CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 51294 OF 2019

[Arising out of the Order-in-Original No. 37/COMMR/ST/BPL-I/2018 dated 19/12/2018 passed by Commissioner of CGST & Central Excise, Bhopal – 462 011.]

M/s Barkatullah University, ...**Appellant**
Hoshangabad Road,
Bhopal – 462 026.

Versus

Commissioner of CGST & Central Excise ....**Respondent**
35-C, GST Bhawan, Arera Hills, Jail Road,
Bhopal – 462 011.

APPEARANCE:
Shri Jitendra Singh, Advocate for the appellant.
Shri S.K. Meena, Authorized Representative for the Department

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50747/2025

DATE OF HEARING : 25.03.2025.
DATE OF DECISION : 22.05.2025.

P.V. SUBBA RAO

M/s Barkatullah University[1] (formerly known as Bhopal University) filed this appeal to assail the order dated 22.12.2018[2] passed by the Commissioner of CGST & Central Excise, Bhopal confirming a demand of Service Tax of Rs. 2,89,82,528/-under the proviso to section 73(1) of the Finance Act, 1994[3] invoking extended period of limitation along with interest under section 75

1. **appellant**
2. **impugned order**
3. **Act**

of the Act and imposed an equivalent amount as penalty under section 78 of the Act. He further gave the appellant the option to pay of reduced penalty of only 25% of the service tax if the service tax with interest was paid within 30 days of the date of communication of the order.

2. We have heard learned counsel for the appellant and learned authorized representative for the Revenue and perused the records.

3. The facts which lead to the issue of the impugned order are that the appellant was investigated by the Directorate General of GST Intelligence[4] which felt that the appellant ought to have, but had not paid service tax as follows:

From July 2012 to June 2017	Taxable amount (Rs.)	Service Tax (inclusive of cess)(Rs.)
Affiliation/inspection fees	21,65,38,235	2,84,71,544
Rental income	38,27,298	5,10,984
TOTAL	**22,03,65,533**	**2,89,82,526**

4. Accordingly, a show cause notice dated 7.3.2018[5] was issued to the appellant by DG GSTI, Bhopal proposing recovery of the aforesaid amount as service tax along with interest and to impose penalty. These proposals were confirmed in the impugned order.

5. Thus the two issues in this case are:

a) Taxability of the affiliation/inspection fees; and

4. DGGSTI
5. SCN

b) Taxability of the rental income

Affiliation/inspection fee

6. Universities, including the appellant, allow colleges and institutions to affiliate to them and for this purpose, they charge an affiliation fee. The impugned order held that the appellant was liable to pay service tax on this fees as this service was not covered under the negative list under section 66D (l) of the Act.

7. Learned counsel for the appellant submits that affiliation fees charged by the universities falls under the negative list of services under section 66D(l) of the Act as held by the Madras High Court in **Madurai Kamraj University versus Jt. Commissioner of GST & C Ex, Madurai**[6] the relevant portion of which is as follows:

> "26. In the result, the impugned order is liable to be set aside as the petitioner educational institution i.e., 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 to the students, faculty as well as the staff of the university. Therefore, in all respect, the impugned order shall not stand 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."

8. This judgment was followed in several decisions and orders confirming demand of service tax on affiliation fees were dismissed.

9. Learned authorized representative for the Revenue reiterates the impugned order but accepts that the issue involved

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6. 2021 (54) GSTL 385 (Mad.)

is the same as in **Madurai Kamraj University.** We, therefore, find that the demand on this count needs to be set aside.

Rental income

10. The second demand of service tax on rental income is on the amounts received by the appellant on the charges for use of buildings or auditoria received by the appellant during the period. Learned counsel for the appellant submits that the appellant, as a University, has auditoria and other buildings which it gave to banks, post offices, Canteens, photocopy shops or other facilities required in the University. The appellant collected charges from the banks, post offices, etc. and the demand of service tax has been confirmed on the amounts received by the appellant. Learned counsel submits that the aim of providing the bank, post offices, etc. is not to earn income but to facilitate the students, faculty and staff. This is part of the total service provided by the appellant namely, education which is covered by the negative list under section 66D(l). He, therefore, submits that no service tax can be charged. He relies on the judgment of the Karnataka High Court in **Rajiv Gandhi University of Health Sciences versus Principal Additional Director General of DG GSTI, Bengaluru**[7] in which the High Court held that no service tax can be charged on the rent received from the banks, etc. by the university. Special Leave Petition Dairy No. 59470/2024 filed by the Revenue assailing this judgment was dismissed by the Supreme Court on 24.1.2025 as follows:

7. MANU/KA/4438/2022

"1. Delay condoned.

2. Having heard the learned Additional Solicitor General appearing for the petitioners and having gone through the materials on record, we see no reason to interfere with the impugned order passed by the High Court.

3. The Special Leave Petition is, accordingly, dismissed.

4. Pending applications, if any, shall also stand disposed of."

11. Learned counsel, therefore, submits that this issue is also no longer *res-integra* and the demand needs to be set aside. Learned authorized representative for the Revenue supports the impugned order but concedes that the decision in **Rajiv Gandhi University of Health Sciences** was on the same issue.

12. In view of the above, we find that question of law with respect to both the demands is decided in favour the appellants. Respectfully following the precedent decisions, we set aside the demand in the impugned order. Consequently, the demand of interest and the penalties also do not survive.

13. The appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced in open court on 22/05/2025.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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