CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH, COURT NO. I

SERVICE TAX APPEAL NO. 53479 OF 2018

[Arising out of the Order-in-Original No. 10/COMMR/ST/JBP/2018 dated 27/06/2018 passed by The Commissioner, Central GST, Central Excise & Customs, Jabalpur (M.P.).]

M/s Madhya Pradesh Medical Science University, **Appellant**
Netaji Subhash Medical College Campus,
Jabalpur (M.P.).

VERSUS

Commissioner, (CGST, CE & C), **Respondent**
GST Bhawan, Mission Chowk,
Jabalpur (M.P.) – 482 001.

APPEARANCE
Shri Manish Koushal, Chartered Accountant – for the appellant.
Shri S.K. Rai, Authorized Representative (DR) – for the Department

CORAM : **HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE SHRI P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50265/2024

DATE OF HEARING : 12.02.2024

P. ANJANI KUMAR

M/s Madhya Pradesh Medical Science University, Jabalpur[1] are engaged in imparting education in the university campus as well as through affiliated colleges. The appellant collects affiliation fees from various colleges/institutes. Revenue was of the opinion that the affiliation fees collected by the appellant is towards rendering of service, which is not outside the purview of section 66D of Chapter V of the Finance Act, 1994[2]. Accordingly,

1. **the appellant**
2. **the Finance Act**

a show cause notice dated 27.03.2018 the demanding service tax of Rs. 4,41,87,527/- was issued to the appellant; the demand raised in was confirmed vide impugned order-in-original No. 10/COMMR/ST/JBP/2018 dated 27.06.2018[3] along with interest and equal penalty.

2. Shri Manish Koushal, learned consultant appearing for the appellant and submits that the issue is no longer res-integra being decided by High Court of Karnataka in Writ-Petition No. 57941 of 2018 in favour of the appellants.

3. Shri S.K. Rai, learned authorized representative appearing for the department on the other hand reiterates the findings of the impugned order and submits that the service rendered by the appellants is not covered by Entry No. 9 of the Notification No. 25/2012-ST dated 20.06.2012; the services are not in the nature of educational services; the appellant actually provided services to the affiliated colleges by way of granting affiliation and, hence, the services provided by them are taxable.

4. We have both sides and perused the records of the case.

5. We find that as submitted by the learned consultant for the appellant, Karnataka High Court has gone into the leviability of service tax on the affiliation fee collected by the universities in the case of **Rajiv Gandhi University of Health Sciences, Karnataka** vs. **Principal Additional Director General, Directorate Intelligence of GST Intelligence, Bengaluru**

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3. the impugned order

Zonal Unit[4] and have concluded that important education by university buy itself are through affiliated colleges by collecting an affiliation fee has to be considered as the service by way of education as a part of curriculum for obtaining qualification recognized by any law for the time being enforced and that the said service rendered by universities fall under the exemption contained under Clause I (of section 66D of the Act). The High Court has observed as follows:-

> "8. The petitioner-University is established under the Karnataka State Universities Act, 2000 and Universities are established by the State for furthering the advancement of learning and pursuing of higher education and research. For this purpose, apart from they themselves imparting education through their constituent colleges, it also admits educational Institutions not maintained by the University as affiliated colleges and in the process regulates the manner in which education has to be imparted in the said Colleges and also conducts examinations. In the process, for providing services for imparting education, it charges affiliation fee to the said colleges and the University has to be considered as an Educational Institution imparting education by itself and also through its affiliated colleges and the services being provided by the University by collecting affiliation fee has to be considered as the service by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force.
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> 9. The said activity of service by way of providing education as contemplated in Clause (l) of Section 66D of the Act was issued under Finance Act, 1994 by placing the said activity under exemption list.
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> 10. It is not the case of the respondents that the consideration received towards the educational activity is taxable for service tax. It is their case that affiliation fee collected by the petitioner-University cannot be considered as a consideration for providing educational services.
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> 11. As already stated above, the act of University in granting affiliation to a private college has to be considered as a service in furtherance of providing education and the decision of the respondents to consider otherwise is erroneous.
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> 12. The case of the petitioner is that it is not in real estate business and certain buildings are let out by it to carry on certain activities like canteen, Bank facility and the like which are essential in running a University for imparting education.

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4. 2022 (64) G.S.T.L. 465 (Kar.)

> 13. Clause (3) of Section 66F of the Act, reads as under :-
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> "(3) Subject to the provisions of sub-section (2) the taxability of a bundled services shall be determined in the following manner, namely :-
>
> (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which give such bundle its essential character;
>
> (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.
>
> *Explanation.* - For the purpose of sub-section (3), the expression "bundled service" means bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services."
>
> 14. It is not in dispute that petitioner has let out some of its buildings for canteen, Bank and other facilities which are essential for effective running of an University in furtherance to imparting education and the said activity has to be considered as an activity incidental to provide services of education and it is a service naturally bundled in the ordinary course of business as contemplated in the aforementioned Clause (3) of Section 66F of the Act and the rent received also deserves to be exempted once the activity of providing education by the petitioner-Institution is exempted from service tax".

6. Though the above decision was rendered in a writ-petition, we are of the considered opinion that the High Court of Karnataka has considered the provision of service tax vis-à-vis important education in the new Service Tax Regime that is w.e.f. 01.07.2012. The impugned show cause notice to be issued covers the period 2014-2015 to 2017-2018 which squarely falls under the negative list regime. Therefore, we have no hesitation whatsoever to conclude that the impugned order cannot be sustained and is liable to be set aside and we do so.

7. Moreover, it is pertinent to note that the appellant is a university which decides the curriculum of the colleges, conducts examination and awards, degrees to the students including those

studying in the affiliated colleges. In this background, the affiliation fee collected by the appellants from the affiliated colleges is to be considered for providing the service to institution in relation to education, which is exempt by virtue of sub-clause (ii) of Clause L of section 66D of the Finance Act, 1994. Moreover as per Entry No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 6/2014-ST dated 11.07.2024 services provided by an educational institution to its students, faculty and staff as well as certain services received by educational institution are exempt. In the instant case, the appellant themselves are a university and the services, if any, provided by the appellants and received by the affiliated colleges which are none other than educational institutions. This should leave no scope for any doubt as to the exigibility of the services rendered by the appellant to the affiliated colleges in consideration to application fee collected.

8. In view of the above, we are of the considered opinion that the impugned order is not sustainable. We set aside the same and allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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