes of law and must be upheld.

5.13 The applicant has submitted that ASSET is eligible for exemption under Sr. No. 66 of Not. No. 12/2017-Central Tax (Rate) dated 28.06.2017 on merits. They submitted that service specified under entry No. 66 are exempted only when the same are provided by/to an institution which qualifies the definition of an 'educational Institution'. The phrase 'relating to' expands the scope of this entry to include such support services which has relation to conduct of an examination of students. They are providing service in relation to conduct of examination by schools and it does not have any other use than in conducting a specific examination. Therefore supply of service is a supply related to conduct of that examination and is eligible for exemption under Sr. No. 66 of Not. No. 12/2017-CT (Rate) dated 28.06.2017.

5.14 The appellant has relied upon the ruling given by the Hon'ble Karnataka Authority of Advance Ruling in case of Datacon Technologies, wherein the applicant was involved in testing the OMR test papers and generating results.

5.15 The applicant has submitted that in view of the evidences and judicial pronouncements, the ruling of the GAAR may be upheld and the exemption available under Sr. No. 66 of the [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#) may be affirmed.

## FINDINGS

6. We have carefully gone through the case records, submissions made at the time of personal hearing, written submissions filed by the CGST department, submissions filed by the applicant, Advance Ruling given by the GAAR and other material available on record.

7. The issue before us is to decide whether the ASSET supplied by the applicant to the schools is eligible for exemption from Goods and Services Tax in terms of Entry No. 66 (b) (iv) of [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#), as amended vide Notification No. 2/2018-Central Tax (Rate) dated 25-1-2018, or otherwise.

7.1 It would, therefore be appropriate to refer to the relevant entry at Sl. No. 66 of [Notification No. 12/2017-Central Tax \(Rate\) dated 28.06.2017](#) and other relevant terms defined / explained in the said Notification, which reads as follows :-

| Sl. No. | Chapter, Section, Heading, Group or Service | Description of Services | Rate (per cent) | Condition |
|---------|---|-------------------------|-----------------|-----------|
|         |   |                         |                 |           |

|     | Code<br>(Tariff)                      |   |     |     |
|-----|---------------------------------------|---|-----|-----|
| (1) | (2)                                   | (3)   | (4) | (5) |
| 6   | Heading<br>9992 or<br>Heading<br>9963 | <p><b>Services provided –</b></p> <p>(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;</p> <p><b>(b) to an educational institution, by way of,-</b></p> <p>(i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</p> <p>(iii) security or cleaning or housekeeping services performed in such educational institution;</p> <p><b>(iv) services relating to</b></p> | Nil | Nil |

**admission to,  
or conduct of  
examination  
by, such  
institution;**

(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  
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<br>course. |  |  |
|--|--|----------------------|--|--|

**2. Definitions.** – For the purposes of this notification, unless the context otherwise requires,-

(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;

**3. Explanation.** – For the purposes of this notification,-

(iv) For removal of doubts, it is clarified that the 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.

7.2 Thus, as per Entry at Sl. No. 66(b)(iv) of Notification No. 12/2017-Central Tax (Rate), ‘services provided to an educational institution, by way of, services relating to admission to, or conduct of examination by, such institution’ is exempted from GST. The services being provided by the applicant are admittedly not relating to admission to educational institution. Therefore, it needs to be examined whether the services being provided by the applicant are ‘services provided to an educational institution, by way of **services relating to conduct of examination by such institution**’.

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’.

8.1 As submitted by the applicant, ‘ASSET’ is an examination tool for educational assessment of students in class 3 to 10, across India and outside India; that the applicant provides the Question Bank of various subjects, which are set by them based on the class level, Board type (State Board, CBSE, ICSE etc.) and the methodology adopted by the school. Thus, the Question Papers of various subjects are set by the applicant and not by the schools. Further, these Question Papers of various subjects are printed / got printed by the applicant and not by the schools.

8.2 On going through the School Summary Form (EB / ARO) 2019 submitted by the applicant, it appears that the ASSET test is taken twice a year, i.e. ‘Summer Round’ and ‘Winter Round’. In the said School Summary Form (EB / ARO) 2019, the ASSET Test dates have been mentioned as ‘Summer Round – 5th to 9th August, 2019’ and ‘Winter Round – 2nd to 6th December, 2019’. It has also been mentioned in the said Form that the ‘Test dates as specified should be strictly followed by the school’. Thus, the dates of the ASSET are fixed by the applicant and not by the schools. The contention of the applicant that the schools are free to choose when and how to take these exams, is therefore, found to be contradictory to the documentary evidence.

8.3 In the School Summary Form (EB / ARO) 2019 submitted by the applicant, the details of ‘Package’ has been mentioned as follows :-

## 13. PACKAGE

| Subjects  | Rs. | Number of Students class wise |    |   |   |   |   |    |    | Total | Amount |
|---|-----|-------------------------------|----|---|---|---|---|----|----|-------|--------|
|   |     | 3                             | 4  | 5 | 6 | 7 | 8 | 9  | 10 |       |        |
| English + Maths + Science   | 600 |                               |    |   |   |   |   |    |    |       |        |
| Social Studies  | 250 | NA                            | NA |   |   |   |   |    |    |       |        |
| Hindi   | 250 | NA                            |    |   |   |   |   | NA | NA |       |        |
| Gross Total   |     |                               |    |   |   |   |   |    |    |       |        |
| Less : 10% Discount / Administration Cost Discount                                |     |                               |    |   |   |   |   |    |    |       |        |
| Less : Discounts as applicable (Please refer to the Offers and Discounts section) |     |                               |    |   |   |   |   |    |    |       |        |
| Net amount payable to Educational Initiatives Pvt. Ltd.                           |     |                               |    |   |   |   |   |    |    |       |        |

It appears from the aforesaid 'Package' details that the package rates per student being charged by the applicant are fixed for the group of subjects (English, Mathematics and Science) and other optional subjects (Social Studies and Hindi). The ASSET may be taken for the group of subjects viz. English, Mathematics and Science and other optional subjects viz. Social Studies and Hindi. However, within the group of subjects (English, Mathematics and Science), there does not appear any choice to select any one or two subjects.

8.4 In case of ASSET, the answers given by the students are assessed by the applicant and not by the schools. Further, the result of the ASSET is also prepared by the applicant.

8.5 On the basis of assessment of the answers given by the students, the applicant provides results, which is accompanied by a detailed analysis, listing out students' strength and weaknesses. The applicant also provides practice tests to the students, concentrating on their weak points. The applicant also provides answers to the exam, with elaborate explanation, to enhance the self learning process and to equip students with skills to avoid misconceptions in future. In this process also, the schools have no role.

8.6 It is apparent that in case of ASSET, the Question papers are set and printed by the applicant, timings of ASSET are fixed by the applicant, answers given by the students are assessed by the applicant, based on which result and detailed analysis is given by the applicant. The subjects for which ASSET can be taken are also fixed by the applicant. All these facts lead to the only conclusion that ASSET is conducted by the applicant. Therefore, it cannot be said that ASSET is an examination conducted by the schools i.e. educational institution.

9. We may also look into other aspects of ASSET.

9.1 It appears that ASSET provides an opportunity to students of grades 5 to 8, who perform exceptionally well in the ASSET test, to appear for ASSET Talent

Search – a two-level test designed to identify academically gifted students wherein the top-performing students get an opportunity to participate in various gifted programmes offered by ASSET & their partner universities & research institutes. The schools do not appear to have any role in it. This indicates that neither the ASSET is an examination conducted by the schools, nor the role of the applicant that of providing services relating to conduct of examination by the schools.

9.2 The Student Mybook 2018 explaining “what is ASSET” has been addressed to the parents. Had the ASSET been a case of providing services to schools only, there would not have been any occasion for the applicant to communicate with the parents of the students.

9.3 The Student Mybook contains a set of personalized practice questions, which are unique for each student taking ASSET inasmuch as no other student taking ASSET would get exactly the same set of question. Thus, in case of ASSET, the role of the applicant is even beyond conducting of test, evaluating the answers and preparing the results. This aspect also becomes prominent from the fact that the applicant provides full time support for schools and teachers with regard to ASSET, conducts one day workshop for teachers to explain them how to analyse the reports generated after the class has taken ASSET exam as the teachers need to be trained on how to analyze the reports, which are very detailed.

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](#)

[\(Rate\) dated 28.06.2017](#) 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 \(Rate\) dated 28.06.2017](#). 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.

13. The appellant as well as the GAAR in the Ruling have referred and relied upon various decisions. We have gone through the said decisions.

13.1.1 In the case of Edutest Solutions Pvt. Ltd. [2018 (18) G.S.T.L. 77 (AAR-GST)], the manuscript material for printing the Question Papers was being supplied by the Education Boards / Educational Institutes and the scope of work of Edutest Solutions Pvt. Ltd. was limited to composing, typesetting, printing, packing and supplying sealed Question Papers to the Education Board / Educational Institutes. In that case, usage rights of the manuscript material of Question Papers were owned by the Education Boards / Educational Institutes. Similarly, in the case of The Bangalore Printing and Publishing Co. Limited [2019 (29) GSTL 835 (AAR-GST)], the work of the applicant therein was limited to composing and printing of Question Paper book for State Level Higher Secondary Examinations and supply of same to the designated place of the State Government Institutions. The content was to be provided by the respective State Government Institutions by soft copy / manuscript, by e-mail or otherwise. Again, in the case of Datacon Technologies [2020 (41) GSTL 380 (AAR-GST – Kar.)], the applicant therein was only given the job to scan the OMR Flying slip, OMR marks Foil with barcode sticker, scanning of OMR attendance sheet and scanning OMR Absentee sheet along with data extraction and finalization of data in all the four categories.

13.1.2 In the present case, the work of the applicant is not limited to printing of Question Papers. As already noted, in case of ASSET, the Questions Papers are set and printed by the applicant, its timings are fixed by the applicant, answers are assessed and result is given by the applicant. Thus, in case of ASSET, the entire gamut of activities is carried out by the applicant. It is evident that the facts in the cases of Edutest Solutions Pvt. Ltd., The Bangalore Printing and Publishing Co. Limited and Datacon Technologies are quite different than the present case and therefore the said decisions are not found to be applicable in the present case.

13.2.1 The applicant has relied upon the Ruling in case of Attest Testing Service Ltd. [2019 (29) GSTL 528 (AAR-GST)] in support of their contention that the service provided by them in ASSET is providing subject wise exam papers and evaluate the result of students who take this exam and it is composite in nature.

13.2.2 The issue before us is not whether the supply in the form of ASSET is a composite supply or otherwise. Therefore, we do not intend to delve further into this aspect.

13.2.3 Even otherwise, in the case of Attest Testing Services Pvt. Ltd., it was held that the exemption under Entry 66 of Notification No. 12/2017-Central Tax (Rate) would be available to the applicant only when the provisions mentioned therein are satisfied by them. It was also held that the exemption under said Entry No. 66 would be available to them only in respect of the Work Order issued by the University of Delhi. In the said case, the scope of work for University of Delhi included to provide consultancy, training and manpower support to handle the entire Entrance Test, 2018 of the University of Delhi, to provide the required hardware & software. The scope of work in the present case is different, hence the said decision is not applicable in the present case.

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.