**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: **30.04.2019**

CORAM

**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**W.P.(MD).No.11054 of 2019**

**and**

**W.M.P.(MD) No.8416 of 2019**

Thiagarajar College of Engineering,
Rep. by its Mr.Sivakumar, Accountant,
Thiruparankundram,
Madurai - 625 015. ... Petitioner

-vs-

Joint Commissioner,
Office of the Commissioner of Central Excise,
CR Building, Lal Bahadur Shasthiri Road,
Bibikulam,
Madurai - 625 002. ... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in C.No.V/ST/15/03/2017 - Adjn in Show Cause Notice No.04/2017-ST dated 13.01.2017 passed by the Respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.R.Aravinthan
Standing Counsel

**O R D E R**

The instant writ petition has been filed challenging the Show Cause Notice dated 13.01.2017 issued by the respondent under the Finance Act, 1994, calling upon the petitioner to pay service tax for the fees collected by them towards internet fee and skill development fee.

2.It is the case of the petitioner that being an educational institution, they do not come within the purview of the provisions of the Finance Act, 1994 and therefore, they are not liable to pay service tax.

3.The learned counsel for the petitioner drew the attention of this Court to Section 66D of the Finance Act and in particular he refers to Section 66D(l), which reads as follows:

"66. ...
(l) services by way of -
(i) pre-school education and education up to higher secondary school or equivalent;
(ii) education as a part of a curriculam 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;
.."

4.According to the learned counsel for the petitioner all the courses offered by the petitioner institution are recognised courses and therefore, service tax is not payable to the respondent. Learned counsel also drew the attention of this Court to the Fee Fixation Committee order dated 13.06.2013 and in particular he referred to the remarks column in the tabular column of the fee fixation order, wherein it has been clearly stated that the fee collected by the petitioner as annual fee includes various fees like Tuition fee, admission fee, Special fee, Laboratory/Computer/Internet fee, Library fee, Sports fee, Placement and Training fee, Maintenance and Amenities fee, Extra curricular activities fee and other recurring expenditure and development charges.

5.Referring to the aforesaid Section 66D of the Finance Act, 1994 as well as the Fee Fixation Order passed by the Fee Fixation Committee, the learned counsel for the petitioner would submit that the impugned Show Cause Notice has been issued without authority under law and therefore, the petitioner is entitled to file a writ petition under Article 226 of the Constitution of India, challenging the impugned Show Cause Notice.

6.Mr.R.Aravinthan, learned Standing Counsel, accepts notice for the respondent.

7.According to the learned Standing Counsel for the respondent, the petitioner has only challenged the Show Cause Notice and no final orders have been passed. According to him, the objections raised by the petitioner before this Court can very well be raised by the petitioner before the authority concerned.

8.Considering the provisions of law relied upon by the learned counsel for the petitioner as well as the fee fixation order, this Court is of the considered view that the respondent who has issued the impugned show cause notice will have to adjudicate and pass final orders only after considering the objections raised by the petitioner in this writ petition.

9.The objections raised by the petitioner are as follows: -

(a) Being an educational institution, they are outside the purview of the Finance Act, 1994, under Section 66D(l) of the Finance Act, 1994 and therefore, no service tax is attracted.

(b) All the courses conducted by them are recognised courses. Even though the petitioner is not conducting courses on internet and skill development, they form part of the curriculum for which the recognised degree has been awarded by the recognised university. This being the case, they are outside the purview of the Finance Act, 1994 and no service tax is attracted.

(c) Further, the fee fixation committee has fixed the total annual fee and that alone the petitioner can collect from the students under the fee fixation order dated 13.06.2013 and the said fees does not include service tax. But despite the same, the respondent has demanded payment of service tax from the petitioner.

10.Being a Show Cause Notice, it is settled law that it can be challenged under Article 226 of the Constitution of India only when it has been issued without authority under law. Even though the petitioner submitted that the impugned Show Cause Notice has been issued without authority under law, it is the case of the respondent that the impugned Show Cause Notice has been issued only in accordance with law. This being the case, the impugned Show Cause Notice cannot be quashed by this Court. However, the respondent is directed to pass final orders, after considering all the objections raised by the petitioner viz., objections (a) to (c) referred to above in accordance with law and pass final orders within a period of 12 weeks from the date of receipt of a copy of this order.

11.With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

Joint Commissioner,
Office of the Commissioner of Central Excise,
CR Building, Lal Bahadur Shasthiri Road,
Bibikulam,
Madurai - 625 002.

+1 CC to M/s.R.ARAVINDAN, Advocate ( SR-64502[F] dated 30/04/2019 )

+1 CC to M/s.JOSEPH PRABAKAR, Advocate ( SR-64737[F] dated 02/05/2019 )

SJ



Order made in
**W.P.(MD).No.11054 of 2019**
**and**
**W.M.P.(MD) No.8416 of 2019**
30.04.2019

KM/(09.05.2019) 4P 4C