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W.P.No.15333 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.07.2023

PRONOUNCED ON : 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15333 of 2020
and W.M.P.Nos.19174 & 19178 of 2020

Pondicherry University
Represented by Registrar (i/c)
Kalapet,
Puducherry 605 014.

... Petitioner

VS

1. The Joint Commissioner of GST & Central Excise,
Commissionerate of GST & Central Excise,
No.1, Goubert Avenue,
Puducherry 605 001.

2.The Superintendent of GST & Central Excise,
Office of the Superintendent of GST &
Central Excise,
Range III A,
48/1, III Floor, Aziz Nagar,
Reddiarpalayam,
Puducherry 605 010.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Certiorari calling for the records of the first



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respondent comprised in Order in Original No.27/2019 (ST) dated 29.10.2019 and OC No.170/2020 dated 06.10.2020 issued by the second respondent and quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel.

ORDER

Common issue arises for consideration in W.P.No.11038 of 2022, W.P.Nos.24261 & 27092 of 2022, W.P.Nos.5967 of 2023 and in W.P.No.15333 of 2020.

2. The dispute in this writ petition is under the Finance Act, 1994. The disputes in other writ petitions are under the respective GST Enactments of 2017 as in force with effect from 01.07.2017 for similar supply of services. W.P.Nos.11038, 27092 of 2022 and W.P.No.5967 of 2023 have been filed by the provider and recipient of service. This writ petition has been filed by the service provider itself.



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3. Other writ petitions were de-tagged and heard separately and are being disposed separately.

4. The petitioner in this writ petition is aggrieved by the Order in Original No.27 of 2019 (ST) dated 29.10.2019 passed by the first respondent and consequential recovery order dated 06.10.2020 bearing reference O.C.No.170 of 2020 of the second respondent.

5. By the impugned Order in Original No.27 of 2019 (ST) dated 29.10.2019, the first respondent has confirmed a sum of Rs.1,19,85,616/- towards service tax due from the petitioner. Apart from service tax, interest under Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act have also been imposed on the petitioner vide impugned Order in Original No.27 of 2019 (ST) dated 29.10.2019.

6. Operative portion of the impugned Order in Original No.27 of 2019 (ST) dated 29.10.2019 passed by the first respondent reads as under:-



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ORDER

I. I confirm the demand of Service tax of Rs.1,19,85,616/- (inclusive of Cesses) (Rupees One crore nineteen lakhs eighty five thousand, six hundred and sixteen only) on the consideration received towards provision of Service of Affiliation/Recognition and Service of Renting of Immovable Property during the period from October 2013 to June 2017, under Section 73(2) of the Finance Act. 1994.

II. I order recovery of interest at the appropriate rate on the above amount (i) under Section 75 of the Finance Act. 1994.

III. I impose a penalty of 10.000/- under sub-section (2) of Section 77 of the Finance Act, 1994, for non-registration and non-filing of returns from October 2013 to June 2017: and

IV. I impose a penalty of Rs.1,02,88,307/- {1697309+8590998} (Rupees One Crore two lakh eighty eight thousand, three hundred and seven only) under Section 78 of Finance Act, 1994. [Penalty of Rs.16,97,309/- being 50% of tax liability for the period from Oct'13 to May'15 as per first proviso to Section 78(1) ibid and equivalent penalty of Rs.85,90,998/-for the period from June'15 to June'17 under Section 78(1) of the Finance Act, 1994].



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The option of paying reduced penalty of Rs.29,96,404/- {Rupees Twenty nine lakhs ninety six thousand and four hundred and four only] which is 25% of tax determined is available subject to payment of Service tax determined, interest along with the above said reduced penalty too within thirty days of receipt of this order in terms of clause (ii) to second proviso and third proviso to Section 78(1) of Finance Act, 1994.”

7. The second Impugned Order dated 06.10.2020 bearing reference O.C.No.170/2020 of the 2nd respondent merely calls upon the petitioner to pay the aforesaid amount confirmed by the first respondent vide impugned Order in Original No.27 of 2019 (ST) dated 29.10.201, failing which it is stated that action under Section 87(b)(ii) of the Finance Act, 1994 will be initiated.

8. The learned counsel for the petitioner has placed reliance on the decisions of the learned Single Judge of this Court in the following two cases:-



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i)Madurai Kamaraj University vs. Joint Commissioner, Office of the Commissioner of GST and Central Excise, Madurai, 2021 (54) G.S.T.L. 385 (Mad.)

ii)The Tamil Nadu Dr.MGR Medical University, Chennai vs. The Principal Additional Director General Directorate General of Goods and Services Tax, Intelligence, Chennai, 2022 (64) G.S.T.L. 475 (Mad.)

9. The learned counsel for the petitioner has also brought to the attention to the decision of the Madurai Bench of this Court in **Manonmaniam Sundaranar University vs. The Joint Director (GST Intelligence), Coimbatore, 2022 (58) G.S.T.L. 27 (Mad.)**. In **Manonmaniam Sundaranar University vs. The Joint Director (GST Intelligence), Coimbatore, 2022 (58) G.S.T.L. 27 (Mad.)**, this Court has allowed the case of the petitioner therein except to the extent of renting of immovable property.



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10. Like the **Manonmaniam Sundaranar University, The Tamil**

Nadu Dr.MGR Medical University, Chennai and The Madurai

Kamaraj University, the Petitioner is also providing services to various colleges seeking affiliation with it. Prior to affiliating colleges, the petitioner inspects the colleges and charge fees. At the time of renewal of the affiliation, the petitioner again inspects the colleges and charges a sum towards inspection for renewal of the existing affiliation. The petitioner also has immovable properties in its campus which have been rented out for various activities.

11. In all the three cases mentioned above, the Court has granted relief by holding that the service provided by the three above named Universities to their colleges, viz constituted colleges were not liable to tax under Finance Act, 1994.

12. The submission of the learned counsel for the petitioner is that the service provided by the petitioner falls within the purview of “negative list” in Section 66D(1)(ii) of the Finance Act, 1994 as it stood from



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1.7.2012 until its deletion in 2016 and therefore, the petitioner was not liable to service tax on the amount collected towards affiliation with charges from various Educational Institutions/Colleges affiliated with the petitioner University.

13. It was submitted that the service provided by the petitioner to the colleges affiliated are nothing but services “by way of education” as a part of a curriculum for obtaining a qualification recognized by law for the time being in force and therefore all through the period upto deletion of Section 66D(l)(ii) from the Finance Act, 1994 till 14.05.2016, petitioner was not liable to pay service tax under Section 66B of the Finance Act, 1994.

14. It is submitted that after the above amendment to Finance Act, 1994 with effect from 15.05.2016 vide Finance Act, 2016 (28 of 2016), the petitioner was exempted from payment of Service Tax in terms of Entry 9 to Mega Exemption Notification No.25 of 2012-ST-dated 20.06.2012 as amended by notifications from time to time.



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15. It is submitted that the service that was provided by the petitioner to various “educational institutions” was exempted in terms of the Mega Exemption Notification No.25 of 2012-ST- dated 20.06.2012 as it stood at the time of its notification with effect from 01.07.2012.

16. It is further submitted that Entry 9 to Mega Exemption Notification No.25 of 2012-S.T dated 20.06.2012 was amended by Notification No.6 of 2014-S.T dated 11.07.2014, whereby there was substitution, as a result of which, the petitioner clearly became entitled to the exemption in terms of Mega Exemption Notification No.25 of 2012-S.T dated 20.06.2012.

17. It is further submitted that by Notification No. 6/2014- ST dated 11-7-2014, Mega Exemption Notification No.25 of 2012-S.T dated 20.06.2012 was amended and introduced the definition of an “educational institution” in explanation to the above Notification in definition clause 2 (oa) which was further amended by Notification No. 9/2016-S.T., dated 1-3-2016 by incorporating the ingredients of Section 66D(l) of the Finance



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Act, 1994 in the above definition. Hence it is submitted that the petitioner was not liable to pay service tax as it was outside the purview of charging provision under Section 66B for the service provided was in the negative list in Section 66D(1)(ii) of the Finance Act, 1994 as it stood with effect from 01.07.2012 up to its deletion on 14.05.2016. It is submitted that, the petitioner was thereafter eligible for exemption under the Mega Exemption Notification No.25 of 2012-S.T dated 20.06.2012 as amended from time to time. Hence, prayed for allowing the writ petition.

18. On behalf of the respondents, it was stated that the writ petition is devoid of merits and is therefore liable to be dismissed. It is submitted that the present writ petition was filed almost after a lapse of one year and eight days impugned on 21.10.2020 after the impugned Order-in-Original No.2 of 2019 (ST) was passed on 29.10.2019.

19. It is submitted that the writ petition is not maintainable in the light of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada &Ors. Vs. M/s. Glaxo Smith Kline Consumer Health Care Limited**, 2020 (36) GSTL (305) SC.



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20. A specific reference was made to paragraph 14 and 15, from the decision of the Hon'ble Supreme Court wherein it was held that even the Hon'ble Supreme Court cannot exercise its plenary power under Article 142 of the Constitution of India, extending the period of limitation and therefore, the High Court cannot take a different approach in the matter in reference to it under Article 226 of the Constitution of India.

21. It is submitted that the Hon'ble Supreme Court has clearly held that in a given case, an assessee may approach the High Court before the statutory period of limitation expires to challenge the assessment order by way of writ petition on the ground that the same was without jurisdiction or passed in excess of jurisdiction by over stepping or crossing the limits of jurisdiction including flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. However, such writ petition has to be filed within the period of limitation.



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22. It is submitted that the Hon'ble Supreme Court observed that while the High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy exist. It is submitted that the Hon'ble Supreme Court however held that if a writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under the Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course.

23. It is submitted that the Hon'ble Supreme Court further held that doing so would be in the teeth of the principle underlying the dictum of a Three-Judge Bench of the Hon'ble Supreme Court in **Oil and Natural Gas Corporation Limited Vs. Gujarat Energy Transmission Corporation Limited**, (2017) 5 SCC 42.

24 Therefore, it is submitted that on this limited ground alone, the writ petition is liable to be dismissed.



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25. On merits, it was submitted that services provided by the petitioner does not come within the purview of the “negative list” in Section 65D(l)(ii) of the Finance Act, 1994 with effect from 01.07.2012 up to its deletion vide Finance Act, 2015 with effect from 14.05.2016.

26. It is further submitted that the petitioner was not exempted from payment of service Tax vide Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 with effect from 01.07.2012 as amended from time to time. It is further submitted that the decision cited by the learned counsel for the petitioner cannot be said to have attained finality as the department is in appeal.

27. It is submitted that none of the amendment to the Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 as amended by the notification are relevant.



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28. It is stated that earlier certain categories of services provided “to an educational institutions” or “by an educational institutions” were exempted from Service Tax. It is submitted that the service provided by the petitioner were however not exempted under the above notification.

29. It is submitted that vide Notification No.6/2014-S.T dated 11.07.2014, Entry No.9 of Notification No.25/2012-S.T dated 20.06.2012 was fully substituted. It is submitted that after Entry 9 of Notification No.25/2012-S.T dated 20.06.2012 was substituted with new Entry vide Notification No.6/2014-S.T dated 11.07.2014, renting of immovable property was deleted from the purview of exemption. Thus, the service provided towards affiliation or recognition to colleges or educational institution were not covered under the Mega Exemption Notification No.25/2012 S.T dated 20.06.2012 as amended from time to time. It is therefore submitted that the petitioner University was not eligible for exemption under the said Notification.



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30. It is therefore submitted that the petitioner University was liable to tax under Section 66 B in as much as the activity fell within the scope of definition of “service” as defined under Section 65B (44) of Finance Act, 1994.

31. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

32. The impugned Order-in-Original is dated 29.10.2019. An appeal ought to have been filed by the petitioner before the Appellate Commissioner against the impugned Order-in-Original dated 29.10.2019 within a period of 2 months from the date of communication of the said order or within a further period of 30 days by filing an application for condoning the delay under Section 85(3)(A) of the Finance Act, 1994.



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33. The petitioner neither filed an appeal within the period of limitation under Section 85(3) of Finance Act, 1994 nor within the condonable period of limitation. The present writ petition was also not filed within such period.

34. Under similar circumstances, the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada &Ors. Vs. M/s. Glaxo Smith Kline Consumer Health Care Limited**, 2020 (19) SCC 681, 2020 (36) GSTL (305) SC held as follows:-

14. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under [Article 142](#) of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in 18 (2016) 1 SCC 315 reference to [Article 226](#) of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under [Article 226](#) of the Constitution.



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15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corpn. of India Ltd. [Electronics Corpn. of India Ltd. v. Union of India, 2018 SCC Online Hyd 21 : (2018) 361 ELT 22], which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) (P) Ltd. v. Union of India [Panoli Intermediate (India) (P) Ltd. v. Union of India, 2015 SCC Online Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court in Phoenix Plasts Co. v. CCE [Phoenix Plasts Co. v. CCE, 2013 SCC Online Kar 10432 : (2013) 298 ELT 481]. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as [Section 31](#) of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction - by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is



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specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in ONGC [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47]. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

18. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum



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60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.”

35. Since the present writ petition was filed only on 21.10.2020 after the expiry of limitation prescribed, it is liable to be dismissed on account of laches. Even, on merits the challenge to the impugned Order-in-Original dated 29.10.2019 based on the decision cited by the learned counsel for the petitioner cannot be granted.

36. Essentially, the petitioner is seeking the benefit of Section 66D(1)(ii) of the Finance Act, 1994 for services rendered by it to various colleges till its deletion vide Finance Act, 2016 and thereafter the benefit of Entry 9 to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 as amended and from time to time thereafter. These twin benefits are captured in the following table:



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66D of Finance Act, 1994 till its deletion by Finance Act, 2016	Entry No.9 Mega Exemption Notification No.25/2012- S.T dated 20.06.2016	
(l) services by way of:- i..... ii.education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force; iii.....	With effect from 01.07.2012	*With effect From 11.07.2014 vide Notification No.6/2014-S.T dated 11.07.2014
	(i)Services <u>provided to or by an</u> *educational institution in respect of education exempted from service tax, by way of,- (a)auxiliary educational services; or (b)renting of immovable property; (*substituted with the “provided to” vide Notification No. 3/2012-ST dated 1.3.2013.)	Services provided,- a..... b.to an educational institution, by way of.- i..... ii. iii..... iv.services relating to admission to, or conduct of examination by, such institution;
		Definitions:- For the purpose of this notification, unless the context otherwise requires:- (oa) “educational institution” means an institution providing services specified in clause (l) of Section 66D of the Finance Ac, 1994 (32 of 1994)



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37. The above definition of “education institution” in clause 2(oa) to Mega Exemption Notification in column II was further amended by Notification No.9 of 2016 S.T dated 01.03.2016 to read as under as Section 66D(l) was deleted vide Finance Act, 2016:-

“2(oa) “educational institution” means an institution providing services by way of:-

- (i) Pre-school education and education up to higher secondary school or equivalent;
- (ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
- (iii) Education as a part of an approved vocational education course.”

38. In this case, the Court concerned with Mega exemption Notification No.25/2012-S.T. dated 20.06.2012 issued under Sub -Section (1) to Section 93 of the Finance Act, 1994 as amended from time to time and Section 66D(l) of the Finance Act, 1994 until its deletion in 2016.

39. Earlier, by an order dated 22.02.2021 in the case of **Manonmaniam Sundaranar University vs. The Joint Director (GST**



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Intelligence), Coimbatore referred to *supra*, a learned Single Judge of this Court accepted the claim of the petitioner therein in so far as exemption for payment of service tax on amounts collected towards affiliation. However, learned Single Judge did not accept the contention of the said University in so far as collection of rent from service providers like Bank, Post Office, Canteens, etc.

40. The above said decision was considered by a learned single Judge of this Court in **Madurai Kamaraj University vs. Joint Commissioner, Office of the Commissioner of GST and Central Excise, Madurai** referred to *supra* which was also cited by the learned counsel for the petitioner, although there is no exemption under Section 66D of the Act.

41. In **Madurai Kamaraj University vs. Joint Commissioner, Office of the Commissioner of GST and Central Excise, Madurai** the Court has observed as under :-

“14.Under Clause 'I' there are three categories of services by educational institutions. One is pre-



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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 'I' 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 'I' 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



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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



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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.**



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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.



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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*



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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.



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In that context W.P.(MD)No.20502 of 2019 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 'I' 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 'I' 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



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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



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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.



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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.”

42. I am however unable to follow the views expressed in the above case, as there is no scope for interpretation of Section 66D(l) of Finance Act, 1994 as the language in Section 66D(l) of Finance Act, 1994 is plain and clear. Section 66D(l) of Finance Act, 1994 calls for no interpretation.

43. In this connection, the decision of the Kings Bench Division in **Cape Brandy Syndicate vs. IRC** (1921)1 KB 64, is invited. There, it was held as follows:-

“In taxing statute one has to look merely at what is clearly said. There is no room for intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to read in, nothing is to be implied. One can only look fairly at the languages used. Statute has to be read plainly.”

44. This view has been followed by the Hon’ble Supreme Court in several cases. Some of the decisions wherein the above principle has been followed reiterated are detailed as under:-

i. **Commissioner of Central Excise,**



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**Raipur vs. Sepco Electric Power
Construction Corporation, 2022(062)
GSTL 0385 SC;**

- ii. **Union of India vs. Mrgadarshi Chit
Funds(P) Ltd., 2017(003)GSTL 0003
SC**
- iii. **Commissioner of Cus.(Import),
Mumbai vs. Dilip Kumar & Company,
2018(361)ELT 0372 SC**
- iv. **Shabina Abraham vs. Collector of
Central Excise and Customs,
2015(322)ELT 0373 SC**
- v. **M.P.Steel Corporation vs.
Commissioner of Central Excise,
2015(319)ELT 0373 SC**
- vi. **Dujodwala Resins & Terpenes Ltd.,
2014(311)ELT 0892 G.O.I.**
- vii. **Sanket Food Products P.Ltd.,
2014(307)ELT 0608 G.O.I**
- viii. **Unique Pharmaceutical Laboratories,
2013(295)ELT 0129 G.O.I,**
- ix. **Ranbaxy Laboratories Ltd. vs. Union
of India, 2011(273)ELT 0003 S.C.**
- x. **Commissioner of C.Ex. Chandigarh
vs. Doaba Steel Rolling Mills,
2011(269)ELT 0298 SC**
- xi. **Pappu Sweets and Biscuits vs.
Commissioner of Trade Tax,
U.P.Lucknow, 2004(178)ELT 0048 S.C**
- xii. **Commissioner of Central Excise,**



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***Pondicherry vs. Acer India Ltd.,
2004(172) ELT 0289 S.C***

***xiii. Commissioner of Cental Excise,
Meerut vs. Kisan Sahkari Chinni Mills
Ltd., 2001(138)ELT 0946 G.O.I***

***xiv. Baidyanath Ayurved Bhawan Pvt.
Ltd., vs. Excise Commissioner U.P.,
1999(110)ELT 0363 S.C***

***xv. Calcutta Jute Manufacturing Co. vs.
Commercial Tax Officer, 1997(093)
ELT 0657 S.C***

***xvi. Mafatlal Industries Ltd., vs. Union of
India, 1997(089) ELT 0247 S.C***

***xvii. Aphali Pharmaceuticals Ltd. vs.
State of Maharashtra, 1989(044) ELT
0613 S.C***

***xviii. Shabian Abraham vs. Collector of
Central Excise and Customs,
2017(050) STR 0241 S.C***

***xix. M.P.Steel Corporation vs.
Commissioner of Central Excise,
2017(050) STR 0205 S.C***

***xx. Ranbaxy Laboratories Ltd vs. Union
of India, 2012 (027) STR 0193 S.C***

45. In **Union of India vs. Wood Papers Limited**, 1990 (47) ELT 500, the Hon'ble Supreme Court held that at the stage of applicability, the Notification has to be construed strictly and the ambit should not be widened or extended. It further held that once only when the first stage is



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crossed, the notification should be construed liberally that is other technicalities and procedural compliances should not come in the way of extending the benefit. There was no scope for expanding the scope of negative list in Section 66D(l) of the Finance Act, 1994 as the petitioner has not crossed the threshold.

46. The Central Board of Excise and Custom had also issued a Educational Guideline on 20.06.2012 after the Finance Act, 1994 was amended by Finance Act, 2012. It clarified that service delivered as a part of curriculum would be covered by Section 66D (l)(ii) of the Finance Act, 1994. It was specifically clarified in paragraph 4.12.1 of The Educational Guide that **Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law** alone would be covered by Section 66D(l)(ii) of the Finance Act, 1994. Paragraph 4.12.1 of The Educational Guide of the Central Board of Excise and Custom reads as follows:-

4.12.1 What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'? It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for



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*obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as **part of curriculum**. **Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered**. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification”.*

47. In 4.12.5 of the Educational Guideline, it was further clarified:-

*4.12.5 Are services provided to educational institutions also covered in this entry? **No. Such services are not covered under the negative list entry**. However certain services provided to or by educational institutions are separately exempted under the mega– notification. These are services provided to or by an educational institution in respect of education exempted from service tax, by way of,-*

- (a) auxiliary educational services; or*
- (b) renting of immovable property*

48. A reading of the above clarification indicates that the services provided by the petitioner to colleges for grant/renewal of affiliation was not in contemplation of the Parliament when it was introduced Section 66D(ii) by Finance Act, 2012 into Chapter V of the Finance Act, 1994



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with effect from 01.07.2012.

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49. The argument of the petitioner is that the services provided by the petitioner University to various colleges fell within the purview of the “negative” list as defined in Section 66D(l)(ii) of the Finance Act, 1994 as it stood between 01.07.2012 until its deletion in 2016 vide Finance Act, 2016 (28 of 2016) dated 14.05.2016 and therefore not liable to tax under Section 66B of the Finance Act, 1994 cannot be countenanced.

50. The further case of the petitioner, that the petitioner was later exempted under Entry 9 to Mega exemption Notification No.25/2012-S.T. dated 20.06.2012 as amended from time to time also cannot be countenanced. I shall explain the position in the ensuing paragraphs.

51. The Hon’ble Supreme Court has repeatedly held that the operation of the notification has to be judged not by the object which the rule making authority had in mind but the words it has employed effectuate the legislative intent. Therefore, there is no scope for extending



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the benefit of Section 66 D(l)(ii) of the Finance Act, 1994 to the petitioner.

52. The Hon'ble Supreme Court in the case of **A.V.Fernandez vs. State of Kerala**, AIR 1957 SC 657 while construing taxability held that no doubt it is true that while construing a fiscal statutes and in determining the liability of a subject to tax, one must have regard to the strict letter of the law and not merely to the spirit of the statute or the strict letter of the law and not merely to the spirit of the statute or the substance of the law.

It observed as under:-

“It is no doubt, true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by interference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have



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regard to the actual provisions of the Act and the rules made there under before we can come to the conclusion that the appellant was liable to assessment as contended by the Sales Tax Authorities.”

53. Under the scheme of the Finance Act, 1994 with effect from 01.07.2012, all activities provided by one person to another person for consideration is a “service” within the meaning of Section 65B(44) of the Finance Act, 1994.

54. No service tax was payable where an activity did not satisfy the definition of “service” within the meaning of Section 65B(44) of the Finance Act, 1994.

55. No service tax was also chargeable where an activity satisfied the definition of “service” but was exempted from payment of service tax under Notification issued under sub-section (1) of section 93 of the Finance Act, 1994. Similarly, no service tax was payable under



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Section 66B of the Finance Act, 1994 on services falling under the “negative list” in Section 66D of the Finance Act, 1944.

56. With effect from 01.07.2012, there were two categories of “services” on which no service tax was payable. They are:-

- (1) those services which were in the negative list in Section 66D of the Finance Act, 1994 and are therefore outside the purview of the levy under Section 66B of the Finance Act, 1994, and
- (2) those services which were exempted under a notification issued sub-section (1) of section 93 of the Finance Act, 1994.

57. Thus, with effect from 01.07.2012, under Section 66B of the Finance Act, 1994, service tax was to be levied at the rate specified therein on the value of “services” other than the services specified in the “negative list” provided or agreed to be provided in the taxable territory by one person to another and concluded in as much as the manner as may be prescribed.



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58. Section 66D(l) of the Finance Act, 1994 was introduced in 2012 vide Finance Act, 2012. Prior to its deletion vide Finance Act, 2016 (28 of 2016), Section 66D(l) of the Finance Act, 1994, read as under:-

“Section 66D.Negative List of Services*.

The negative list of services shall comprise of the following services, namely:-

(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 curriculum for obtaining a qualification recognized by any law for the time being in force;

iii. education as a part of an approved vocational education course.”

Note : (**Omitted by Finance Act, 2016 (28 of 2016), dated 14.05.2016.)*”

59. The above provision is unambiguous and clear. There is no scope for expanding the scope of exemption by applying and invoking the Rules of Interpretation.



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60. Section 66D(1)(ii) of the Finance Act, 2012 applied only to

service:-

i)by way of education

ii) as a part of a curriculum

iii)for obtaining a qualification recognized
by any of law, for the time being in
force.

61. Only specified category of services provided to “educational institution”were grouped in the “negative list” in Section 66D(1) of the Finance Act, 1994. Only the specified category of service provided were not chargeable/or liable to service tax under Section 66B of the Finance Act, 1994. The service of the petitioner while affiliating a college with it or renewing the affiliation already granted to colleges was not in the contemplation of the Parliament when it amended Finance Act, 1994 in 2012 and introduced Section 66D(1)(ii) to Finance Act, 2012.

62. What was contemplated in Section 66D(1)(ii) by Finance Act,



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2012 was service provided by an “ educational institution” by way of education to students/scholars as a part of a curriculum for them to obtain a qualification recognized by any law for the time being in force.

63. Amount charged by the petitioner on the colleges for inspection of colleges for affiliation/recognition /renewal of affiliation was not in contemplation of the Parliament. The said activity cannot be termed as a service by way of “education” as was contemplated in Section 66D(l)(ii) of the Finance Act, 1994.

64. Exclusion from Service Tax levy in Section 66D(l)(ii) of the Finance Act, 1994 was intended to cover only colleges so that they do not charge service tax on the students for provision of services by way of “education” as a part of curriculum for them to obtain a qualification recognized, by any law, for the time being in force.

65. Therefore, to begin with the services provided by the petitioner did not fall within the purview of “negative list” as defined in Section 65B(34) read with Section 66D(l)(ii) of the Finance Act, 1994 and/or as amended by Notification No.9 of 2016-S.T dated 01.03.2016. Therefore,



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the contention of the petitioner that the petitioner was outside the purview of Service Tax levy under Section 66B of the Finance Act, 1994 is liable to be rejected.

66. Therefore, the above views expressed in **Madurai Kamaraj University vs. Joint Commissioner, Office of the Commissioner of GST and Central Excise, Madurai** referred to *supra* and the views expressed in **Manonmaniam Sundaranar University vs. The Joint Director (GST Intelligence), Coimbatore** referred to *supra* require reconsideration.

67. I shall now turn my attention to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012. To avail the benefit of Mega Exemption Notification No.25/2012-ST dated 20.06.2012, the petitioner should have during the period in dispute, satisfied the requirements of the conditions stipulated therein.

68. Once again, the decision of the Kings Bench Division in **Cape Brandy Syndicate vs. IRC (1921)1 KB 64** is to be kept in mind wherein it was held “*In taxing statute one has to look merely at what is clearly*



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said. *There is no room for intendment. There is no equity about tax.*

There is no presumption as to tax. Nothing is to read in, nothing is to be implied. One can only look fairly at the languages used. Statute has to be read plainly.”

69. To be eligible for exemption under Entry 9 of Mega Exemption Notification No.25/2012-S.T. Dated 20.06.2012, the service provided by the petitioner to “educational institution” should have been specified in it.

70. At the time of inception with effect from 1.7.2012, Entry 9 to Mega Exemption Notification No.25/2012-S.T. dated 20.06.2012 read as under :-

Entry 9.Services provided to or by an*educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property;

*(*substituted with the “**provided to**” vide Notification No. 3/2012-ST dated 1.3.2013.)*



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71. The benefit of exemption under Entry 9 to Mega Exemption

Notification No.25/2012-S.T. dated 20.06.2012 at the time of its inception with effect from 01.07.2012 was available for both services i.e.:

service provided :-

- i.to an “educational institution” and
- ii. by an “educational institution”

72. The exemption in Entry 9 to Mega Exemption Notification

No.25/2012-S.T. dated 20.06.2012 at the time of its inception with effect from 01.07.2012, was however confined only to :-

- i. Auxiliary educational services; or
- ii. Renting of immovable property.

73. Clause 2(f) of Mega Exemption Notification No.25/2012-S.T.

dated 20.06.2012 at the time of its inception defined the expression “auxiliary educational services” as follows:-

- (f) *“auxiliary educational services” means any services relating to imparting any skill,*



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knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

74. At the time of inception with effect from 1.7.2012, there was no definition for the expression “educational institution” in Mega Exemption Notification No.25/2012-S.T. dated 20.06.2012.

75. Unless, the affiliation service provided by the petitioner fell within the purview of definition of the expression “auxiliary educational services” as defined in clause 2(f) to the Mega Exemption No.25/2012-S.T dated 20.06.2012, question of the petitioner being eligible to exemption under Entry 9 to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 at the time of its inception with effect from 01.07.2012, cannot be countenanced.



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76. For understanding, the expression “auxiliary educational services” as defined in clause 2(f) to the Mega Exemption No.25/2012-S.T dated 20.06.2012, clause 2(f) can be dissected and understood follows:-

as any services provided whether to the students or the faculty, relating to,	or,any other services which educational institutions:-
i) imparting any skill, or	ordinarily carry out themselves, but may obtain as outsourced services from any other person,
ii) knowledge, or	including services relating to admission to such institution, conduct of examination,
iii)education; or	catering for the students under any mid-day meals scheme sponsored by Government, or
iv)development of course content;	transportation of students faculty or staff of such institution.
v) any other knowledge – enhancement activity	

77. In the Educational Guideline issued after the Finance Act, 1994 was amended by Finance Act, 2012, the Central Board of Excise and Custom it was clarified that certain services provided to or by educational institutions are separately exempted under the mega– notification namely:-



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- (a) *auxiliary educational services; or*
- (b) *renting of immovable property*

78. In paragraph 4.12.6 of The Educational Guide, it was clarified as under :-

4.12.6 *What are auxiliary educational services?*

“Auxiliary educational services’ are defined in the mega notification. In term of the definition, the following activities are auxiliary educational services: • any services relating to imparting any skill, knowledge or education, or • development of course content, or • any other knowledge – enhancement activity, whether for the students or the faculty, or • any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including following services relating to: admission to such institution conduct of examination catering for the students under any mid-day meals scheme sponsored by Government transportation of students, faculty or staff of such institution.

4.12.7 *Are the auxiliary educational services for all educational institutions exempt?*

No. Exemption is available for services to or by educational institutions in respect of education exempted from service tax. Therefore, service tax is chargeable on such auxiliary educational services which are in respect of education chargeable to service tax.”



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79. It is thus clear that services provided to educational institutions which are already exempted was not available under Entry 9 to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012.

80. Although, the Educational Guide issued by the Central Board of Excise and Custom is not binding on the Court, they nevertheless represent the understanding of the Deparement. They are relevant as “*contemporary expositio* of law.

81. In **Commissioner of Trade Tax v. Kajaria Ceramics Ltd.** — 2005 (191) E.L.T. 20 (S.C.), the Hon'ble Supreme Court held that the intention and purport of Notification have to be interferred from contemporary official statements as “*contemporary expositio*” and used as aids’ to interpret even recent statutes.

82. In para 28, the Hon'ble Supreme Court held as under:-



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“28. Thus in *CCE v. Andhra Sugar Ltd.* [1989 Supp (1) SCC 144 : 1989 SCC (Tax) 162 : 1988 Supp (3) SCR 543] Mukharji, J. (as His Lordship then was) said: (SCC p. 146, para 5)

“It is well settled that the meaning ascribed by the authority issuing the notification, is a good guide of a contemporaneous exposition of the position of law. Reference may be made to the observations of this Court in *K.P. Varghese v. ITO* [(1981) 4 SCC 173 : 1981 SCC (Tax) 293 : (1982) 1 SCR 629] . It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty has been to construe, execute and apply the same enactment.”

(See also in *Karnataka Small Scale Industries Development Corpn. Ltd. v. CIT* [(2003) 7 SCC 224 : 2002 Supp (4) SCR 453] SCR at p. 460.)”.

83. In **Francis Bennion Statutory Interpretation**, 4th Edition, it was stated as follows in 596 :-

“Section 231. The basic rule. - *In the period immediately following its enactment, the history of how an enactment is understood forms part of the contemporanea expositio, and may be held to throw light on the legislative intention. The later history may, under the doctrine that an ongoing Act is always speaking, indicate how the enactment is*



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regarded in the light of developments from time to time.

COMMENT

On a superficial view, it may be though that nothing that happens after an Act is passed can affect the legislative intention at the time it was passed. This overlooks the two factors stated in this section.

Contemporanea expositio. The concept of legislative intention is a difficult one. Contemporary exposition helps to show what people though the Act meant in the period immediately after it was passed. Official statements on its meaning are particularly important here, since every Act is supervised, and most were originally promoted, by a government department which may be assumed to know what the legislative intention was.”

84. This view was quoted with approval in **Ajay Gandhi v. B.**

Singh — 2004 (167) E.L.T. 257 (S.C.)

85. The Courts have also held that statutory interpretation involves determining the meaning of a text contained in one or more documents and Judges are often criticised for being tied too closely to the statutory words and for failing to give effect to the intention of the Parliament or



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the law-maker. In **Collector V Parle Exports Pvt. Ltd.** —1989(38)

E.L.T. 741 (S.C.), the Court held that *according to the tradition of our law, “primacy is to be given to the text in which the intention of the law-giver has been expressed.*

86. It has held as under:-

“Such language, it has been said, in Cross’s “Statutory Interpretation” (Second Edition) at page 21, appears to suggest that there are two units of enquiry in statutory interpretation - the statutory text and the intention of the Parliament - and the Judge must seek to harmonize the two. However this is not correct. According to the tradition of our law, “primacy is to be given to the text in which the intention of the law-giver has been expressed.”

87. The service provided by the petitioner to various colleges while granting or renewing affiliation cannot be construed as “**auxiliary educational services**” in view of the above definition clause 2(f) to Mega Exemption Notification No.25/2012-ST dated 20.06.2012 with effect from 01.07.2012. Therefore, the contention of the petitioner that the petitioner was alternatively exempted from service tax under Mega



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Exemption Notification No.25/2012-ST dated 20.06.2012 with effect from 01.07.2012 for inception is misplaced.

88. The petitioner being a University recognized under the provisions of the UGC Act, 1956, has to be construed as an “educational institution”. As an “educational institution”, the petitioner would have been exempted from payment of service tax for renting out its “immovable property” for a brief period - **till 1.4.2013.**

89. The exemption for renting of immovable property was short lived. This exemption stood withdrawn in view of amendment to Entry 9 to Mega Exemption No.25/2012-S.T dated 20.06.2012 vide Notification No. 3/2013-S.T, dated 1-3-2013.

90. With effect from 1.4.2013, the expression “**provided to or by**” was substituted with the expression “**provided to**” in Entry 9 to Mega Exemption No.25/2012-S.T dated 20.06.2012 vide Notification No.3/2013-S.T dated 1-3-2013. Therefore, with effect from 1.4.2019,



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perforce, the petitioner would have been liable to pay service tax for renting of its immovable property to various persons. Renting of immovable property by the petitioner was no longer exempted in view of above amendment.

91. The amendment in Notification No.6/2014-S.T.dated 11.07.2014 completely changed the complexion of Mega Exemption Notification No.25/2012-S.T. dated 20.06.2012.

92. Notification No.6/2014-S.T.dated 11.07.2014 introduced a new definition of “educational institutions” in definition Clause 2(oa) as mentioned above. Exemption to “auxiliary service” and renting of “immovable property” as it stood at the inception with effect from 01.07.2012 in Mega Exemption Notification No.25/2012 – S.T dated 20.06.2012 was deleted. The definition of “auxiliary service” in Clause 2(f) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 was also deleted vide Notification No.6/2014-S.T.dated 11.07.2014.

93. Thus, Entry 9 to Mega Exemption Notification No.25/2012-S.T.



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dated 20.06.2012 after amendment vide Notification No.6/2014-S.T dated

11.07.2014 is to be read as follows:-

Mega Exemption Notification No.25/2012-ST-dated 20.06.2012	
Entry No.9:	Services provided,-
(a)by an educational institution to its students, faculty and staff;	(b) to an educational institution, by way of, -
	(i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Government; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution;
Definitions	oa)“educational institution" means an institution providing services specified in clause (1) of Section 66D of the Finance Act, 1994 (32 of 1994).]"



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94. Only certain categories services outsourced by “educational institution” viz., “constituent college” alone were exempt namely services relating to **admission to, or conduct of examination by**, alone are exempted under Entry No.9(6)(iv) to Mega Exemption No.25/2012-S.T dated 20.06.2012.

95. Exemption under Entry 9(b)(iv) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 as amended by Notification No.6/2014-S.T. dated 11.07.2014 would be applicable to the petitioner only if the services provided by the petitioner were “relating to admission to an “educational institution” for admission, or conduct of examination by such“ “educational institution” as defined in definition clause 2(oa) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012.

96. In other words, only the service provided by the petitioner to colleges viz “educational institution” as defined in definition 2(oa) as amended by Notification No.9 of 2016-S.T. dated 01.03.2016 by way of services relating to admission to, or conduct examination by such educational institution alone were exempted.



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97. Clause (l) of Section 66D of the Finance Act, 1994 itself stood omitted by Finance Act, 2016 (28 of 2016), with effect from 14.05.2016.

The above deletion of clause (l) of Section 66D of the Finance Act, coincided with the amendment to Mega Exemption Notification No.25/2012-ST dated 20.06.2012 vide Notification No.9/2016-S.T dated 01.03.2016. The definition clause 2(oa) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 thus read as under:-

“2(oa) “educational institution” means an institution providing services by way of:-

- (i) Pre-school education and education up to higher secondary school or equivalent;*
- (ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*
- (iii) Education as a part of an approved vocational education course.”*

The said amendment however did not alter the above position. It did not allow any scope for conferring any exemption to the petitioner for amount charged towards affiliation and renewal of affiliation.

98. The definition of “educational institution” in clause 2(oa)



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merely amended by Notification No.9/2016-S.T dated 01.03.2016 as

Section 66D of the Finance Act, 1994 itself stood omitted by Finance Act, 2016 (28 of 2016) dated 14.05.2016.

99. The amended definition of “educational institution” in definition clause 2(oa) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 merely incorporated the ingredient of Section 66 D(1) of the Finance Act, 1994 as it stood prior to its deletion into the definition clause 2(oa) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 .

100. The above amendment the definition of “Educational Institution” came into effect from the date on which the Finance Act, 2016 received the assent of the President of India.

101. Thus, with effect from the date on which deletion of Section 66D(1) vide Finance Act, 2016 came into force, Entry No.9 to Mega Exemption Notification No.25/2012-ST dated 20.06.2012 was to be read



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as follows:-

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Mega Exemption Notification No.25/2012-ST-dated 20.06.2012	
Entry No.9:	Services provided,-
(a)by an educational institution to its students, faculty and staff;	b) to an educational institution, by way of,-
	(i)transportation of students, faculty and staff; (ii)catering, including any mid-day meals scheme sponsored by the Government; (iii)security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution;
<i>Definitions</i>	2(oa)“ <i>educational institution</i> ” means an institution providing services by way of:- iv) <i>Pre-school education and education up to higher secondary school or equivalent;</i> v) <u><i>Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;</i></u> vi) <i>Education as a part of an approved vocational education course.”</i>

102. The service provided *albeit* for affiliation and renewal of



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affiliation of such educational institution and the amount charged by the petitioner towards such affiliation and renewal of affiliation during inspection cannot be termed as a service by way of service relating to admission to, or conduct of examination to an “educational institution” as defined in definition 2(oa) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 as amended by Notification No.9 of 2016-S.T.dated 01.03.2016.

103. The above exemption in Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 as amended from time to time was intended to exempt only those ancillary services provided by way of **admission to, or conduct of examination by**, to “educational institutions”. There is no scope for expanding the scope of exemption. Even if meaning of the expression “service relating to admission to, or conduct of examination to an educational institution” is to be interpreted assuming there is an ambiguity in the language, in Entry 9(b) (iv) of Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 it has to be interpreted by applying the principle of “*Noscitur – a sociis*”. In the ***Prabhudas Damodar Kotecha v. Manhabala Jeram Damodar, (2013)***



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15 SCC 358 the Hon'ble Supreme Court held that **the** principle of *noscitur a sociis*, which provides that words must take colour from words with which they are associated. If the principle of “Noscitur - a sociis” meaning of the expression in Entry 9(b)(iv) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 has to be interpreted from the meaning of other clauses in Entry 9(b) to Mega Exemption Notification No.25/2012-S.T dated 20.06.2012. Therefore, the even if the above principle is applied, it has to be construed, there was no scope for construing the exemption in favour of the petitioner.

104. Only such services provided to “educational institutions” were exempted from payment of service tax under Mega Exemption Notification No.25/2012-S.T dated 20.06.2012. Merely, because “educational institutions” impart education as a part of a curriculum for obtaining a qualification recognized by law, it will not mean that the amount charged by the petitioner was exempted under Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 as amended from time to time. What was exempted are only some of the peripheral /ancillary



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services which earlier grouped as “auxiliary services” in the definition clause 2(f) to Mega Exemption Notification No.25/2012 - S.T dated 20.06.2012 as it stood prior to its deletion vide Notification No.6/2014-S.T dated 11.07.2014.

105. Only such “auxiliary services” i.e. services relating to admission to such educational institutions and/or for conduct of examination provided to “educational institution” which were outsourced by such “educational institution” alone were exempted under Mega Exemption Notification No.25/2012-S.T dated 20.06.2012.

106. It cannot be said services provided by the petitioner to such “educational institution” while inspecting the colleges for affiliating them or renewing the affiliation would be services provided to such “educational institution” by way of services relating to admission to, or conduct of examination by, such institution.

107. University such as the petitioner which is recognized by the



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University Grants Commission of India under the provisions of the

University Grants Commission Act, 1956 is not exempted for payment of Service Tax. Further, petitioner may affiliate a college viz., “ educational institution” which provide educational services as a part of curriculum to its students for them to obtain a qualification recognized by any law for the time being in force. However, such services provided to educational institution as defined in definition clause 2(oa) to Notification No.25/2012-S.T dated 20.06.2012 will not apply to services provided by the petitioner to colleges/educational institution.

108. There could be affiliation after inspection or renewal of affiliation already granted after such inspection. There could be also decision not to grant affiliation after inspection or not to renew affiliation after such inspection. These are independent services provided by the petitioner which are “commercial” in nature and facilitate a private “educational institution” to provide education to students as a part of a curriculum for student/scholar to obtain a qualification recognized by any law for the time being in force. It is an independent business vertical carried by the petitioner which is a “service” not exempted and is



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therefore liable to service tax. Even otherwise, there is no scope for telescoping the benefit of Section 66D(1)(ii) of Finance Act, 1994 into Entry No.9 of Mega Exemption Notification No.25/2012-ST dated 20.06.2012 as amended by Notification No.9 of 2016-S.T dated 01.03.2016 and Notification No.6/2014-S.T dated 11.07.2014. Thus, there is no scope for conferring exemption which is not available to the petitioner.

109. The affiliation work and the charges collected and similar amounts collected for renewal of affiliation cannot be said to service provided in relation to relating to admission to, or conduct of examination by, such institution.

110. Services provided by the petitioner to “educational institution” viz., “constituent colleges” were neither in the contemplation of Section 66D (1)(ii) of the Finance Act, 1994 nor under Notification No.9 of 2016-S.T dated 01.03.2016 as amended from time to time. Unless such services



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were in relation to **admission to** “ Educational Institution” for, **conduct of examination by, such “ Educational Institution”** such service cannot be equated with activity of affiliation and renewal of affiliation.

111. The language of Entry 9 in Mega Exemption Notification No.25/2012-S.T.dated 20.06.2012 as amended by various notification and the last mentioned amendment vide Notification No.9 of 2016-S.T. dated 01.03.2016 was clear and unambiguous. Thus, there was no scope for interpretation. Since the language was plain, it had to be read plainly as held in **Cape Brandy Syndicate vs. IRC** (1921) 1 KB 64 which has been followed by the Hon’ble Supreme Court in several cases.

112. There was no ambiguity either in the language in Section 66D(l) of the Finance Act, 1944 as it stood till its deletion by Finance Act, 2016 (28 of 2016) dated 14.05.2016 under Entry 9 in Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 as amended by various notification and the last mentioned amendment vide Notification No.9 of



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2016-S.T. dated 01.03.2016 to warrant any beneficial interpretation in favour of the petitioner.

113. The neither expression “ education as a part of curriculum for obtaining a qualification recognized by any law, for the time being in force” in section 66D)(l)(ii) of the Finance Act, 1994 deletion till its vide Finance Act, 2016 (28 of 2016) nor the Entry 9(b)(ii) in Mega Exemption Notification No.25/2012-S.T dated 20.06.2012 as amended by Notification No.6/2014-S.T dated 11.07.2014 and Notification No.9/2016 S.T dated 01.03.2016 exempting service provided to an “educational institution by way of, service relating to admission to, or conduct of examination by such institution” was intended to cover the service provided by the petitioner. Therefore, there is no scope for either holding the petitioner was not liable to tax under Section 66B of the Finance Act, 1994 or was exempted under the said Notification.

114. In my view, there was no scope for expanding exemption to services provided by the petitioner to various colleges while collecting affiliation charges and other charges from colleges who had to comply with the conditions specified by the petitioner while granting affiliation.



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Similarly, there is no scope for exempting the petitioner from service tax for renting of immovable property after 1.4.2013.

115. The views in **Madurai Kamaraj University vs. Joint Commissioner, Office of the Commissioner of GST and Central Excise, Madurai** and **Manonmaniam Sundaranar University vs. The Joint Director (GST Intelligence), Coimbatore**, referred to supra as mentioned above would require a reconsideration as there is no scope for interpretation when the language in the Notification was clear. There was also no scope for merging to exclusion and exemption together.

116. In view of the above discussion, this writ petition has to fail, on all counts except, for “renting of immovable property” for a brief period between 01.07.2012 and 31.03.2013. The said exemption is not available with effect from 01.04.2013 in view of amendment to vide Notification No.3/2013–ST dated 01.03.2013 amending Mega Exemption Notification No.25/2012 – ST dated 20/06/2012.



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117. After 1.4.2013, only if the petitioner had rented out its immovable property by to an “ Educational Institution”. After amended to Mega Exemption Notification No.25/2012 – ST dated 20/06/2012, vide Notification No.6/2014-S.T dated 11.07.2014, there was no exemption for renting of “immovable property”

118. Since the decision of the learned Single Judge in the case of **Madurai Kamaraj University vs. Joint Commissioner, Office of the Commissioner of GST and Central Excise, Madurai** is pending appeal before the Hon’ble Division Bench, liberty is given to the petitioner to file a statutory appeal before the first Appellate Authority within a period of thirty (30) days from the date of receipt of a copy of this order.

119. While filing the appeal, the petitioner shall pre-deposit on the service tax demanded vide impugned Order in Original No.27/2019(S.T) dated 29.10.2019 except in so far as renting of immovable property for the period between 01.07.2012 and 01.03.2013, in view of the amendment to Mega Exemption Notification No.25/2012 – ST dated 20.06.2012 vide



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Notification No.3/2013 – ST dated 01.03.2013. The Appellate Authority shall however await for the decision of the Division Bench challenging the decision of the learned Single Judge of Madurai Bench of Madras High Court in **Madurai Kamarj University vs. Joint Commissioner, Office of the Commissioner of GST and Central Excise, Madurai** referred to supra.

120. This writ petition stands dismissed with the above liberty and observation. No costs. Consequently, connected miscellaneous petitions are closed.

12.10.2023

Index : Yes/No
Neutral citation : Yes/No
rgm/kkd



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C.SARAVANAN, J.
kkd

To

1. The Joint Commissioner of GST & Central Excise,
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Pre-delivery Order in
W.P.No.15333 of 2020

12.10.2023