

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 75502 of 2016**

(Arising out of Order-in-Original No.22/COMMR/ST-I/KOL/2015-16 dated 31.12.2015 passed by Commissioner of Service Tax, Kolkata)

Commissioner of CGST & CX, Kolkata : **Appellant**
180, Shantipally, Rajdanga Main Road, Kolkata-700 017.
VERSUS

M/s Eastern Institute of Management, : **Respondent**
IISCO House, 7th Floor, 50, Jawaharlal Nehru Road,
Kolkata-700 071.

APPEARANCE:

Shri P.Das, Authorized Representative for the Appellant

None for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77949/ 2025

DATE OF HEARING :11.12.2025

DATE OF DECISION:11.12.2025

Order : [Per Shri Ashok Jindal]

Revenue is in appeal against the impugned order. The facts of the case are as under:

1.1. An investigation was initiated on 23.01.2013, by the officers of SIV unit, Kolkata Service Tax Commissionerate and a Summons was issued to M/s. EIM. In response it was requested for re-fixing the date after a month. Subsequently on 23.04.13, another Summons was issued to appear on 03.05.2013 when Shri Amit Sengupta, Director of M/s. EIM, appeared and who gave the following answers:-

Q.7. Please state in brief the nature of activities undertaken by you?

Ans. As a trust, the institute offers the MBA/BBA course as on offsite campus of university of Kalyani. We are a nonprofit seeking educational trust and are not commercial in

Q.8. In the letter dated 09.06.2011 of the Registrar of Kalyani University, it is stated that you are an integral post of the university's AICTE approved Department Of Business Administration. Do you [get] any Budget allocation from the university? If not, why?

Ans. We do not get any budget allocation from the university and we have never applied for the allocation. We meet our own expenses.

Q9. As per letter dated 08.04.2013 of Registrar of Kalyani University, you have been provisionally affiliated with the said university. Have they permanently approved your affiliation is valid.

Ans. The practice is to affiliate on an ongoing basis for two to three years period. As soon as they register our students, it is a confirmation that the affiliation is valid.

Q.10. As per the said letter dated 08.04.2013 of the Registrar of Kalyani University, you are simply acting as a conduit to students who want to register their names with Kalyani University in MBA courses, is it not.?

Ans. No, we teach the students ourselves and also offer additional courses to them not covered in the Kalyani Syllabus. We also offer our students placement facilities which Kalyani does not.

Q.11. As per the said letter dated 08.04.2003, the university will take examination of the students already admitted. This clearly goes to show that you are preparing the students to appear for the BBA/MBA Examination to be undertaken by Kalyani University, is it not?

Ans. Yes, but they also have examination for courses not offered by Kalyani. For every examination our professors give 30% of marks at least, and in some cases 100% in the presence of external examiners.

Q.12. As per letter dated 08.04.2003, the Registrar of Kalyani University, has expressed the intention to work out the feasibility of declaring your unit as an off-site campus of the University, whereas in your letter dated 07.08.2013, you have stated that you are working as an off-site campus of the university. Have the university declared your institute as their off-site campus?

Ans. Yes, but there is confusion between affiliation and off-site we consider we have both we are affiliated as an off-site campus.

Q.13. As per your letter dated 07.03.2013 you have stated that your institute has been providing Management Training to the students registered under University of Kalyani. Do you import the

training as per the advice of the Universities authority or as per your planning?

Ans. The academic inputs are part fulfillment of the university's syllabus but we give significant training over and above the university requirements this can be described as management training.

Q.14. Do the faculties attached to the department of business administration of Kalyani University, impart training to the students who are admitted to your institute?

Ans. Our faculty teach at Kalyani also some professors of Kalyani have taught in our institute.

Q.15. it is also seen from your P&L A/c submitted by you, you are incurring huge expenditure on salary allowances to faculties. Who are these faculties? Are they recruited by you or they are recruited by the University?

Ans. They are recruited by us in the presence of Kalyani personnel. Salaries given are in most cases lower than the latest pay Commission recommendation.

Q.16. Your income's major part comprises of admission fees/tuition fees. Are you collecting these amounts on behalf of the University or it is your own collection against imparting training to the students?

Ans. It is our own collection. Barring examination and registration fees, Kalyani has no right to our revenue.

Q.17 You are also earning through 'Sale of Prospectus. Please clarify whether these prospectus are your own or they belong to the University?

Ans. They are our own.

Q.18 What do you mean by Management Development Programme as shown in your income side in the P&L A/c for 2010-11?

Ans. These are programmes held jointly with the University of Cincinnati, USA where we are reimbursed for expenses incurred by us.

Q.19 What are Consultation Fees?

Ans. Our faculty act as consultants for other companies. These payments are routed through the institute. Sometimes, the institute receives reimbursement of fees for expenses like refreshment, travel etc.

Q.20. What do you mean by (i) Examination fees (ii) Registration fees (iii) Membership fees (iv) Faculty reimbursement (v) Retainership fees?

Ans. There are 4 semesters in 2 years. At the end of each semester university of Kalyani holds examinations for which we have to pay a fee-This is examination fee. When a student is admitted to EIM, within a certain time period he becomes a registered student of Kalyani University for which a fee is paid - This is registration fee. We are members of various associations like Bengal Chambers Calcutta Mgmt.

Association, AIMA etc. We have to pay a membership fee to each such association.

Q.21. It is seen that you have incurred substantial amount on (i) Advertisement Publicity (ii) Education Tours Travels. Why?

Ans:- We need to advertise to get students for our course expenses on tours and travels (refer primority) to costs incurred by us for student exchange programmes with University of Chulaloug Koron in Bangkok, University of Cincinnati USA etc.

1.2 M/s EIM offers a 2-year, full time programme in Business Management leading to the Master of Business Administration (MBA) degree of the University of Kalyani. Candidates desiring admission to EIM must be graduates of any recognized university and need to collect the prospectus and admission from the institute office by paying Rs. 750/- in cash or have these mailed to them by sending a demand draft of Rs.800/- drawn in favour of the institute. Each academic year comprises of two semesters. The fee per semester is Rs.1,10,000/- payable at the beginning of each semester. The total coarse fee over 2 years is Rs.4.40 lakh.

1.3 M/s EIM devised their own MBA course, which is divided into four semesters spread over a period of 2 years. The institute also offers additional courses not covered by the Kalyani University Syllabus. In other words the institute also gives significant training over and above the requirement of Kalyani University and this extra training is described as Management

Training Even though vide Certificate No. RPS/Cent/57/558/11 of Kalyani university M/s EIM is considered as an integral part of Kalyani University's AICTE approved department of Business Administration, yet they do not get any Budget allocation from the said University and have to meet their own expenses. The institute collects admission fees / tuition fees from the students individually which is Rs.4,40,000/- Rs.1,10,000/- per semester. To enroll a student of the institute into Kalyani University's Department of Business Administration, the institute pays to the university a fee called registration fee. Similarly, when at the end of a semester of the institute, the students have to appear for an examination conducted by Kalyani University, the institute pays to the university a fee known as examination fee.

1.4 As per letter No. RPS/Abb. Coll/67/105/03 dated 08.04.2003 of the registrar of Kalyani University, the university has provisionally affiliated the Eastern Institute of Management. As a consequence of such affiliation, students of the institute are enabled to register with the university, to appear for necessary examinations both at graduate and post graduate level and to receive degrees of Kalyani University.

1.5 As per letter dated 07.03.13 of the Director/Trustee of EIM, it has been stated that M/s EIM was registered as a "Non profit seeking educational trust", and the training provided by them was not commercial in nature. In the said letter it had been clearly admitted that M/s EIM has been providing management training to the students registered under university of Kalyani.

1.6 After the amendment of Section 65(105)(zxc) of the Finance Act, 1994, added by Finance Act, 2010, with retrospective effect from 01.07.2003, what matters is whether the centre or institute has imparted training or coaching for a consideration. If it has done so, it will get covered by the definition 'Commercial Training or Coaching'. The consideration for training or coaching per se determines the commercial character of the activity. The change of law, which is substantial, has come about with retrospective effect from 01.07.2003.

1.7 Regarding statutory recognition of educational Institute the SCN refers relevant narration of CBEC circular No. 107/01/2009-ST. dated 28.01.2009, F.No. 137/23/2007-CX4 as follows:-

As per UGC Act 1956, UGC with the approval of Central Government and under the Recognition of college in Terms of Regulations, 1974 framed under the UGC Act, can grant recognition to a college or institution run by a trust, a registered society or a body corporate or body incorporated under Central or State Act as an institution affiliated to or form as constituent member with a university, providing education up to a bachelor degree, masters degree or diploma of a duration of minimum one academic year.

As per National Policy on Education, 1986, a scheme of autonomous colleges was promoted. In the autonomous colleges whereas the degree continues to be awarded by the university, the name of college is also included. These colleges develop and submit

new courses of study for approval by the university. The autonomous colleges are fully responsible for the conduct of examination. (Circular No. 107/01/2009-ST, dated 28.01.2009, F. No. 137/23/2007-CX4)

Under AICTE Act, 1987 AICTE (Grant of Approval for starting New Technical Institutions, Introduction of Courses or Programme and Approval), Regulation 1994 was made. Vide Notification No. F-2-1/2006 U.3 (A) dated 05.04.2006 the Central Govt, issued clarification regarding the role and the powers of AICTE and UGC with respect to 'Deemed to be University'.

1.8 The Show Cause Notice thus concluded that from the explanation and guidance from the circular it emerges that from the year 2005 onwards, a technical institutions or establishment (which is otherwise recognized being a university, or affiliate college) not having AICTE approval cannot be called to be the one issuing any certificate or diploma or degree or any educational qualification recognized by the law for the time being in force and thus would be within the ambit of service tax.

2. The Adjudicating Authority dropped the demand holding that the course is designed under University of Kalyani as prior approval of AICTE in respect of Management courses which is mandatory and the examination is conducted and certified. Certificates were awarded under University of Kalyani as laid down in the UGC guidelines for the study centres and non franchising study centres approved/affiliated by the University. It was further held by the Adjudicating Authority that the course

conducted by the Respondent is under the exclusion clause of the definition to the extent of curriculum strictly essential to the programme leading to the degree awarded by the University. Therefore, the cost which is realized additionally as a part of "Management Development Programme" should not come under this exclusion. The cost realized for such development programme is found to be Rs. 26,27,505/- on which the service tax is leviable. Therefore, the service tax is recoverable under section 73(1) of the said Act along with interest at appropriate rate for the delayed period of payment. The service tax on the value mentioned above would be Rs. 2,48,474/- alongwith interest and certain penalties were imposed.

3. As per CBEC Notification No. 10/2003-ST dated 20.06.2003 provides exemption from Service Tax in respect of specified type of Commercial Training or Coaching Services provided by a Commercial training or Coaching Centre on condition that the exemption was not applicable if the charges for such services were paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre. In the instant case, the assessee has collected all the payments from the students and only a part of the payment collected from the students were paid to Kalyani University in order to facilitate registration and examination of the candidates by Kalyani University. The particular exemption for payment of Service Tax is an explicit exemption and could not be extended beyond the specific limit of its provision. The above said notification was rescinded by Notification No. 34/2012-ST dated 20.06.2012, which means that the scope and applicability of Notification No. 10/2003 –

ST dated 20.06.2003 was restricted for the period prior to 20.06.2012. The Adjudicating Authority has not considered the aspect that the assessee, by way of collecting money directly from the students, had contravened the conditions of exemption. Therefore, impugned order is to be set aside.

Therefore, Revenue is before us.

4. None appeared on behalf of the Respondent. Considering the issue in narrow compass appeal is taken up for consideration.

5. We have gone through the impugned order. In the impugned order the Ld. Adjudicating Authority has considered the reply to the Show Cause Notice which is as under:

"1. *A trust called Eastern Institute of Management Trust was registered on 30th September, 2002. This was a non-profit for education trust.*

2. *The trust approached University of Kalyani for affiliation.*

3. *On January 1, 2003 the affiliation was granted.*

4. *The University spelt out the procedures and methodology to be followed vide their letter dated April 8, 2003.*

5. *From the beginning of 2002, the university has been registering students conducting examinations, declaring results and issuing degrees.*

6. *As far as financial transactions are concerned, we paid a deposit of 1 lakh as per letter of January 1, 2003. Every year new students are registered with University of Kalyani for a fee and we pay examination fees for each student for semester*

examinations. Apart from this there are no financial transactions between EIM and the University of Kalyani. All fees from students are collected by us and expenditure is done in our control.

7. To add value to our students, we follow a system of dual specialization, wherein a student will specialize in one area under Kalyani University and in another area under the institute. The institute issues a mark sheet for the Institute specialization. Last year's brochure is also enclosed herewith.

8. The institute has a very good record of placements. Some appointment letters, randomly selected, routed through the Institute, have been enclosed.

9. In the Kalyani marking system, 30% is for internal marks, given by the faculty teaching the course and 70% for the final examination conducted by the University.

10. Ever since granting affiliation our name has been included in the University diary.

11. Some of our faculty members teach at University of Kalyani.

12. We were nonplussed on receiving the show cause and scouted for third party sources to confirm the arrangements. Governments of India, Ministry of HRD conducted a survey of colleges where they classified EIM as a recognized centre, private, unaided and specializing in management.

13. UGC recognizes Kalyani University in the list of State universities which are eligible to receive central assistance and the University recognizes EIM as an affiliate.

14. In a bid to clear our position we obtained information from Bharathidasan University to establish their relationship with Bharathidasan Institute of Management. Their response is unambiguous. "

6. It is not disputed by the Revenue while filing the appeal that the course has designed under University of Kalyani has a prior approval of AICTE in respect of Management courses which is mandatory. The examination is conducted and certificates are awarded by the University of Kalyani as laid down in the UGC guideline . In that circumstances, the Adjudicating Authority has rightly dropped the demand against the Respondent and for the rest of the demand for which the Respondent was providing additional courses the demand has been confirmed.

8. In that circumstances we do not find any infirmity with the impugned order. The same is upheld and the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)