

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.25471 of 2015
Date of decision: 4.2.2016**

Punjab Unaided Technical Institutions Association

.....Petitioner

Vs.

Union of India and another

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Kumar Vishav Aggarwal, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition is for declaring clause 13(c) of Notification No.25/2012 Service Tax dated 20.6.2012, Annexure P.2 as unconstitutional, void and illegal as it provides class legislation there being no intelligible differentia of reasonable classification in religious charitable institutes and educational charitable institutes and both registered under Section 12AA of the Income Tax Act, 1961 (in short, "the Act"). Further

prayer has been made for a direction to the respondents not to levy tax on the contractors who provide construction service to the petitioner i.e. indirect tax to be borne by the petitioner.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is an association of private unaided technical institutions in the State of Punjab. The colleges associated with the petitioner association are imparting education in the field of engineering, M.Sc., MCA, MBA, BBA and other subjects. The main aim and object is to provide education to the general public at large by its various institutes. The petitioner is getting construction of its educational buildings from local contractors. Earlier the service tax on constructions in respect of charitable educational institutes was exempt vide circulars dated 10.9.2004 and 17.9.2004. Vide notification dated 20.6.2012, Annexure P.2, service tax was imposed on the said service as exemption was granted only to entities registered under Section 12AA of the Act predominantly for religious purposes for general public by class legislation. Hence the instant writ petition with the prayer as noted above.

3. We have heard learned counsel for the petitioner.

4. Challenge in this petition is to Clause 13(c) of the notification dated 20.6.2012. The relevant part of the notification reads thus:-

“GSR...(E). In exercise of powers conferred by sub section (1) of section 93 of Finance Act 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012 – Service Tax, dated the 17th March 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (i) vide number GSR 210 (E) dated the 17th March 2012, the Central Government being satisfied that it is

necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely :-

1. to 12. xxxxxxxxxx

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of :-

a) & (b) xxxxxx

c) a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public.”

5. A perusal of the above shows that the services provided by entities registered under Section 12AA of the Act and meant primarily for religious use by general public shall be exempted from service tax.

6. A statute enacted by Parliament or legislature can only be struck down by courts on two counts which are viz. (a) lack of legislative competence; and (b) violation of any of the fundamental rights granted in Part III of the Constitution of India or any other Constitutional provision. It is well settled that no enactment can be struck down by merely saying that it is arbitrary, unreasonable or unjust. It was pronounced by the Apex Court in State of *Andhra Pradesh vs. McDowell & Co.* AIR 1996 SC 1627 as under:-

“No court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State legislatures to make laws is limited in two ways viz. the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the

position is similar to the United States of America. The power of the Parliament or for that matter, the State legislatures is restricted in two ways. A law made by the Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground...”

In other words, a provision, statute or law shall not be declared to be unconstitutional and void solely on the ground of unjust and harsh provisions or it violates some natural, social, political or economic rights of citizen, unless it is established that such injustice infact is prohibited or violates the rights guaranteed or protected by the Constitution of India.

7. It is well recognized that the notification issued by the authorities by way of delegated legislation can be held to be beyond statutory competence if the power to issue the same does not emanate from the statutory provisions. Equally, it can also be struck down on the ground that it is arbitrary, unreasonable or unjust. Rather, clause 13(c) of the notification dated 20.6.2012 exempts building owned by an entity registered under Section 12AA of the Act and meant predominantly for religious use by general public from payment of service tax and is, thus, a beneficial exemption granted thereunder which cannot be said to be unconstitutional. Infact, learned counsel for the petitioner has not been able to show that the competent authority is not empowered to issue the impugned notification. Once there exists legislative competence in the State legislature or competent authority, in the absence of learned counsel for the petitioner to demonstrate that the enactment/provision/notification is arbitrary,

discriminatory or violative of Article 14 of the Constitution of India, it cannot be declared to be unconstitutional.

8. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 04, 2016
'gs'

(Raj Rahul Garg)
Judge