BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.09.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.8353 of 2019

and

W.M.P.(MD)No.6567 of 2019

(Through video conference)

Bharathidasan University,
Rep. by its Registrar ...Petitioner

-Vs-

The Joint Commissioner of GST and Central Excise,
Office of the Commissioner of GST and Central Excise,
Williams Road,
Cantonment,
Tiruchirappalli. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings passed by respondent in C.No.V/ST/15/19/2018-S-T.Adjn, dated 20.02.2019 and quash the same.

For Petitioner : Mr.VR.Shanmuganathan

For Respondent : Mrs.S.Ragaventhre
Standing Counsel

ORDER

Prayer sought for herein is for a Writ of Certiorari, calling for the records relating to the impugned proceedings passed by respondent in C.No.V/ST/15/19/2018-S-T.Adjn, dated 20.02.2019 and quash the same.

2.Petitioner is a State University, which was established by an Act of State legislature called "The Bharathidasan University Act, 1981". It is an affiliating University having territorial jurisdiction over the revenue Districts of Tiruchirappalli, Thanjavur and Pudukkottai presently divided into Tiruchirappalli, Karur, Perambalur, Ariyalur, Thanjavur, Nagapattinam, Thiruvarur and Pudukkottai.

3.The petitioner/University is holding service tax Registration No.AABAB0471ASD002 and have been paying service tax duly. While, that being so, the respondent revenue seems to have called upon the petitioner/University to provide certain details relating to the colleges affiliated to the University and the affiliation fees collected from them and the general inspection charges for the affiliated colleges for the period from 01.07.2012 to 31.03.2017. The petitioner had given reply. Thereafter, a show cause notice was given on 23.10.2018, by the respondent revenue to the petitioner stating that the petitioner/University under two heads is liable to pay service tax. The first head is renting of immovable properties, such as banks, post office etc., and the second head is other services of the University like affiliation fees, application fee for affiliation of new courses and rent collected from commercial establishments, etc.

4.Altogether, the revenue issued a show cause notice for the proposed tax due of service tax on those heads for a sum of Rs.54,24,258/-.

5.The petitioner/University had given reply and in fact it seems to have paid the service tax on 04.01.2019, however, without prejudice their right to challenge the proposed action on the part of the revenue to levy the service tax on such services rendered by the petitioner/University.

6.Ultimately, on 20.02.2019, the respondent revenue passed order in original, whereby, confirming the proposal made through the show cause notice, and accordingly, demanded the service tax levied against them, and also order of levy of interest under Section 75 of the Finance Act, 1994, and penalty to the tune of Rs.35,01,093/- under Section 78 of the Finance Act, 1994, and also imposing a penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994. Challenging the said order in original, the present writ petition has been filed.

7.Mr.VR.Shanmuganathan, learned counsel appearing for the petitioner, at the outset, would submit that the issue raised in this writ petition is covered by a recent decision of this Court, in the matter of Madurai Kamaraj University v. Joint Commissioner, Office of the Commissioner GST & Central Excise in W.P(MD)No.20502 of 2019 dated 16.08.2021.

8.However, Mrs.S.Ragaventhre, learned Standing Counsel appearing for the respondent would vehemently contend that the facts of this case are slightly different from the facts of the Madurai Kamaraj University case and therefore, the decision taken in the said case cannot be said to be made applicable to the facts of the present case.

9.She would also submit that if the petitioner/University having permitted the third parties to occupy the lands and buildings of the petitioner/University to various service providers, out of which, commercially, they earned rent, that cannot be fit in within the meaning of Educational Services, she contended. Therefore, the learned Standing Counsel would submit that, it cannot be accepted that the Judgment in Madurai Kamaraj University cited supra would be made applicable to the facts of the present case.

10. In fact, I had an occasion to consider the case of the said University, namely, Madurai Kamaraj University, in the said case, in W.P(MD)No.20502 of 2019, dated 16.08.2021, where, a detailed order having considered the exemption provided under the authorised provision of the Finance Act, 1994, as well as "Mega Exemption Notification" of the year 2012, I have allowed the said writ petition declaring that the University, being an affiliating University cannot be brought under the purview of service tax for the services rendered including the service of affiliation and other allied services.

11. The relevant portion of the order cited supra reads thus:

> "11. After having gone into these arguments and the connected records, this Court feels that, the only question posed before this Court for decision is that, whether the services rendered by the petitioner university by granting affiliation and its allied activities and also by providing shelter in their campus to the service providers like Bank, Post Office, or catering etc., directly beneficial to the students, staff and faculty of the university, are exempted services within the meaning of Section 66-D of the Finance Act and also under the Mega Exemption Notification of the year 2012 as amended from time to time.
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> **12.** The history of introduction of service tax has been traced by the learned Counsel for the petitioner, which has been discussed in the earlier paragraphs. Up to 2012, the term "service" seems to have not been explained. First time, the term "service" has been explained under Clause 44 of Section 65-B, which has already been quoted hereinabove.

13. While giving such explanation for the term "service", the legislature also thought it fit to introduce two sections, namely, Section 66-B and 66-D. 66-B is a charging section which makes it clear that, there shall be levied a tax at the rate of 12% on all services other than those specified in the negative list. Therefore, what are all the services provided under the negative list are taken away from the purview of Service Tax net. The exempted services as provided under Section 66-D Clause 'l', alone has been quoted hereinabove.

14. Under Clause 'l' there are three categories of services by educational institutions. One is pre-school to higher secondary education service, second is education as a part of curriculum for obtaining a qualification recognised by law for the time being in force and the third one is education as a part of an approved vocational course. This Court feels that, sub-clause 2 of Clause 'l' of Section 66-D is relevant for the present issue, the reason being that, whatever be the education as a part of curriculum for obtaining a qualification recognised by law for the time being in force means whatever be the Degree, Diploma, PG diploma, Professional Degree or Post Graduate Degree are concerned, in order to obtain such qualification, if education being imparted as a part of curriculum, that education shall be part of service for the purpose Clause 'l' for getting exemption.

15. When an educational institution is imparting education as part of curriculum for obtaining a qualification as stated supra, no doubt, such services are being exempted and in this context, there can be no quarrel from the revenue side also.

16. However, whether such kind of service of imparting education as part of curriculum for obtaining a qualification whether is rendered by the petitioner university is a question where, it is the stand of the revenue that, the university is not directly imparting any education except providing affiliation to the institution, but would not deal with imparting education to the students. Therefore, the activities of affiliation and allied activities like inspection etc., cannot be treated as imparting education by the educational institution concerned.

17. However, insofar as the said stand taken by the revenue is concerned, we must take into aid the expanded provision which has subsequently been inserted under mega notification referred to above, whereby, clause 9 has been inserted with effect from 11.07.2014, where, the services provided by the educational institution to its students, faculty and staff are mentioned. The word "students", that we can understand, with, the services provided, is nothing but imparting education, whereas, the services to be provided by the educational institution to its faculty and staff is concerned, certainly, it may not be a direct activity of imparting education. No staff or faculty is going to get any imparting of education either from the institution or from the university. Hence, it is not limited to the services of imparting education to students alone for the purpose of exemption, but, it expands beyond which, where, whatever the services to be provided by the educational institution to its faculty and staff shall also form part of the activity of education being provided by way of services by the educational institution. If we take up this language used, exactly, the services provided by the educational institutions including the university not only for students but also for faculty and staff would be covered under the exempted purview.

18. Not stopping with that, it goes further saying that, an educational institution can render services by way of transportation of students, transportation of faculty and transportation of staff. Like that it further goes, like, catering including any mid-day meal scheme sponsored by the Government. It further expands to security or cleaning or housekeeping services performed in such educational institutions. It also expands to services relating to admission or conduct of examination by such institutions. The word 'such institution' according to the revenue is nothing but the institution which impart education and conduct examination ie., affiliated college and not the university. But, in the considered view of this Court, that kind of interpretation is not possible, in view of the expanded meaning that has been given and the explanation given, which shows the intention of the Central Government who issued the mega exemption notification, under which, we can understand that, what are all the allied services that shall form part of the educational services, which may be services provided to the staff, services provided to the faculty, expanded services like transportation, boarding and lodging and other allied activities enabling the students as well as the staff and faculty to come to the institution and getting imparted the education.

19. In this context, sub-clause (iv) of clause 9 referred to above is so important, which says that, services related to admission or conduct of examination by such institution are exempted services. Here, the services rendered to admission is two fold, one is the admission being made for the students in a particular institution. However, such admission can be made legally by the said institution, only on the basis of the affiliation granted by the University, fixing the intake strength of each and every course for the particular academic year. Illustratively, if there is a class where the university has given permission/affiliation for 100 students, not even 101 students can be admitted by the college. Therefore, that admission of the students strictly relates to the affiliation granted by the university. Therefore, the affiliation activity is an integral part of imparting education for any student for getting qualified to get a qualification like degree or diploma. Accordingly, the services provided by the educational institution like the petitioner institution ie., the university to give affiliation can be an integral part of the educational services, being provided jointly, both by the University and the college. The college cannot independently function without the affiliation of the university. Therefore, for the purpose of providing the services of education, both the university as well as the college concerned, who get affiliated to the university, cannot be separated.

20. This is the purposive interpretation which is only possible, because, the services relating to admission and also the conduct of examination by such institution has been exempted. When we talk about the conducting of examination, it is the vehement contention of the revenue as submitted by the learned Standing Counsel by relying upon the advance ruling referred to above, stating that, exempted service on the conduct of examination is that, it relates to admission to institution and anything related to examination, based on which, degree, title or diploma is conferred to the students.

21. With respect, this Court is of the concerned view that, that kind of narrow or pedantic interpretation cannot be possible in the words "conduct of examination". The reason being, the very prime function of the petitioner university under the statute, under which it has been created, under Section 4(4) of the University Act, which has been quoted herein above, is to hold examinations and to confer degrees, titles, diplomas and other academic distinctions. Therefore, holding or conducting an examination is primarily a job of the university and the colleges affiliated to the university are only facilitators. Therefore, examinations are not conducted directly by the colleges, it is being conducted by the university, but the facilitator is the college. Therefore, the word "conduct of examination by such institution" means, conduct of examination by the university and the college and not by the college alone. The examination is the examination of the university, for which, facilitation is given by the college, wherein the examinations are conducted and ultimately, valuation is to be done by the university and marks are awarded and degree is conferred by the university. Therefore, it is the university, where, the facilitator is the college, where, the examination is being taken place and therefore, the word "conduct of examination", cannot have such a narrow and pedantic interpretation as has been given by the Advance Ruling Authority in their order dated 19.11.2020, which has been in fact, heavily relied upon by the respondent revenue. Therefore, this Court is not subscribing the said view given by the Advance Ruling Authority in their order dated 19.11.2020.

22. In this context, it is further to be noted that, the very Advance Ruling Authority in the said order in paragraph No.7.6. has also made it clear that, we do not part any opinion on the claim of the applicant that they extend such services to the institutions by extending the affiliation. Therefore, the said issue as claimed by the said university in the said ruling of the Advance Ruling Authority has not been answered and it has been kept open by stating the aforesaid that they do not want to express any opinion on such claim. Therefore, the claim made by the university on that aspect even though was indicated, the issue was kept open. In that context also, this Court feels that, no such pedantic or narrow view can be taken as that would destroy the very concept of providing exemptions to the services rendered by the educational institutions. The word "educational institution", cannot denote only the college affiliated to the university, but, it includes the university. As stated above, without the university, college cannot impart education on its own.

23. Moreover, the regime of service tax, ie., prior to the GST came into the field, had continuously made available the exemption provisions, initially by Section 66-D, from 2012, subsequently the mega notification, wherein, in the year 2014 clause 9 was inserted and subsequently by notification 9 of 2016, Clause 'l' of Section 66-D, which was omitted from the year 2016, had been reintroduced by introduction of clause (oa), where, under the heading "educational institution", the exact Clause 'l' of Section 66-D has been inserted. Therefore, throughout the regime between 2012 and 2017, the educational institution had been provided with the exemption as has been stated in various provisions of the Act as well as the mega notification, followed by the amended notification and during all these periods, these institutions including the universities can very well enjoy the exemption. Accordingly, the stand taken by the revenue for levying service tax for the services being provided by the petitioner university cannot be approved.

24. Insofar as the second part of the claim made by the respondent university against levying the service tax on the services such as renting of immovable property for the purpose of bank, post office, canteen etc., as we stated above, these are all allied services of education which are also included in the purview of educational services, in view of clause 9, which has given an expanded meaning of educational services which includes the services to be provided not only to the students, but also faculty and staff. In this category, the faculty and staff of the university are getting whatsoever services by way of transportation, boarding and lodging etc., are also to be included in the meaning educational services being provided by the educational institutions ie., the petitioner herein which can also be exempted from the purview of service tax. Therefore, that aspect of assessment and demand made for levying service tax on the services provided by the petitioner institution under the heading renting of immovable property also, in the considered view of this Court, cannot be sustained. Therefore, on both aspects, the assessment and demand made by the respondent, in the considered view of this Court, is untenable and therefore, it is liable to be interfered with.

25. The alternative appeal remedy plea raised by the respondent also has been considered and in this context, the judgment of the Gujarat High Court has been placed for my consideration, where the Court has simply relegated the party therein to go before the appellate authority under Section 86 of the Finance Act. In my considered view, here, the issue is, whether the exemption claimed by the petitioner is tenable or not is the main question, where, already there has been a judgment by the learned Judge by order dated 22.02.2021, as referred to above, where certain area has not been considered, as the mega notification was not brought before the Writ Court and therefore, it normally cannot be resolved by the appellate authority under Section 86 of the Finance Act. Therefore, that kind of relegation of parties to the appellate authority, in this context, in the present case, does not arise.

26. In the result, the impugned order is liable to be set aside as the petitioner educational institution ie., the university cannot be assessed for demanding any service tax for the services of education provided by them, which includes affiliation or other services provided for the students, faculty as well as the staff of the university. Therefore, in all respect, the impugned order shall not stand in the legal scrutiny.

27. Accordingly, the impugned order is set aside and the writ petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed."

12. In view of the said order having been passed, where the issue raised in this writ petition is covered, this Court has no hesitation to hold that the present writ petition is to be allowed, accordingly, the impugned order is set aside and the petition is allowed, as a sequel, if any tax already paid, pursuant to the impugned demand, by the petitioner towards the respondent revenue, the same shall be refunded within a period of 60 days from the date of receipt of a copy of this order.

13.With these directions, this writ petition is ordered accordingly. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PNM/PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Joint Commissioner of GST and Central Excise,
Office of the Commissioner of GST and Central Excise,
Williams Road,
Cantonment,
Tiruchirappalli.

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-30066[F] dated 23/09/2021)

W.P.(MD)No.8353 of 2019
21.09.2021

_RD(17.12.2021) 10P 3C