Assistant Commissioner, CGST & CX, Joka Division, Kolkata South Commissionerate (Appellant). Respondent: Indian Institute of Management, Calcutta (IIM Calcutta)

Appellate Authority for Advance Ruling — West Bengal

Appeal Case No. 09/WBAAAR/Appeal/2018 (filed 04.12.2018); Date of Or… Dated **01.03.2019**

Q Questions Before the Authority

- After the introduction of the IIM Act with effect from 31.01.2018, whether or not IIM Calcutta should be considered an 'Educational Institution'.
- Whether IIM Calcutta is eligible for exemption under Entry No. 66(a) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, and from which date it should be effective.
- Whether or not IIM Calcutta is eligible to get refund of the tax amount already paid by it.

F Facts

IIM Calcutta, a government-funded institute holding a GSTIN, provides education services to students and others. It sought an advance ruling on whether, after the IIM Act came into force on 31.01.2018, it is an 'educational institution' entitled to exemption under Entry 66(a) of Notification 12/2017-CT(Rate). The Revenue department appealed the WBAAR ruling of 02.11.2018, which had held IIM Calcutta eligible for the exemption.

H Ruling

Whether IIM Calcutta is an 'Educational Institution' after the IIM Act, 2017 came into force	****Yes**, from 31.01.2018**	Founded on clause 2(y)(ii) of Notification 12/2017-CT(Rate), as IIMs became empowered to grant degrees and diplomas
Eligibility for exemption under Entry 66 for the period 01.07.2017 to 30.01.2018	**Not eligible under Entry 66**	Specified programmes were exempt under Entry 67 during this period
Eligibility for exemption from 31.01.2018 to 31.12.2018	**Eligible under Entry 66 or Entry 67, whichever is more beneficial**	Relies on the principle that an assessee may claim the more beneficial of two exemption notifications, as conceded in Circular 80/01/2019-GST (see Provisions)
Exemption from 01.01.2019 onwards	**Available under Entry 66 only**	Entry 67 was deleted by Notification 28/2018-CT(Rate) dated 31.12.2018 with effect from 01.01.2019; the entries are to be read with the Circular
Refund of tax already paid	**Not decided**	The order does not address the refund question at all

The Appellate Authority held that IIM Calcutta is an 'educational institution' under clause 2(y)(ii) of the Notification from 31.01.2018, when the IIM Act made IIMs institutions of national importance empowered to grant degrees. The exemption under Entry 66 was not available from 01.07.2017 to 30.01.2018, though specified programmes fell under Entry 67 in that period. The Authority modified the WBAAR ruling accordingly and did not decide the

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refund question.

R Reasoning

The Authority read clause 2(y)(ii) of Notification 12/2017-CT(Rate) together with the IIM Act, 2017, which conferred degree-granting powers on IIMs from 31.01.2018. It treated the period before that date as one in which IIMs fell outside the 'educational institution' definition, leaving only the specific Entry 67 exemption available. For 31.01.2018 to 31.12.2018 it applied the principle that the assessee may choose the more beneficial of two notifications. It held that the entries must be read harmoniously with the Circular, which it took to govern the position after Entry 67 was deleted. The Appellant's argument on UGC Act section 22(1)(c) was noted but not discussed in the operative findings.

P Provisions Relied On

- West Bengal Goods and Services Tax Act, 2017 / Central Goods and Services Tax Act, 2017, section 97 (advance ruling) an…
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, clause 2(y) (definition of 'educational institution')
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, Entry at serial No. 66 (exemption for services by educational i…
- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, Entry at serial No. 67 (exemption for IIM programmes)
- Notification No. 28/2018-Central Tax (Rate) dated 31.12.2018 (deleted serial No. 67 with effect from 01.01.2019)
- Indian Institute of Management Act, 2017 (in force from 31.01.2018)
- Circular No. 82/01/2019-GST (F. No. 354/428/2018-TRU) dated 01.01.2019 (the order also cites it as 80/01/2019-GST in one…
- Supreme Court judgments on choosing the more beneficial exemption notification (not named in the order)
- UGC Act, 1956, section 22(1)(c) (raised by the Appellant, not decided)

! For the Practitioner

The order helps practitioners advising IIMs or similar institutes on the timing of GST exemption, since it fixes 31.01.2018 as the date IIM Calcutta became an educational institution and explains the shift between Entries 66 and 67. It confirms that the more beneficial of two overlapping exemptions may be claimed for the transitional period. It does not decide the refund question, and it does not settle the UGC degree-recognition point raised by the Appellant. Because the order leaves refund unresolved, anyone seeking refunds should check the full text and later rulings.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> wbaaar_appeal_no.09_2018_dt._01.03.19.pdf

Prepared 30-10-2026.

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