

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

SERVICE TAX APPEAL NO. 50294 OF 2022

(Arising out of Order-in-Original No. 19/2021-ST dated 11.10.2021 passed by the Additional Director General (Adjudication) Directorate General of GST Intelligence (Adjudication Cell), New Delhi)

Central Board of Secondary Education

Shiksha Kendra -2, Community Centre,
Preet Vihar, Delhi - 110092

.....Appellant

VERSUS

Additional Director General (Adjudication),

Directorate General of GST Intelligence,
West Block-VIII, Wing-6, 2nd Floor,
R.K. Puram, New Delhi

.....Respondent

APPEARANCE:

Shri B.L. Narasimhan, Ms. Shagun Arora, Ms. Srishty Yadav and Shri Kunal Aggarwal, Advocates for the Appellant

Shri S.K. Meena, Authorized Representative for the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

DATE OF HEARING: 28.11.2025

DATE OF DECISION: 05.12.2025

FINAL ORDER NO. 51818/2025

JUSTICE DILIP GUPTA:

Central Board of Secondary Education ¹ has filed this appeal to assail the order dated 11.10.2021 passed by the Additional Director General (Adjudication), New Delhi² confirming the demand of service tax against the appellant under section 73(1) of the Finance Act, 1994³ with interest and penalty and directing for recovery of Rs. 16,07,53,152/- from the appellant.

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1. the appellant
 2. the Additional Director
 3. the Finance Act

2. The appellant claims that it is an autonomous body under the aegis of the Ministry of Education. It was constituted by Resolution No. 209 dated 27.02.1962 with the primary objective of standardizing education across India and in some cases, to educational institutes outside India. For this purpose, the appellant conducts examination for secondary and senior secondary stages of education.

3. The appellant further claims that any educational institution that wishes to prepare students for examinations conducted by the appellant, is required to meet certain standards of education laid down by the appellant through its "Affiliation Bye-Laws of the Central Board of Secondary Education". Some of the requirements are:

- (a) Necessary qualifications required for teachers of various posts/subjects and conduct of training programme for them;
- (b) Minimum land requirement for the schools;
- (c) Infrastructural facilities for class-rooms, science laboratories, computer laboratories, and rooms for extra-curricular activities;
- (d) Fee for students;
- (e) Manner of conducting examination; and
- (f) Prescription of course curriculum.

4. Upon meeting such standards, the schools can be considered for affiliation with the appellant, and the students at such affiliated schools can appear at the examinations conducted by the appellant. Further, upon clearing the examination, the students are issued a statement of marks and a certificate of performance.

5. For the grant of affiliation by the appellant, the schools are required to pay charges in the form of "Affiliation Fee", in terms of Appendix-I to the Affiliation Bye Laws.

6. Pursuant to an investigation, a show cause notice dated 27.09.2017 was issued to the appellant proposing to demand service tax of Rs. 18,22,49,805/- on the amount of Affiliation Fee collected by the appellant from schools during the relevant period. The show cause notice invoked the extended period of limitation and alleged:

- (i) By affiliating a school/education institution, the appellant admits such school to privileges of affiliation with the appellant enabling the school to prepare its students for examination conducted by the appellant. Affiliation is an activity rendered by CBSE in terms of section 65B(44) of the Finance Act, for which it received a monetary consideration;
- (ii) Grant of affiliation by the appellant does not appear to fall in the category of service provided by the "Government" and is, therefore, not covered in the Negative List contemplated in section 66D(a) of the Finance Act. The grant of affiliation is also not an activity described as "pre-school education", "education up to higher secondary school", or "education as part of approved vocational education course" that are covered in the Negative List in clause (I) of section 66D of the Finance Act;
- (iii) Grant of affiliation is also not covered under Notification No. 25/2012-ST, dated 20.06.2012⁴;
- (iv) Thus, the Affiliation Fee that is charged for grant of affiliation by the appellant to the schools is leviable to service tax.

4. the Exemption Notification

7. The appellant filed a detailed reply to the show cause notice and contended that:

- (i)** The Affiliation Fee is not a "consideration" for any "service" provided by the appellant;
- (ii)** The appellant is performing a sovereign function and therefore, Affiliation Fee cannot be subjected to service tax;
- (iii)** The activities of the appellant are covered under section 66D(1) of the Finance Act;
- (iv)** The payment of Affiliation Fee is exempted from levy of service tax by virtue of Entry 9 of the Exemption Notification; and
- (v)** The extended period of limitation could not have been invoked.

8. The show cause notice was adjudicated by the order dated 11.10.2021 passed by the Additional Director. The demand was confirmed after extending cum-tax benefit. The findings recorded in the order are:

- (i)** The appellant is providing the service of affiliation to schools and in return, is receiving consideration in the form of Affiliation Fee. The activity and consideration are clearly identifiable in this transaction;
- (ii)** The appellant is not a department of the Central Government or State Government and, therefore, does not qualify to be a Government. Thus, the service provided by the appellant is not covered under section 66D(a) of the Finance Act for the period prior as well as after 14.05.2015;
- (iii)** "Services by way of education" means services imparted by an educational institution to students, faculty and staff, which is not akin to service of providing affiliation to

educational institutions. Thus, service of affiliation is not covered under section 66D(1) of the Finance Act;

- (iv)** Exemption under Entry 9 of the Exemption Notification, as it stood till 01.03.2013, is not applicable to the appellant as the appellant is neither an educational institution nor providing any auxiliary education service. Even in light of amendment dated 11.07.2014, granting of affiliation has no relation to the services provided to an educational institute by way of admission to, or conduct of examination by the educational institution. Service of granting affiliation has no connection with such services provided by educational institutions;
- (v)** The contention of the appellant on extending the benefit of cum-tax has been allowed; and
- (vi)** The extended period of limitation is invocable as the appellant had indulged in suppression.

9. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Ms. Shagun Arora, Ms. Srishty Yadav and Shri Kunal Aggarwal made the following submissions:

- (i)** Affiliation of schools to its Board would not amount to a "service". In absence of a service, the amount collected as "Affiliation Fee" cannot be subjected to the levy of service tax;
- (ii)** The appellant was set up by Resolution No. F.115-R/28 dated 01.07.1929 of the Government of India with the objective of regulating High School and Intermediate Education in Rajputana, Central India and Gwalior. The said Resolution underwent various amendments, and the final version, as amended in 1969, has been documented and

published on the website of the appellant. A reading of the resolution would show that the objective of the appellant was to standardize education across jurisdiction (India and outside India) and to conduct examination at the secondary and other stages of education. Further, educational institutions could avail the service of the appellant for preparing its students for examinations conducted by the appellant. For certifying the schools as "affiliated" to its Board, the appellant collected an amount towards "Affiliation Fee". This fee collected by the appellant is only for enrollment of the educational institutions with the appellant, which acknowledges that the education imparted by the institution is at par with the standards of the appellant Board and that the students at the educational institutions are permitted to appear for the exams conducted by the appellant;

- (iii)** The affiliation accorded by the appellant was only a mechanism to identify the educational institution enrolled with the appellant Board. No activity was undertaken by the appellant for the schools. There was no underlying service being given by the appellant to the educational institutions. Rather, the schools were required to demonstrate their qualification to the standard of education of the appellant to be affiliated with the appellant. Thus, in the absence of any "activity" being carried out by the appellant for the schools, service tax cannot be levied. In this connection reliance has been placed on the judgment of the Karnataka High Court in **Principal Additional Director General and Ors. vs. Rajiv**

Gandhi University of Health Sciences, Karnataka⁵. It was held that the act of affiliation only creates an umbilical cord between affiliating body and affiliated entity and does not fall within the domain of an “activity done for consideration”. With such understanding, demand of service tax on “Affiliation Fee” was set aside;

(iv) The aforementioned judgment of the Karnataka High Court has been relied upon in the following decisions:

- (a) **Devi Ahilya Vishwavidhyalaya (University) vs. Commissioner, Central Goods and Service Tax & Central Excise, Indore**⁶;
- (b) **M/s. Jiwaji Vishwavidhyalya vs. Commissioner, CGST & Central Excise, Bhopal**⁷;
- (c) **Registrar M/s. University of Kota vs. Commissioner, CGST and Central Excise, Jodhpur**⁸;
- (d) **Principal Commissioner of CGST & Central Excise, Jabalpur vs. M/s. Rani Durgawati Vishwavidyalaya**⁹;
- (e) **Rajiv Gandhi Proudhyogiki Vishwavidyalay vs. The Principal Commissioner, Central Tax, Customs & Central Excise, Bhopal**¹⁰;
- (f) **Principal Commissioner, CGST & Central Excise vs. M/s. Makhanlal Chaturvedi, National University of Journalism & Communication**¹¹;
- (g) **M/s. Barkatullah University vs. Commissioner of CGST & Central Excise, Bhopal**¹²;
- (h) **M/s. Chhatrapati Shahuji Maharaj University vs. Commissioner of Central Excise & CGST, Kanpur**¹³;

5. Writ Appeal No. 856 of 2022 decided on 30.07.2024
6. Service Tax Appeal No. 50939 of 2019 decided on 22.05.2025 (Tri.-Del.)
7. Service Tax Appeal No. 50551 of 2019 decided on 17.04.2025 (Tri.-Del.)
8. Service Tax Appeal No. 50874 of 2020 decided on 01.08.2025 (Tri.-Del.)
9. Service Tax Appeal No. 52139 of 2019 decided on 16.05.2025 (Tri.-Del.)
10. Service Tax Appeal No. 50713 of 2019 decided on 26.06.2025 (Tri.-Del.)
11. Service Tax Appeal No. 51258 of 2019 decided on 24.06.2025 (Tri.-Del.)
12. Service Tax Appeal No. 51294 of 2019 decided on 22.05.2025 (Tri.-Del.)

- (v) In the present case, the appellant has been established by way of a Resolution of the Government of India for the purposes of standardizing the quality of education. Further, the Resolution empowers the appellant to collect fees as may be prescribed. Thus, if the appellant collects any amount in exercise of its functions stipulated by the Resolution, such amount cannot be treated as consideration for any service;
- (vi) Even if an activity has been carried out by the appellant, the same would be in the nature of "education" which was covered under the Negative List till 13.05.2016 under section 66D of the Finance Act;
- (vii) In any case, the activity of the appellant is exempted from the levy of service tax by virtue of Entry 9 of the Exemption Notification;
- (viii) Education Boards are also educational institutions. Service tax is exempt on services rendered by Boards; and
- (ix) The extended period of limitation could not have been invoked in the facts and circumstances of the case.

10. Shri S.K. Meena, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference.

11. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

12. The issue that arises for consideration in this appeal is whether the demand of service tax on Affiliation Fee paid by the schools to the

13. Service Tax Appeal No. 70569 of 2020 decided on 22.04.2025 (Tri.- All.)

appellant for issuance of affiliation certificate is justified. The period involved in this appeal is from July, 2012 to June, 2017.

13. The contention of the learned counsel for the appellant is that affiliation of schools to the appellant would not amount to any service and in the absence of a service having been provided, the amount collected as Affiliation Fee cannot be subjected to levy of service tax. Learned counsel explained that for certifying the schools as affiliated to the appellant, the appellant collected an amount towards Affiliation Fee. This fee collected by the appellant is only for enrollment of the educational institutions with the appellant which only acknowledges that the education imparted by the institution is at par with standards of the appellant Board and students of such educational institutions are permitted to appear at the exams conducted by the appellant. Thus, in the absence of any activity having been carried out by the appellant for the schools, service tax cannot be levied.

14. This issue was examined at length by the Karnataka High in **Rajiv Gandhi University**. The High Court held that the act of affiliation only creates an "umbilical cord between affiliating body and the affiliated entity" and does not fall within the domain of "activity done for consideration". The relevant portion of the judgment is reproduced below:

"Affiliation creates a kind of umbilical chord between affiliating body and the affiliated entity. Section 2(a) of RGUHS Act, defines 'Affiliated College' to mean a college or institution... affiliated to the University in accordance with the Statutes. It also includes the institutions that are deemed to be affiliated to the University. Deeming part is not relevant for our discussion. Section 4 of this Act which enlists the powers & functions of the University, at clause (vii) reads 'to affiliate or recognise colleges and institutions and to withdraw such affiliation or recognition'. Section

45 provides for affiliation and the procedure therefor. For grant of admission, affiliation is a pre-condition under subsection (10). Section 48 provides for withdrawal of affiliation on fault grounds. For the grant or renewal of affiliation, the University levies fees, late fees, fines & penalties in terms of extant statutes of the University. **However, the act of granting, renewing or withdrawing is done in discharge of public duties enjoined by law. Therefore, such acts do not fit into the expression 'activities carried on for consideration', more particularly, when they do not have commercial elements, as rightly contended by Mr.Raghuraman.** Added, the idea of 'activities carried on for consideration' as employed in the definition of service u/s 65B(44) of the Finance Act ordinarily obtains in the realm of freedom of contract and not in the field of public law. Of course, the concept of sovereign function being impertinent, does not factor in the discussion. **The function related to affiliation cannot be treated as a 'bundled service' under clause (3) of section 66F of the Finance Act, 1994, either.** The interests/fines/penalties leviable on account of default also have a thick connect with the fees regularly leviable and therefore, they would partake the character of fees only. **In view of all this, the Revenue is not justified in levying Service Tax on the income accruing to the University on account of affiliation during the academic year between 2012-13 and 2016-17. The periodicity of collection of affiliation related fees pales into insignificance."**

(emphasis supplied)

15. The Gujarat High Court in **Sahitya Mudranalaya Pvt. Ltd. vs.**

Additional Director General¹⁴ also observed:

"**13.14** The scope and ambit of the expression "educational institution" as defined under clause (oa) of the Mega Exemption Notification requires to be examined. **Furthermore, it is required to be ascertained as to whether the services provided**

14. 2021 (46) G.S.T.L. 245 (Guj.)

by the petitioners to the Boards/University fall within the ambit of clause (I) of Section 66D of the Finance Act. Under clause (oa) of the Mega Exemption Notification, "educational institution" is defined to mean 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. Clause (I) of Section 66D of the Finance Act, 1994 reads thus : *****

13.16 The question is, whether the narrow meaning sought to be assigned to the word "education" by the respondents is required to be adopted, namely only those institutions which directly impart education to the students; or a broader meaning which includes even those institutions which are connected with the education of those students.

13.21 In the light of the above principles enunciated in the decisions referred to hereinabove, this Court is of the opinion that the word "education" cannot be given a narrow meaning by restricting it to the actual imparting of education to the students but has to be given a wider meaning which would take within its sweep, all matters relating to imparting and controlling education. **Examination is an essential component of education as it is one of the major means to assess and evaluate the candidate's skills and knowledge, be it a school test, university examination, professional entrance examination or any other examination. As held by the Supreme Court, the examination is considered as a common tool around which the entire education system revolves.**

13.22 Thus, education would mean the entire process of learning, including examination and grant certificate or degree or diploma, as the case

may be and would not be limited to the actual imparting of education in schools, colleges or institutions only. Unless the School Boards hold examinations, the education of school students would not be complete, so is the case with college students, whose education would be complete only when the University conducts examinations and awards degrees or diplomas. It is the School Boards which issue the Secondary and Higher Secondary School Certificates after holding examinations and the University which confers degrees/diplomas etc. after holding examinations. Unless a student holds a certificate issued by a Board, his or her school education would not be complete, similarly, without a degree or diploma being conferred by the University, college education would not be complete. **Therefore, examinations are an indispensable component of education, without which such education is incomplete. Therefore, to say that Boards/Universities are not "educational institutions" would amount to divorcing examinations from education.**

13.23 Clause (I) of Section 66D of the Finance Act may be examined in the light of the above. Sub-clause (i) of clause (I) refers to pre-school education and education up to higher secondary school or equivalent. When the sub-clause says education up to higher secondary school or equivalent, it goes without saying that it includes the examination leading to conferment of a certificate of having passed the higher secondary school or equivalent. Similarly when sub-clause (ii) says education as a part of the curriculum for obtaining a qualification recognized by any law for the time being in force, it is apparent that the Legislature meant the entire process of preparation of curriculum to the holding of examination leading to obtaining of a qualification recognized by any law for the time being in force. **If the contribution of the Boards/Universities is excluded, there would be no curriculum for obtaining a qualification nor would there be examination leading to conferment of such qualification. Clearly, therefore, it was not the intention of the**

Legislature to exclude preparation of curriculum and holding of examinations from the ambit of clause (I) of Section 66D of the Finance Act, 1994. As a necessary corollary, therefore, the School Boards and the University in question would clearly fall within the ambit of the expression "educational institution" as contemplated under clause (oa) of Entry No. 2 of Notification No. 25/2012-S.T. and services provided by such Boards/University would also fall within the ambit of the services as postulated under clause (I) of Section 66D of the Finance Act.

13.24 The Government of India has also adopted a similar approach in its Notification No. 14/2018-Central Tax (Rate), dated 26th July, 2018 issued in exercise of powers conferred by sub-section (1) of Section 11 of the Central Goods and Services Tax Act, 2017, wherein it has been clarified that the Central and State Educational Boards shall be treated as educational institutions for the limited purpose of providing services by way of conduct of examination to the students.

14. Once the Boards/University to whom services have been provided by the petitioners, are held to be educational institutions, the very substratum of the impugned show cause notices is lost inasmuch as the show cause notices are premised on the allegation that the service recipients namely the Boards/University referred to hereinabove are not educational institutions and, therefore, the services rendered by them do not fall within the negative list of services as provided under Section 66D(I) of the Finance Act, 1994 and that the Board/University are not "educational institutions" as defined under clause (oa) of Entry No. 2 of the Mega Exemption Notification No. 25/2012-S.T., dated 20-6-2012."

(emphasis supplied)

16. It is, therefore, clear from the aforesaid judgment of the Gujarat High Court in **Sahitya Mudranalaya** that a narrow meaning to the word "education" should not be given and it would cover within its sweep all

matters relating to imparting and controlling education. Thus, education would mean the entire process of learning, including examination and grant of certificate, and should not be limited to the actual imparting of education. Thus, Boards would be "educational institution". The Gujarat High Court further held that the preparation of curriculum and holding of examinations is not excluded under section 66D(I) of the Finance Act.

17. The same view was taken by the Tribunal in **Barkatullah University** and the observations are:

"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 (I) 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(I) of the Act as held by the Madras High Court in *Madurai Kamraj University versus Jt. Commissioner of GST & C Ex, Madurai* [2021 (54) GSTL 385 (Mad.)] 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.

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

18. Learned counsel for the appellant, in the alternative, submitted that even otherwise the appellant is covered by Entry 9 of the Exemption Notification as was applicable for the period from 11.07.2014 to 31.03.2017.

19. It is seen that for an activity to fall within the four corners Entry 9 of the Exemption Notification, two conditions have to be satisfied, namely:

(a) Condition 1: The service should have been provided to an educational institution; and

(b) Condition 2: The services should be relating to admission to, or conduct of examination by, such institution.

20. It is seen that Condition No. 1 and the definition of "educational institution" during this period is similar to the definition of "educational institution" in the Negative List Entry contained in section 66D(I) of the Finance Act. It has been found that the schools to which affiliation granted qualify as educational institutions. Thus, Condition No. 1 is satisfied.

21. Condition No. 2 is also satisfied as the activity relates to conduct of examination. Thus, the affiliation granted by the appellant to schools is a service relating to conduct of examination by such schools and is, therefore, exempted from the levy of service tax by virtue of being covered under Entry 9 of the Exemption Notification for the period ending on 31.03.2017.

22. Entry 9 of the Exemption Notification was amended by addition of a proviso with effect from 01.04.2017. The amendment carried out in Entry

9 of the Exemption Notification purports to restrict the scope of clause (b) by specifying that the educational institution should be an institution providing services by way of pre-school education and education up to higher secondary school or equivalent. The appellant satisfies the fulfillment of this requirement as the affiliation that is granted is for providing services by way of pre-school education and education upto higher secondary school or equivalent.

23. In view of the aforesaid discussion, the Additional Director was not justified in confirming the demand of service tax on the appellant.

24. It is, therefore, not necessary to examine the other contentions that have raised by the learned counsel for the appellant.

25. The impugned order dated 11.10.2021 passed by the Additional Director cannot, therefore, be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **05.12.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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