

Body

**APPELLATE AUTHORITY FOR ADVANCE RULING ORDER NO.KAR/AAAR /04/2022, Dated 06th July, 2022**

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING  
6th FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,  
GANDHINAGAR, BANGALORE - 560009**

**(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide  
Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018 )**

**BEFORE THE BENCH OF  
SMT. RANJANA JHA, MEMBER  
SMT. SHIKHA C. MEMBER**

Sl. No	Name and address of the appellant	
		M/s Teamlease Education Foundation, BMTc Commercial Complex, 6th Floor, 80 ft Road, Koramangala, Bangalore, 560095
1	GSTIN or User ID	29AADCT8958N1ZA
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 07/2022 Dated: 8th March 2022
3	Date of filing appeal	13-04-2022
4	Represented by	Shri. Harish Bindumadhavan & Ms Disha Gursahaney, Advocates & Authorised representatives
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Bangalore South Commissionerate.
6	Jurisdictional Authority- State	LGSTO 17, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Rs 20,000 /- (CGST & SGST) paid vide Challan CIN HDFC22042900045159 dated 8-04-2022.

**PROCEEDINGS**

**(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)**

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, 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 would also mean reference to the corresponding similar provisions in the KGST Act.
2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Teamlease Education Foundation, 6th Floor, BMTc Commercial Complex, 80 Ft Road, Koramangala, Bengaluru, 560095 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 07/2022 dated 8th March 2022.

**Brief Facts of the case:**

3. The Appellant is an approved NEEM (National Employability Enhancement Mission) Facilitator under the All India Council for Technical Education (NEEM) Regulations, 2017. The objective of NEEM is to offer on the job practical training to enhance employability of a person pursuing Post-Graduate/Graduate/Diploma in any technical or non-technical stream or a person who has discontinued studies after class 10. As per NEEM Regulations, a person registered for receiving training is called a Trainee. A contract is required to be executed between NEEM Facilitator and NEEM Trainee; the contract is neither an offer of employment nor a guarantee of employment. The Trainees are entitled for payment of remuneration/stipend under the NEEM Regulations which shall be at par with the prescribed minimum wages for unskilled category. Such remuneration/stipend shall be paid as a single consolidated amount without any statutory deductions applicable to regular employees viz. PF/ESI, etc since the NEEM contract assures training and does not constitute employment. The NEEM Facilitators are required to partner with various trainers and Employers/Company/Industry (Industry Partner) for imparting training to NEEM trainees. The industry partner is required among other

things, to provide adequate facilities for the training and pay the monthly stipend to the Appellant for the purpose of paying to the trainees. The Appellant on the other hand is responsible for executing an agreement with each trainee, prior to deploying the trainee to the industry partner, payment of stipend to the trainee engaged by the industry partner and payment of premium towards medical and accident insurance obtained for the trainees. For this, the Appellant charges the industry partner an 'Administrative fee' and reimbursement of the monthly stipend and reimbursement of cost of medical and accident insurance.

4. The Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following questions:-

a. "Whether the Applicant is acting as a pure agent of the industry partner to the extent of reimbursement received towards stipend paid to Trainees on behalf of industry partner as part of training agreement and therefore the said reimbursement is not chargeable to GST?"

b. "Whether the Applicant is acting as a pure agent of the industry partner to the extent of reimbursement received against cost of medical and accident insurance obtained for the benefit of Trainees by the Applicant and reimbursed by the industry partner as per the training agreement and therefore the said reimbursement is not chargeable to GST?"

5. The AAR vide its order KAR ADRG No 07/2022 dated 8th March 2022 held as under:-

"The Applicant does not qualify to be a pure agent of the Industry partner to the extent of reimbursement received towards stipend paid to Trainees on behalf of Industry partner as part of training agreement and therefore the said reimbursement is chargeable to GST.

The Applicant does not qualify to be a pure agent of the Industry partner to the extent of reimbursement received against cost of medical and accident insurance obtained for the benefit of Trainees by the Applicant and reimbursed by the Industry partner as per the training agreement and therefore the said reimbursement is chargeable to GST. "

6. Aggrieved by the ruling given by the AAR on the issue of reimbursement of stipend paid to the trainees on behalf of the industry partner, the Appellant has filed this appeal on the following grounds.

6.1. A reading of Rule 33 of the CGST Rules makes it clear that any cost or expenditure incurred by the supplier on behalf of the recipient of service shall be excluded from the value of supply under Section 15 of the CGST Act, if the conditions prescribed under Rule 33 are satisfied. In the present case, the impugned order has misconstrued the provisions of Rule 33 to add a restriction that expenditure must be incurred first and only claimed later, to qualify as a pure agent. The Appellant submitted that the first condition under Rule 33 that, the supplier acts as a pure agent of the recipient of the supply when he makes the payment to the third party on authorisation by such recipient has been complied with. The agreement between the industry partner and the Appellant is the authorisation required under this condition, which is supported by the NEEM regulations. Clause 3 of the agreement lays down that for the dedicated employment of the trainees with the industry partner, the industry partner pays the Appellant a monthly stipend in a bank account, to be utilized by the Appellant solely for the purposes of paying the trainees in accordance with the NEEM Regulations. They submitted that the impugned order has incorrectly added a restriction in the provision of Rule 33 that expenditure must be incurred first and only claimed later; that the fact that the Appellant receives the stipend in the dedicated bank account before disbursing to the trainee has no bearing on the fulfilment of Rule 33(i); that the timing of receiving the stipend by the Appellant cannot dictate whether the Appellant is a pure agent or not. They relied on the decision of Sri Bhagavathy Traders vs. CCE, Cochin [2011 (24) STR 290 (Tri-LB)] wherein it was held that reimbursement will arise only when the person actually paying was under no obligation to pay the amount and he pays the amount on behalf of the buyer of the goods and recovers the said amount from the buyer of the goods. It makes no reference to the timing of the recovery.

6.2. The Appellant submitted that they have fulfilled that second condition of Rule 33 which is, the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; that the same is not disputed in the impugned order. With regard to the third condition under Rule 33 which reads as, the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services, he supplies on his own account, the Appellant submitted that clause 3 of the Agreement clearly distinguishes between the supplies made by the Appellant on his own account, for which an administrative fee and a sourcing fee is payable to the Appellant and the supplies made by the trainees to the Appellant as per their dedicated employment with the industry partners; that the impugned order has inadvertently recorded that the Appellant has not furnished any information with regard to procurement of supplies from the third party; that the impugned order has made no findings on this submission by the Appellant and is therefore, non-speaking to this extent.

6.3. The Appellant submitted that they fulfil the definition of the expression 'pure agent' which has been given in the explanation to Rule 33; that the Appellant is only a conduit for the payment and the actual service is provided by the trainees to the industry partner and the industry partner is liable to make the payment of consideration; that the Appellant is providing services as per NEEM regulations and does not retain any portion of the stipend or receive any separate consideration from Trainees; that it is merely acting as an intermediary of the industry partner; that the Appellant is recovering actual amount of stipend paid to trainees from industry partner and separately charging fee for administration, sourcing and enrolment towards the services provided on its own account, on which GST is charged. Therefore, it is clear that the reimbursement received from the industry towards the stipend paid to trainees is in the nature of pure agent services provided by the Appellant as per Rule 33 and therefore such reimbursement should not form part of taxable value.

6.4. The Appellant submitted that in the Appellant's own case, on the same facts and on the same question posed before the Gujarat AAR which was reported in 2022(3) TMI 1088-Authority of Advance Ruling, Gujarat, the Appellant has received an order holding that the Appellant is pure agent of industry partner to the extent of reimbursement of the actual amount of stipend incurred by it and thereby the said reimbursement is not

leviable to GST. The Authority in Karnataka has passed a diametrically opposite order on the issue of stipend; that such inconsistency is not permitted in the case of a central levy. The Appellant has also placed reliance on two other advance rulings passed by the Maharashtra AAR in the case of Yashaswi Academy for Skills and Karnataka AAR in the case of Cadmaxx Solutions Education Trust, on similar facts and questions and submitted that the impugned order has failed to pass any findings on the same. In the case of Cadmaxx Solutions Education Trust, the same Authority has held that reimbursement of stipend paid to the trainees does not attract GST; that the Authority has not distinguished the findings in that case to the present case of the Appellant.

6.5. The Appellant submitted that they are acting as pure agent of the industry partner to the extent of reimbursement received towards stipend paid to the trainees on behalf of the industry partner as part of the training agreement and therefore the said reimbursement is not chargeable to GST.

### **PERSONAL HEARING**

7. The appellant was granted a virtual hearing on 26th May 2022. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Ms Disha Gursahanay, Advocate and authorised representative.

7A. The Advocate explained the facts of the case and the circumstances leading to the present appeal. It was submitted that the Appellant is a Company engaged in charitable activities and is an approved NEEM Facilitator to implement and provide technical and nontechnical training to individual trainees under the NEEM Regulations; that for the purpose of imparting training, the Appellant collaborates with various industry partners for imparting training to the trainees; that the Appellant executes an agreement with each trainee as per which the Appellant is entrusted with the task of deploying the trainee to the industry partner, assist the trainee in enrolment under various courses, pay premiums towards the medical and accident insurance obtained for the trainees and pay the stipend to the trainees engaged by the industry partner. The Appellant charges the industry partner an administration fee, sourcing fee, enrolment fee as well as claims reimbursement of monthly stipend paid to the trainees and reimbursement of cost of medical and accident insurance obtained for welfare of trainees. The Advocate submitted that the reimbursement received towards stipend is an expenditure incurred as a pure agent of the industry partner as per Rule 33 of the CGST Rules; that the Appellant is merely a conduit for the payment of stipend and the actual service is supplied by the trainees to the industry partner and such reimbursement of stipend should be excluded from the taxable value for payment of GST; that the AAR has misconstrued the provisions of Rule 33 and added a restriction that expenditure must be incurred first and reimbursement claimed later in order to qualify as pure agent; that this condition is not stipulated under law and hence the ruling of the AAR deserves to be set aside.

7.2. A query was posed by the Bench by drawing attention to the NEEM Regulations wherein a responsibility is cast on the NEEM Facilitator (Appellant) to issue a training completion certificate to the trainees and also that penal consequences get attracted if the NEEM Facilitator fails to comply with the provisions of the NEEM Regulations. In this regard, the Member posed a query that the Appellant appears to have a direct interest in successful completion of the training program and in issue of the training completion certificate and as such it appears that the Appellant fails to satisfy clause (c) of the definition of 'pure agent'.

7.3. In response, the Advocate submitted that no doubt there is a responsibility cast on the Appellant in terms of the NEEM Regulations but in terms of the agreement entered into with the industry partner, there is an obligation on the part of the industry partner to pay the stipend to the trainees; that the agreement clearly stipulates that the stipend amount which is paid to the Appellant will be utilized solely for the purpose of paying the trainees in accordance with the NEEM Regulations. Therefore, the Appellant is merely a conduit for the payment of stipend by the industry partner to the trainees. The Advocate also submitted that in addition to the stipend there are various other amounts which the Appellant charges the industry partner such as administration fee and sourcing fee which are for the services supplied by the Appellant to the industry partner and on such charges, which is a consideration for their services, they are paying GST; that on the stipend, it is not a consideration for any service provided by the Appellant and they are not retaining any portion of the stipend and hence the same should not form part of their taxable value. It was also submitted that the extent of the stipend is not decided by the Appellant but by the industry partner.

7.4. Another query was posed by the Bench as to how the pure agent concept can be attributed only to the stipend and not to the other amounts charged from the industry partner. In response, the Advocate submitted that it is only the stipend amount which gets paid to the trainees without any withholding; that as per the agreement as well as the invoice, the amount towards stipend is separately indicated and hence only to the extent of stipend they operate as 'pure agent'.

7.5. The Advocate also drew attention to the ruling passed by the Gujarat Authority for Advance Ruling in their own case wherein it was held that the stipend reimbursed by the industry partner shall not form part of the taxable value in as much as they are pure agents. They also referred to rulings given by Karnataka AAR in the case of Cadmaxx Solutions Education Trust where on the same set of facts relating to NEEM Facilitator it was held that reimbursement of stipend is not chargeable to GST. The Advocate prayed that their appeal be allowed since they meet all the requirements of a 'pure agent' as laid down in Rule 33 of CGST Rules.

### **DISCUSSIONS AND FINDINGS**

8. We have gone through the entire case records and considered the submissions made by the Appellant in their grounds of appeal, as well as the submissions made at the time of personal hearing. The limited issue for determination is whether the Appellant is acting as a 'pure agent' of the industry partner to the extent of reimbursement received towards stipend paid to trainees as part of the training agreement.

9. Briefly stated, the Appellant being in the business of training, is an approved NEEM (National Employability Enhancement Mission) Facilitator

under the All India Council for Technical Education NEEM Regulations, 2017. The Appellant has entered into a contract with a trainee whereby the Appellant, as NEEM Facilitator, will formulate a 'Training Program' for the training of the NEEM Trainee and shall make suitable arrangements for facilitating the same. As part of the contract with the trainee, the Appellant is required to deploy the trainee in the premises of a company/industry depending on the trade selected. The Appellant is also required to pay a monthly stipend to the trainee by the 10th of the month. The Appellant has also entered into an agreement with industries (called industry partners) for imparting training to the NEEM trainees. One such agreement with M/s LG Electronics India Pvt Ltd has been placed before us. The terms of the training agreement with the industry partner mandate that the industry partner will provide adequate facilities for the training as per NEEM Regulations, pay the monthly stipend to the Appellant on or before 2nd of every month in consideration of dedicated deployment of the trainees which is to be used by the Appellant solely for the purpose of paying the trainee, reimburse the cost of medical and accident insurance obtained by the Appellant for the benefit of the trainees, pay the administrative fee, sourcing fee, enrollment fee and other fees charged by the Appellant towards the services provided.

10. In the context of the above facts, the Appellant sought a ruling from the lower Authority as to whether the stipend amount reimbursed by the industry partner to the Appellant which is used solely for the purposes of paying the trainees in accordance with the NEEM Regulations can be excluded from the value of service supplied by them since they are acting as a 'pure agent' of the industry partner. The lower Authority gave a ruling in the negative stating that the Appellant failed to fulfill the conditions stipulated in Rule 33 of the CGST Rules and hence did not qualify to be a pure agent. The lower Authority gave a finding that the Appellant had not furnished any contractual agreement to incur expenditure first and to claim the said amount later; that it is evident from the copy of the agreement entered into with M/s LG Electronics India Pvt Ltd and the course registration letters addressed to the trainee, that the stipend amount is paid by the industry partner to the Appellant by the 2nd of the month and the same is paid by the Appellant to the trainee on the 10th of the month. The lower Authority thus concluded that the Appellant is not incurring any expenditure initially and later claiming the said amount from the industry partner and hence the Appellant does not qualify to be a pure agent.

11. In their appeal before us, the Appellant has contended that the reimbursement received towards stipend is an expenditure incurred as a pure agent of the industry partner as per Rule 33 of the CGST Rules; that the Appellant is merely a conduit for the payment of stipend and the actual service is supplied by the trainees to the industry partner and such reimbursement of stipend should be excluded from the taxable value for payment of GST; that the AAR has misconstrued the provisions of Rule 33 and added a restriction that expenditure must be incurred first and reimbursement claimed later in order to qualify as pure agent; that this condition is not stipulated under law. Before we analyze whether the Appellant fulfills the provisions of Rule 33, we would like to refer to the NEEM Regulations under which the Appellant operates. The All India Council for Technical Education (AICTE) notified the National Employability Enhancement Mission (NEEM) Regulations, 2017 on 15th June 2017.

The relevant clauses of the NEEM Regulations are reproduced hereunder for ease of reference:-

#### **4.0 ELIGIBILITY OF A TRAINEE UNDER NEEM**

4.1A person registered under this NEEM Regulation is called a Trainee under NEEM.

4.2A person seeking training under NEEM shall be at least 16 years of age and not more than 40 years of age as on the date of registration.

4.3A person seeking training under NEEM may either be pursuing his or her Post Graduation/ graduation/ Diploma in any technical or non-technical stream or may have discontinued studies after Class 10th.

4.4Satisfies standards of physical fitness as prescribed by NEEM Facilitator.

#### **5.0 NORMS OF CONTRACT FOR IMPARTING TRAINING UNDER NEEM**

5.1A contract shall be signed between NEEM Facilitator and the NEEM Trainee to capture all terms & conditions which would govern the relationship.

5.2The NEEM training shall be deemed to have started from the date of joining of the NEEM Trainee as mentioned in the contract letter as per proforma given in Appendix II

5.3The NEEM contract shall not be either an offer of employment or a guarantee of employment.

5.4Any remuneration/stipend paid to a trainee is a consolidated amount not subject to any other deduction of payment as applicable in a regular employment.

#### **6.0 PERIOD OF TRAINING**

6.1NEEM training shall be in a registered company/Industry as registered with the NEEM Facilitator.

6.2NEEM training shall be for a minimum of 3 months and a maximum of 36 months and the trainings must be NSQF compliant.

6.3The duration of NEEM training shall be determined by the nature of Industry or trade where a NEEM trainee would be engaged for such training and shall be at the sole discretion of NEEM Facilitator.

#### **7.0 TERM IN A TION OF TRAINING CONTRACT**

7.1The contract of the training shall expire on the completion of training as mentioned in the contract letter signed between the NEEM trainee and NEEM Facilitator.

7.2Either party can terminate the contract by notifying in writing to the other party by giving a notice thirty days in advance.

7.3NEEM Facilitator can terminate the Training contract with the NEEM trainee on account of any unlawful behavior on the part of the NEEM trainee or on account of repeated flouting of company/Industry policies or for continuous irregularity in attending to the scheduled training as notified for the NEEM trainee.

7.4NEEM trainee can terminate the contract entered into with the NEEM Facilitator where the NEEM Facilitator fails to honour any of the terms of

the contract by giving a written notice 30 days in advance to the NEEM Facilitator.

7.5 The selection of a NEEM trainee does not constitute an employment contract with NEEM Facilitator or the company/Industry where the NEEM trainee is placed for training under the contract.

#### **9.0 PRACTICAL AND BASIC TRAINING OF NEEM TRAINEES**

9.1 Each NEEM trainee shall be provided comprehensive training in the trade by deployment in the premises of an employer/company/industry or in field operations depending on the trade selected.

9.2 On the job training may be complemented by access to the cloud, satellite or such other facilities that NEEM Facilitator deems as appropriate for the training.

9.3 NEEM trainees who undergo training in the NEEM project would be required to undergo related instruction and course curriculum devised under NSQF or as approved by National Skill Qualifications Committee (NSQC).

9.4 NEEM Facilitator will partner with various trainers and Employers/Company/Industry for the completion of training of NEEM trainees.

#### **10.0 HEALTH AND SAFETY AND WELFARE OF TRAINEES**

10.1 NEEM Facilitator shall comply with the necessary provisions and the applicable Acts, to ensure welfare, safety and health aspects of the trainees while they undergo training.

#### **12.0 NEEM FACILITATOR'S LIABILITY FOR COMPENSATION FOR INJURY**

12.1 If personal injury is caused to a NEEM trainee, by incident/accident arising out of and in the course of his training as a NEEM trainee, NEEM Facilitator shall be liable to pay compensation which shall be determined and paid, so far as may be, in accordance with the provisions of the Workman Compensation Act, 1923 as amended from time to time.

#### **13.0 CONDUCT AND DISCIPLINE**

13.1 In all matters of conduct and discipline, the NEEM trainee shall be governed by the rules and regulations as may be prescribed by the NEEM Facilitator and or by the company/industry where the NEEM trainee will be placed for training.

#### **14.0 POST TRAINING SUPPORT**

14.1 All NEEM trainees shall be given a training completion certificate at the end of training period.

14.2 All NEEM trainees who complete the training program and reach the minimum threshold in the examination that may be prescribed shall be issued a training skill assessment certificate at the completion of NEEM training. The best location (online or offline) shall be notified by the NEEM Facilitator.

#### **15.0 REMUNERATION/STIPEND**

15.1 NEEM Facilitator shall pay all enrolled NEEM trainees a remuneration/stipend which shall be at par with the prescribed minimum wages for unskilled category.

15.2 Remuneration/Stipend shall be paid as a single consolidated amount and such payment will not attract any statutory deductions or payments applicable to regular employees i.e. PF/ESI etc., since the NEEM contract assures training and does not constitute employment.

#### **17.0 PENALTY AND WITHDRAWAL OF REGISTRATION AND APPROVAL**

17.1 If a NEEM Facilitator contravenes any of the provisions of these Regulations, the AICTE may, after making such enquiry, as it may consider appropriate and after giving NEEM Facilitator an opportunity for being heard, revoke/withdraw the registration and approval granted to such NEEM Facilitator.

17.2 If the Registration and Approval of NEEM is revoked or withdrawn, the concerned NEEM Facilitator will not be eligible to apply for fresh registration for a period of at least 2 years from the date of such revocation or withdrawal.

#### **18.0 VALIDITY OF REGISTRATION**

18.1 The Registration is valid for three years from the date of issue of letter of Registration. The performance of the NEEM Facilitator will be reviewed every three years or at any time during the three year period as may be decided by the Council by the duly constituted committee for the purpose of extension of Registration or otherwise. This Clause would operate retrospective to all Facilitators.

12.A reading of the above NEEM Regulations makes it evident that the Appellant as a NEEM Facilitator is bound by the following responsibilities:-

> Motivate youth to join the NEEM Scheme as a Trainee

> Partner with various trainers and employers/company/industry for providing on-the-job training to the NEEM trainees

> Deploy the trainee in a suitable industry for the purpose of getting a comprehensive on-the-job training

> Pay a consolidated amount (without any statutory deductions) by way of remuneration /stipend to the NEEM trainee which shall be at par with the prescribed minimum wages for unskilled labour

> Be responsible for the conduct and discipline of the NEEM trainee during the period of deployment for training, as per the rules and regulations of the industry where the NEEM trainee is placed for training

> Monitor the daily and weekly working hours of the trainee including the entitlement to leaves

> Submit periodical reports to AICTE regarding the trainee details and the completion of the training

> Issue a training completion certificate at the end of the training period

> Conduct a certificate examination for all trainees who complete the training and issue a Training Skill Assessment Certificate to the trainee who obtains a minimum qualification threshold in the examination.

>Be liable to pay compensation to a NEEM trainee as per the Workman Compensation Act, 1923, if a personal injury is caused to the trainee by incident or accident arising out of and in the course of training as a NEEM trainee

>Be responsible for complying with the NEEM Regulations failing which his registration as NEEM Facilitator is liable to be revoked/withdrawn.

13. In carrying out the above responsibilities as a NEEM Facilitator, the Appellant enters into two separate contracts. A contract is made with the NEEM trainee which is mandated by the NEEM Regulations and which, among other terms and conditions, specifies the period of training and the payment of stipend by the Appellant to the NEEM Trainee by the 10th of the following month. The Appellant also enters into a separate contract with an industry which has the requisite personnel, facilities, industry knowledge and infrastructure to provide training as per the NEEM Regulations. We refer to the agreement made between the Appellant and M/s LG Electronics India Pvt Ltd (hereinafter referred to as Company/Industry partner), which has been placed before us. As per the said agreement, the Appellant has registered the Company for providing training as per the NEEM Regulations. The responsibilities of the Company as per the agreement are as follows:-

>Provide adequate facilities in accordance with the NEEM Regulations or as deemed appropriate by the Appellant for the training

>Ensure that the personnel providing the training are fully competent and qualified to provide the training

>Observe the health, welfare and safety standards during the training

>Pay to the Appellant by the 2nd of every month, a consolidated amount as monthly stipend in consideration for the deployment of the trainees which is to be utilized by the Appellant solely for the purpose of paying the trainees.

>Pay the Appellant administration fee of Rs 375/- per trainee per month which is the consideration for assisting the Company with the administrative tasks for deployment of trainees to the Company for training.

>Pay the Appellant a one-time sourcing fee of Rs 1000/- per candidate for sourcing the candidates.

>Implement Digital Workforce Solution (DWS) for attendance and leave management.

>Pay the Appellant Rs 500/- to enable the Appellant to enroll the trainees in various courses like Bachelor of Management Studies, etc.

>Pay the Appellant the cost of medical and accident insurance provided to the trainees.

>Shall convene periodic meetings with the Appellant to discuss issues concerning areas for improving the training

>Shall not initiate disciplinary proceedings against any trainee without intimation to the Appellant

>Shall notify the Appellant in writing if it is desirous of offering employment to any trainee during or after the completion of the training

>Upon completion of the training, the Company shall inform the Appellant so that the Training Completion Certificate can be given by the Appellant.

14. In the context of the Appellant's role as a NEEM Facilitator and their agreement with the industry partner, let us examine the provisions of Rule 33 of the CGST Rules, 2017 which deals with the value of supply of services in case of pure agent.-

"33. Value of supply of services in case of pure agent. - Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely:

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. - For the purposes of this rule, the expression "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration. - Corporate services firm A is engaged to handle (the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B. "

15. A reading of Rule 33 gives the understanding that a pure agent is one who, while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement, at actuals, for such supplies from the recipient of the main supply. In other words, under the pure agent concept, the expenditure which is incurred by the supplier of service for procuring supplies from a third party for the recipient, in addition to his own supplies, is excluded from his value of supply since such expenditure is one which is compulsorily levied on the recipient of service, but has been paid by the supplier of service to the third party on behalf of the recipient and is claimed as a reimbursement from the recipient at actuals. The Appellant's contention is that the Company, who is the recipient of service, has authorized them to procure the services of a third party i.e the trainees and has authorized the Appellant to make the payment of stipend to the

third party on the Company's behalf as a consideration for the supply of service rendered by the third party. The appellant has also argued that the payment of stipend to the trainees which is done on behalf of the Company as its pure agent, is in addition to the services supplied by them on their own account for which consideration is in the form of administration charges, sourcing fees, etc.

16. We find that the Appellant's case does not fit into the above understanding of pure agent. In this case, the Appellant is providing the service of deploying trainees to the Company as per the NEEM Regulations. However, it is the Appellant who is obligated under the NEEM Regulations to pay the stipend to the trainees. Regulation 15 of the NEEM Regulations as well as the terms of the contract entered into with the NEEM Trainee stipulate that it is the Appellant who will pay the stipend to the trainee. Since the trainee has registered with the Appellant as NEEM Facilitator, it is the responsibility of the Appellant to deploy the trainee in a suitable industry to undergo training at the industry for a specific period and pay the stipend during the training period. Merely because the Appellant is getting the stipend amount reimbursed from the Company, will not make the Appellant a pure agent of the Company. The clause regarding stipend in the agreement with the Company does not in any manner give the understanding that the Company has authorized the Appellant to make the payment of stipend to the trainees as its 'pure agent' and neither does the Company own the payment of stipend to the trainees as its liability. The agreement merely states that the reimbursement of stipend received from the Company is a consideration paid for deployment of trainees which is the service supplied by the Appellant. In order to satisfy the 1st condition of Rule 33, it is essential to prove that the Company is obligated to pay stipend to the trainees and that it has authorized the Appellant to make the payment to the trainees on behalf of the Company. We do not find any such authorization in the agreement. In fact, the obligations of the parties as mentioned in 5.1 (vii) of the agreement clearly states as follows: "Teamlease shall pay stipend to the trainees engaged by Company which shall be at par with the prescribed minimum wages payable for unskilled category under Shops & Establishment Act. However, if the trainees are trained on shop floors of manufacturing units, Mines, Refineries, Factories or any non-Shops & Establishment process, Company shall notify Teamlease the list of locations as specified in "Annexure A " together with Industry classification as required under the Regulations where training shall be conducted to enable Teamlease to pay stipends to Trainees in line with the applicable minimum wages payable for unskilled category under the Factories Act. " This clearly evidences that it is the Appellant who is obligated to pay the stipend to the trainees. We therefore, find that the Appellant fails to satisfy condition (i) of Rule 33.

17. We also find that Appellant fails to satisfy the 3rd condition of Rule 33 i.e 'the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.' We find from the agreement with the industry partner that, other than deployment of trainees as per the NEEM Regulations, no other service is supplied by the Appellant. All the charges billed by the Appellant on the Company are only in connection with the supply of trainees for training under NEEM Regulations. Even the stipend paid to the Appellant, albeit for the sole purpose of disbursing to the trainees, is only a consideration paid to the Appellant for the deployment of the trainees. This is made clear by Para 3 of the Agreement relating to Stipend which states thus: "In consideration of dedicated deployment of the Trainees to the Company in accordance with this Agreement, the Company shall pay a monthly stipend ("Stipend") in the Bank Account as detailed in Annexure B, to be utilized by TEAMLEASE solely for the purpose of paying the Trainees in accordance with the NEEM Regulations, which shall be equal to or greater than the prescribed minimum wages for unskilled category under applicable law and employee compensation insurance premium on or before the [2nd] day of each calendar month. For the avoidance of doubt it is clarified that the Stipend payable shall be a single consolidated amount and shall not be subject to further withholding tax, namely Tax Deducted at Source or any other statutory deductions or payments, except for income tax if applicable. " Therefore, we find that even on this count, the Appellant does not qualify as a pure agent.

18. Further, we find that the activity of deploying trainees to the Company to undergo training is undertaken by the Appellant in his own interest as a NEEM Facilitator. While the NEEM Regulations make provisions for the NEEM Facilitator to partner with Companies/Industries to provide the training, it makes the Facilitator responsible for payment of stipend and for issue of the training completion certificate. The Regulations do not cast any responsibility on the Company or the Industry who is providing the practical training. It is the responsibility of the Facilitator to furnish data of the trainees to AICTE. We also find that being registered with AICTE as a NEEM Facilitator, it is obligatory on the part of the Appellant to deploy all the trainees registered with him to suitable industries to undergo practical on-the-job training and to pay them the monthly stipend failing which the Appellant faces the risk of having his NEEM Facilitator registration revoked. No doubt the terms of the agreement with the Company specify that the stipend amount paid to the Appellant is to be utilized only for the purpose of paying the trainees, but this does not make the Appellant a pure agent of the Company since the NEEM Regulations does not require the Company/Industry to pay a stipend to the trainees. Therefore, the Appellant does not satisfy clause (c) of the definition of 'pure agent' as given in the explanation to Rule 33.

19. The lower authority has held that the Appellant does not qualify as a pure agent for the reason that the Appellant is not incurring the cost of the stipend initially and later claiming the same from the Company. They have held that since the Company is paying the stipend amount to the Appellant on the 2nd of the month and the Appellant disburses the stipend to the trainees on the 10th of the month, no expenditure is incurred by the Appellant and the amount received cannot be termed as reimbursement. The Appellant has argued before us that the lower Authority has misconstrued the provisions of Rule 33 and brought in the concept of timing of expenditure which is not present in Rule 33. We are inclined to agree with this argument of the Appellant and hold that the timing of receipt and disbursement of stipend is not the criteria to determine whether the Appellant is a pure agent. What is required to be seen is whether the payment of stipend by the Company to the Appellant is a reimbursement of expenditure which is to have been borne by the Company but met by the Appellant on his behalf as a pure agent. We have already stated that such is not the case in the matter before us. The task of providing adequate training to the enrolled trainees and payment of stipend to the trainees is an obligation on the part of the Appellant and as part of this responsibility and in their own interest they have deployed trainees to the premises

of the Company. Since the deployment of trainees to the Company and ensuring that the trainees complete the training is an activity undertaken by the Appellant in his own interest as a NEEM Facilitator, the Appellant fails to satisfy the definition of 'pure agent' as given in Rule 33 of the CGST Rules. Merely because the agreement with the Company states that the stipend amount will be utilized for payment to the trainees and the invoice shows the stipend amount separately, it does not mean that the Appellant is a pure agent and is absolved of his liability. Therefore, while agreeing with the ruling given by the lower Authority that the Appellant does not qualify to be a pure agent of the industry partner to the extent of reimbursement received towards stipend paid to the trainees, we disagree with the reasoning given by the lower Authority to reach this conclusion.

We accordingly set aside the reasoning and hold that for the reasons set forth in our discussions in the aforesaid paras, the Appellant fails to qualify as a pure agent with regard to the payment of stipend to the trainees which is reimbursed by the Company.

20. The Appellant had drawn our attention to the Advance Ruling given in their own case on the same set of facts by the Gujarat Authority for Advance Ruling wherein it was held that they are pure agents to the extent of reimbursement of stipend. Attention has also been invited to the ruling given by the Karnataka Authority for Advance Ruling in the case of Cadmaxx Solutions Education Trust wherein it has been held that the stipend amount required to be paid by the trainer to the trainee, which is paid through the applicant (a NEEM Facilitator) is not taxable in the hands of the applicant since the applicant is only acting as a pure agent. We have gone through the said rulings and find that in both cases, the Authorities have not examined the case in the light of the NEEM Regulations, 2017. Therefore, these ruling do not help the Appellant's case before us.

21. In view of the foregoing, we pass the following order.

**ORDER**

We uphold the order No. KAR ADRG 07/2022 dated 8th March 2022 passed by the Advance Ruling Authority and the appeal filed by the Appellant M/s. Teamlease Education Foundation. stands dismissed on all accounts.

(RANJANA JHA)

Member

Karnataka Appellate Authority  
for Advance Ruling

(SIHKHA C)

Member

Karnataka Appellate Authority  
for Advance Ruling