IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.21907 and 26300 of 2021
and
W.M.P.Nos.23106, 27758 & 27761 of 2021

W.P.No.21907 of 2021

The Tamil Nadu Dr.MGR Medical University
Rep.by its Registrar, No.69, Anna Salai
Guindy, Chennai 600 032. ... Petitioner

-Vs-

1. The Principal Additional Director General
   Directorate General of Goods and Services Tax,
   Intelligence, Chennai Zonal Unit
   C-3, C-Wing II Floor, Rajaji Bhavan
   Besant Nagar, Chennai 600 090.

2. Principal Commissioner of Central Tax
   and GST, MHU Complex, No.692,
   Anna Salai, Nandanam, Chennai 600 035.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records relating to file F.No.INV/DGCEI/CHZU/ST / 19/2017 O R No.98/2017 show cause Notice No. 05/2018 dated 24.1.2018 passed by the First respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabhakar

For Respondents : Mrs.R.Hemalatha
Senior Standing Counel

W.P.No.26300 of 2021

The Registrar
Periyar University, Periyar Palkalai Nagar
Salem-636 011. ... Petitioner

-Vs-

1. The Principal Chief Commissioner of GST
   and Central Excise
   26 GST Bhawan, 1 Uthamar Gandhi Road,
   Thousand Lights West, Nungambakkam, Chennai- 600 034.

2. The Commissioner
   Office of the Commissioner of GST and Central Excise
   No.1, Foulks compound,
   Anai Road Salem-636 001.

3. The Joint Commissioner
   Office of the Commissioner of GST and Central Excise
   No.1 Foulks Compound Anai
   Road salem- 636 001.

4. The Assistant Commissioner
   Salem Division- I Office of the Assistant
   Commissioner of GST and Central Excise
   Salem I Division, No.106 Varalakshmi Orchid
   Ramakrishna Road, Salem – 636 007.

5. The Superintendent
   Office of the Superintendent of Customs
   Central Excise and Service Tax Salem III Range
   No.1/ 276 Meyyanoor Road Shiva
   Towers Salem- 636 004. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the record relating to the impugned order issued by the 2nd respondent commissioner of GST and central Excise in C.No. V/ 15/ RIS AES/ 25/ 2018- ST dated 31.03.2021 demanding payment of service tax from the Petitioner University along with extension of limitation period interest and penalty for the period from 01.07.2012 to 30.06.2017 and the consequential order passed by the 5th respondent superintendent of customs central Excise and Service tax Salem III Range vide proceedings in O.C. No. 24/ 2021 dated 05.04.2021 directing the petitioner University to pay service tax immediately and submit the challans for the same, quash the same.

For Petitioner	:	Mr.P.Godson Swaminath for M/s.Isaac Chambers
For Respondents	:	Mr.Umesh Rao.K Senior Standing Counsel

C O M M O N O R D E R

Since the issue raised in these writ petitions is one and the same, with the consent of the learned counsel appearing on either side, both the writ petitions were heard together and disposed of by this common order.

2. That the petitioners are State Universities created under the Act of State Legislature. The petitioner University in W.P.No.21907 of 2021 is a Medical University under whom all the medical colleges run in the State of Tamil Nadu are affiliated.

3. In respect of the petitioner in W.P.No.26300 of 2021 is concerned, it is a general University, where other non professional colleges in the territorial jurisdiction of that University are affiliated.

3. These Universities are primarily affiliating Universities under which several institutions get affiliated and the students admitted in the affiliated institutions are being tested by conducting examinations and the degrees are being awarded by these Universities.

4. For the said process of affiliation and related activities including examinations etc., the petitioner Universities respectively have fixed certain fee structure as per the decision taken by the respective Syndicate or Governing Council of the Universities concerned.

5. Apart from this fee fixed for affiliation and related activities, certain immovable properties are rented out which are located in the respective University campuses for the purpose of housing Bank, ATM, Post Office, Staff Canteen, Students Canteen etc.,

6. According to the learned counsel for the petitioners, these activities are educational activities and therefore for these educational activities whatever the fee or rent collected by these Universities from those for whom it has been rented out, as the same are only for the benefit of the students and staff of the Universities, the Universities are to be exempted from the purview of Service Tax.

7. They also submitted that, whether these services being rendered by the Universities are to be exempted from the purview of service tax is no more res integra as that issue has been exhaustively considered and decided by a decision of this Court in the matter of "Madurai Kamaraj University -Vs- Joint Commissioner, Office of the Commissioner of GST and Central

Excise, Madurai" dated 16.08.2021 made in W.P.(MD) No.20502 of 2019.

8. Relying upon this decision, the learned counsel for the petitioner Universities would contend that, the issue raised in these writ petitions is squarely covered by the said decision and therefore the show cause notice issued in respect of petitioner University in W.P.No.21907 of 2021 and the Order-in-Original issued in respect of petitioner University in W.P.No.26300 of 2021 are liable to be set aside in view of the law declared in the said order cited supra.

9. Mrs.R.Hemalatha, learned Senior Standing Counsel for the respondents in W.P.No.21907 of 2021 and Mr.Umesh Rao, learned Senior Standing Counsel appearing for the respondents in W.P.No.26300 of 2021, on instructions would submit that, first of all against the order in Madurai Kamaraj University case cited supra, an intra-court appeal has been filed, where the appeal has been entertained, however no interim stay has been granted.

10. Since the writ appeal filed against the order in Madurai Kamaraj University case dated 16.08.2021 having been entertained by the Division Bench of this Court, the issue is not conclusively decided and therefore the benefit arising out of the said decision cannot be extended to these petitioner Universities, they contended.

11. That apart, the learned Standing Counsel appearing for the respondents in both the writ petitions have also submitted that, assuming without admitting that the services rendered by the Universities in providing affiliation to the colleges for which fee is collected by them as affiliation fee and for any other allied activities such as conduct of examinations, award of degree etc., are concerned, if at all that may be covered by the decision of this Court in Madurai Kamaraj University case cited supra, insofar as the revenue which they derive from various tenants like Bank, Post Office, Canteen etc., for whom immovable properties of the Universities have been let in, that cannot be brought under the purview of exemption clause which was provided only to give exemption for educational activities.

12. In other words, they would contend that, the revenue derived by the Universities by way of rent from various third parties for letting out the property belonging to the Universities cannot be treated as educational services. Therefore, for such revenue that they collect definitely they shall be brought under the purview of service tax. Hence, to that extent the impugned proposal made by way of show cause notice and the order-in-original passed against the petitioners

herein can be sustained, they contended.

13. I have considered the rival submissions made by the learned counsel appearing for either side and have perused the materials placed on record.

14. As has been rightly pointed out by the learned counsel for the petitioner Universities, the issue raised in these writ petitions is no more res integra, at least for the present, in view of the judgment made in "Madurai Kamaraj University -Vs- Joint Commissioner, Office of the Commissioner of GST and Central Excise, Madurai" dated 16.08.2021 made in W.P.(MD) No.20502 of 2019., where I had an occasion to consider the issue in depth and passed an exhaustive order, where all positive grounds raised by the petitioner as well as the respondent in that case having been considered, was given an answer by this Court in the said judgment.

15. Insofar as the objections raised by the learned Standing Counsel appearing for the respondents that, the rental income derived by these Universities cannot be treated as educational services is concerned, that has also been dealt with seperately in my order dated 16.08.2021 in the case cited supra and in order to understand the same, the relevant portions of the said order is extracted hereunder.

> " 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.”

16. Therefore, the services rendered by the petitioner Universities by way of affiliation and allied activities including the conduct of examinations, awarding of degrees, diplomas etc., and also the income they derived from rent paid by the third parties like Postal Department, Banks etc., and also to run Canteen for the purpose of Students and Staff, were considered to be allied services attached with the educational activities undertaken by the Universities and therefore they are also exempted.

17. Since that view had been taken in the Madurai Kamaraj University case, I have no hesitation to hold that the issue raised in entirety in these two writ petitions is covered by the decision of this Court cited supra. In that view of the matter, the following orders are passed in these writ petitions.

- That the impugned show cause notice dated 24.01.2018 in W.P.No.21907 of 2021 and the impugned Order-in-Original dated 31.03.2021 in W.P.No.26300 of 2021 are hereby set aside.

- The writ petitions in all respects are allowed in the terms indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Principal Additional Director General
   Directorate General of Goods and Services Tax,
   Intelligence, Chennai Zonal Unit,
   C-3, C-Wing II Floor, Rajaji Bhavan
   Besant Nagar, Chennai 600 090.

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   and Central Excise 26 GST Bhawan,
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   Salem III Range, No.1/ 276 Meyyanoor Road,
   Shiva Towers, Salem- 636 004.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.25382

+1cc to M/s.Umesh Rao.K, Advocate, S.R.No.25389

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.25576

W.P.Nos.21907 & 26300 of 2021

GSM(CO)
UMA(16/06/2022)