BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.20502 of 2019

and

W.M.P.(MD)No.17152 of 2019

Madurai Kamaraj University,
Represented by its Registrar,
Palkalai Nagar,
Madurai – 625 021. ... Petitioner

Vs.

Joint Commissioner,
Office of the Commissioner of GST and Central Excise,
No.4, Lal Bahadur Sashtri Road,
C.R.Building, Bibikulam,
Madurai – 625 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records on the file of the respondent in proceedings order in Original No.MDU-ST-JC-12-2019 dated 30.05.2019, in File No.V/ST/15/50/2018-Adjn and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.K.Prahu
Standing Counsel

O R D E R

****

The prayer sought for herein is for a Writ of Certiorari, calling for the records on the file of the respondent in proceedings order in Original No.MDU-ST-JC-12-2019 dated 30.05.2019, in File No.V/ST/15/50/2018-Adjn and quash the same.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows:

2.1. The petitioner is a State University was established by an Act of State Legislature called Madurai Kamaraj University Act, 1965 (Act 33 of 1965, Tamil Nadu), (in short, "The University Act") as an affiliating University. To understand the purpose for which the petitioner university was established and the main function and powers of the university, the following provisions of the university act can be taken note of.

"2.Definitions – In this Act, unless the context otherwise requires,-

(a) "affiliated college" means any college within University area affiliated to the University

and providing courses of study for admission to the examinations for degrees of the University and includes a college deemed to be affiliated to the University under this Act;"

2.2. Section 4(4) and 4(7) of the University Act, reads as follows:

"4(4) to hold examinations and to confer degrees, titles, diplomas and other academic distinctions on persons who -

.....

4(7) to affiliate colleges to the University as affiliated, professional or post-graduate colleges under conditions prescribed and to withdraw affiliation from colleges;"

2.3. So, the above provisions of the University Act make it clear that, the petitioner university was established as an affiliating university under which several colleges in the territorial jurisdiction got affiliated and in those colleges as well as the colleges run by the University itself, the prime function of the university is to hold examinations and to confer degrees, titles, diplomas etc. Also it is the prime function of the university to affiliate the colleges to the university as affiliated, professional or post-graduate colleges and also to withdraw such affiliations from

those colleges. With this aim and main function, the petitioner university had been established and has been functioning for all these years.

2.4. That in the year 1994, Finance Act, 1994 was enacted in which the concept of service tax had been first introduced. Initially only three services were categorised as services to be taxed under Finance Act, 1994 ie., service tax. Subsequently, at various point of time, several services have been included in the list and this regime called the service tax regime was prevailing between 1994 and 2012.

2.5. In 2012, ie., with effect from 01.06.2012, the word "Service" has been defined by giving an amendment to the Finance Act, 1994, dealing with service tax and in this context, Section 65-B was inserted from 01.06.2012, under the heading **'Interpretations',** which means definitions. Sub-clause 44 of Section 65-B explained about the word service, which reads thus:

"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,–

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.- For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,–

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

[Explanation 2.-For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation 3: For the purpose of this Chapter,-

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as having an establishment in that territory;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;"

2.6. Like that, with effect from 01.06.2012, Section 66-B was introduced under the heading **'Charge of service tax on and after Finance Act, 2012',** which is a charging Section, which reads thus:

"***66B. Charge of service tax on and after Finance Act, 2012***

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."

2.7. Therefore, it makes clear that there shall be levied a tax ie., service tax at the rate of 12% of the value of all services, other than those services specified in the negative list. So, all services are taxable except the services under negative list. What are all

the items which are to be treated as negative list entries is also provided by having the Section called 66-D under the heading **'Negative list of services',** wherein, a number of such services have been provided under negative list. That means, those services are omitted or exempted from the purview of the service tax with effect from 01.07.2012. In this context, Clause (l) of Section 66-D reads thus:

> *"(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 recognised by any law for the time being in force;*
>
> *(iii) education as a part of an approved vocational education course;"*

2.8. Under Clause 'l' of Section 66-D, the services from pre-school education up to higher secondary education or equivalent, education as a part of curriculum for obtaining a qualification recognised by law for the time being in force and also education as a part of an approved vocational education course are in the negative list. Thus, they are not coming under charging or levying of service tax. By giving these three categories of educational services as categorised under Clause 'l' as stated supra, the

services provided to the students by educational institutions at various levels of education from pre-school level to college level, which include the part of curriculum for obtaining a qualification recognised by any law, that means, any qualification like UG degree, PG degree, Diploma or Post Graduate, professional degree and also vocational course degrees or certificates are all exempted, since they are being part of negative list under Section 66-D.

2.9. In this context, it is to be noted that the Clause 'l' in Section 66-D negative list had been in the statute book for a period from 01.07.2012 to 13.05.2016. However, from 14.05.2016, the Clause 'l' was omitted or taken away. However, in the meanwhile, a notification called “Mega Exemption Notification” dated 20.06.2012 was issued by the Central Government, by exercising the powers conferred under sub-section (1) of Section 93 of the Finance Act, 1994, (32 of 1994), whereby, certain services had been mentioned for giving exemptions from the purview of service tax.

2.10. In this context, it is pertinent to note that, clause 9 of the Mega Notification referred to above was substituted from 11.07.2014, which reads thus:

"(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;]"

2.11. In the very same mega exemption notification, clause (oa), which was inserted from 11.07.2014, has given a mention of the word 'educational institution', which reads thus:

"(oa) "educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994);"

2.12. By thus, though Clause 'l' of Section 66-D was already available under the statute as a negative list service, the mega

exemption notification also was introduced with effect from 11.07.2014, under which, the services to be rendered by educational institutions had been explained and expounded for the purpose of seeking exemption. Therefore, during the regime of Section 66-D 'l' between 01.07.2012 and 13.05.2016, in addition, this mega notification has also provided the way for giving exemption to educational services of the educational institutions as stated under Clause 9, referred to above. Therefore, it can be taken as an expanded meaning or expounded scope of exemption to be claimed by the service providers of education within the meaning of negative list under Section 66-D.

2.13. The said clause 'l' of 66-D though was omitted from 14.05.2016, by virtue of the mega notification regime which also continued even from 11.07.2014, and that has continued up to 30.06.2017, ie., till the service tax regime was in the field ie., the previous day of GST regime which came into effect from 01.07.2017. In this context, it is further to be noted that, by Notification No.9 of 2016 dated 01.03.2016, the Clause (oa) 'educational institution', has further amplified by stating that, the educational institution means, an institution providing services by way of pre-school education up to higher secondary education or

equivalent, education as a part of curriculum for obtaining a qualification recognised by law for the time being in force and also education as a part of an approved vocational education course. In order to appreciate the same, the relevant clause (oa) under Notification No.9 of 2016 is extracted hereunder:

> *"for clause (oa), the following shall be substituted with effect from such date on which the Finance Bill, 2016, receives assent of the President of India, namely:-*
>
> *(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 recognised by any law for the time being in force;*
>
> *(iii) education as a part of an approved vocational education course;"*

2.14. If we look at the said Clause (oa), it could be found that it is almost a replica of Clause 'l' of Section 66-D as referred to above. Therefore, there has been no dispute that, this kind of service tax regime had been occupying the field of service tax from 1994 till 30.06.2017, within which, from 01.07.2012 to 13.05.2016, Clause 'l' of Section 66-D by way of negative list of services had

been made available to press into service and during that period the mega notification had come into effect from 2012 onwards, wherein, clause 9 was introduced with effect from 11.07.2014, which had further expanded the scope of claiming exemption for educational institutions and its services and the same has been reiterated or amplified under Notification No.9/16 dated 01.03.2016 and this position continued till 30.06.2017.

2.15. With the teeth of these statutory provisions, now, we must look into the issue raised in this writ petition, where, the petitioner University being a statutory university created under the Act of State legislature as referred to above, ie., Madurai Kamaraj University Act, 1965, has been rendering educational services, wherein, the important educational services of the university as contemplated under the Act is to give affiliation to its affiliated institutions and also to conduct examinations for conferring Diplomas and Degrees. In respect of these services, mainly the affiliation are being conferred or given to various affiliated institutions. The controversy thus has arisen as to whether such services of providing affiliation to its affiliated institutions by the petitioner university can be treated as a taxable service within the meaning of service tax as provided under 1994 Finance Act, till

2017 ie., till the day on which the GST regime has come. In this context, from 01.04.2013, till 30.06.2017, it is the claim of the respondent revenue that the petitioner's university services towards affiliation and other allied or related services are to be treated as taxable service.

2.16. In this context, the claim was made by the university to seek exemption for the services of affiliation and related services rendered by the University from the purview of service tax net, by invoking the negative list clause provided under Section 66-D of the Finance Act and also the subsequent mega exemption notification and also the consequential notification No.9/16, as during the relevant period ie., from 01.04.2013 to 30.06.2017, all these legislations and the notification issued by the Central Government had been occupying the field where the services rendered by educational institutions from pre-primary to college level and even post graduate and professional level are completely exempted from the purview of service tax and therefore, the claim made by the revenue against the petitioner university is bad in law and therefore, in this context, a challenge has been made as to the action taken by the respondent revenue to issue show cause notice F.No.IN/DGGI/CoZU/M/39/2018 dated 23.10.2018, followed by the

order dated 30.05.2019, confirming the proposal made in the show cause notice and demanding service tax for the said period. This is how this writ petition has come up with the aforementioned prayer.

3. In support of the contentions raised against the order impugned, ie., the assessment and demand made in this regard by order dated 30.05.2019, by respondent revenue, Mr.Joseph Prabakar, learned Counsel for the petitioner university has made the following broad submissions:

3.1. That the university in all fairness shall be treated only as educational institution, as except doing the services of education, no other service is rendered by the University.

3.2. If it is an educational institution, it is covered under Clause 'l' of Section 66-D, where, the services by way of pre-school education and education up to higher secondary education or equivalent, education as a part of a curriculum for obtaining a qualification recognised by any law and also the education as a part of an approved vocational educational course are all totally exempted under the said negative list and those services are not covered under the purview of service tax net.

3.3. The negative list under Section 66-D was made available for the whole period from 01.07.2012 to 13.05.2016. Therefore, during this period, whatever the educational service rendered by any institution, including the petitioner university cannot be treated as services as if which are liable to be taxed under service tax. Instead, it should be treated only as an exempted service or in other words, educational services rendered by the petitioner institution shall not be brought under the purview of service tax net.

3.4. The Clause 'l' of Section 66-D, even though was omitted with effect from 14.05.2016, during that period itself, from 11.07.2014, the mega notification had introduced clause 9, which has further expanded and amplified the service to be provided by an educational institution to its students, faculty and others and by an educational institution, by way of transportation of students, catering, security, cleaning, housekeeping and also services relating to admission or conduct of examination by such institution. In view of this expanded meaning of the services provided by educational institution, by virtue of Clause 9 of the mega exemption notification, which continued with a specific amendment also made

by virtue of notification No.9 of 2016 till 30.06.2017, where also under Clause (oa) the exact clause 'l' of Section 66-D has been reintroduced under the heading **"educational institution",** by providing the pre-school to higher secondary school education and also education as a part of curriculum for obtaining a qualification recognised by any law and also part of an approved vocational education course, as an exempted service.

3.5. Therefore, learned Counsel for the petitioner submits that, for the whole period ie., from 01.04.2013 till 30.06.2017, the educational services have been under exempted category or the educational services have not been categorised as services liable to be taxed under the service tax regime. Therefore, the whole gamut of making a demand by assessing the service tax as has been done by the revenue is *per se* unlawful and against the aforesaid legal provisions and therefore, the impugned order is liable to be set aside, he contended.

3.6. Expanding further on his arguments, learned Counsel would also submit that, though in this context a similar university of the State of Tamil Nadu has already approached this Court and filed a writ petition seeking such a relief in W.P.(MD)No.12879 of

2019, a learned Judge of this Court by order dated 22.02.2021, though had accepted the claim made by the petitioner university in that case insofar as the exemption for affiliation and affiliation related activities, has not accepted the contention of the university insofar as collecting rent from service providers like bank, post office, canteen etc.,

3.7. Therefore, by relying upon the said decision in the case of ***Manonmaniam Sundaranar University Vs. The Joint Director (GST Intelligence), Coimbatore dated 22.02.2021,*** learned Counsel for the petitioner would canvass the point that, insofar as one portion of the view expressed by the learned Single Judge in the said judgment it is in tune with the various exemptions provided under the Act as well as the notification as referred to above. But, insofar as the view expressed by the learned Judge in the second part of the claim of service tax by revenue with respect to the rent collected from the bank, post office, canteen etc., is concerned, even that view may not be correct according to the learned Counsel for the petitioner with respect, because, it forms part of the educational activities undertaken by the University, as within the vast campus of the university there are number of students, teaching and non-teaching faculties and in order to

provide the basic services, the bank, post office and canteen, are allowed and those services in view of the expanded meaning provided under mega exemption notification, especially, under clause 9 as has been quoted herein above is concerned, such services also are very well exempted as the Central Government thought it fit to expand the scope of exemption area of an educational institution to the extent of catering, transportation of students, faculty and staff, security or cleaning and housekeeping and other allied activities.

3.8. Therefore, the second part of the demand made through the impugned order of the revenue from the petitioner university also can very well be exempted, in view of clause 9 of the mega notification and though, this clause 9 was introduced from 11.07.2014, this is only an inclusive meaning within Clause 'l' of Section 66-D. Therefore, during 66-D period from 01.07.2012 and 13.15.2016 and even beyond that, not only with the aid of mega exemption notification, but also on the basis of Section 66-D itself, these services also can be categorised as part of educational services being rendered by the petitioner university and altogether, it should be treated only as an educational service. Hence, the exemption sought for by the petitioner university shall be accepted

and allowed and therefore, to that extent, the view expressed by the learned Judge in the judgment referred to above in the similar circumstances triggered by the other university, insofar as the second part of the judgment with respect, may not be in consonance with the aforementioned legal provision.

3.9. Therefore, in a whole, the entire demand made by the respondent revenue shall go, as it is not backed by any legislation much less any notification or circular. Therefore, the learned Counsel would vehemently contend that, the entire demand made through the impugned order shall be treated as an exempted area within the meaning of Section 66-D 'l' and subsequently the mega notification and notification No.9 of 2016. Therefore, for the whole period between 01.04.2013 and 30.07.2017, the petitioner is not liable to pay any service tax as demanded and therefore, he contended that, the impugned order in entirety shall be interfered with.

4. Per contra, Mr.K.Prahu, learned Standing Counsel appearing for the respondent revenue has made submissions stating that, insofar as the exemption provided under Section 66-D as well as the mega notification and the subsequent notification are

concerned, such kind of exemption has been provided only for the educational institution which provides pre-school education and education upto higher secondary school or equivalent or education as a part of curriculum for obtaining a qualification recognised by any law or education as a part of approved vocational course. He would further enlarge his arguments that, the petitioner institution does not impart education directly to the students in various levels like pre-school, higher secondary school, college level or for any vocational courses.

5. Therefore, the learned Standing Counsel for the respondent tries to distinguish the factor that, the petitioner institution is not an educational institution directly imparting education to the students. In fact, it is only an affiliating body created under the Uniersity Act and its prime duty is to affiliate the colleges to the university, for which *quid pro quo* charges are being collected from the educational institutions and not from the students directly. Therefore, in the process of granting affiliation to educational institutions, and the allied activities such as to conduct inspection of the institution to verify the facilities available in the institutions, its infrastructure, whether it is in tune with or in compliance of the conditions of the affiliation to be granted under

various statutory educational authorities, including the State and Central authorities, that should be verified by the team of inspection, for the said purpose, a fee is collected called "inspection fee" and affiliation is granted for one academic year or more academic years and for granting such affiliation, a fixed fee is collected by the petitioner. Therefore, it is a separate service provided by the university concerned. Therefore, it cannot be treated as part of the educational service imparting education directly to any of the students.

6. Hence, the learned Counsel for the respondent would submit that, first of all exemption provided under Section 66-D and subsequently under the mega exemption notification are not applicable to the institution like the petitioner. Hence, apparantly, based on such exemption provisions, no such exemption can be asked for or claimed by the petitioner university.

7. That apart, the learned Counsel for the respondent by relying upon the averments made in the counter affidavit as well as the additional counter affidavit filed on behalf of the respondent and also the advance ruling given by the Authority For Advance Ruling, dated 19.11.2020, has submitted that, there has been a

direct ruling by the Authority For Advance Ruling in the said order dated 19.11.2020, where, a similar issue had arisen and that had been referred to the Advance Ruling Authority, where, accepting the decision already taken in this regard by GST Council, of course, on the basis of the recommendation made by the Fitment Committee, the authority has come to a conclusion that the services provided by the university, insofar as granting affiliation, conducting inspection etc., are not the services covered under the exemption clause and therefore, such kind of services can never be treated as exempted services from the purview of the service tax and also under the purview of the Central GST Act, thus such an advance ruling has already been given by the authority in the said order.

8. Relying upon heavily on the said order of the Advance Ruling Authority, learned Counsel would contend that, since the ruling has come, where the issue has been answered against the similarly placed university, that would be directly applicable to the case of the petitioner also, therefore, no exemption can be taken by the petitioner university by making these arguments, stating that, whatever services provided by them towards the affiliation and

other allied activities are to be treated as exempted service. Therefore, the learned Counsel would contend that, in view of the said ruling of the Advance Ruling Authority as well as the unambiguous provisions available under the Act as well as the notification relied upon by the petitioner, the claim made by the petitioner university that the service tax cannot be levied, is completely without any basis or not backed by any legal provisions under the relevant statute referred to above. Hence, learned Counsel seeks dismissal of this Writ Petition.

9. It is also one of the contention of the learned Standing Counsel appearing for the respondent that, there has been an appellate remedy provided under the Act as against the impugned order and in this context, he has also relied upon the judgment of the Gujarat High Court made in ***Civil Application No.489 of 2021,*** *in the case of* ***M/s. Gujarat Technological University*** *Vs.* ***Union of India*** *dated* ***12.01.2021.***

10. I have considered the elaborate submissions made by the learned Counsel appearing for the parties and have perused the materials placed before this Court.

11. After having gone into these arguments and the connected records, this Court feels that, the only question posed before this Court for decision is that, whether the services rendered by the petitioner university by granting affiliation and its allied activities and also by providing shelter in their campus to the service providers like Bank, Post Office, or catering etc., directly beneficial to the students, staff and faculty of the university, are exempted services within the meaning of Section 66-D of the Finance Act and also under the Mega Exemption Notification of the year 2012 as amended from time to time.

12. The history of introduction of service tax has been traced by the learned Counsel for the petitioner, which has been discussed in the earlier paragraphs. Up to 2012, the term "service" seems to have not been explained. First time, the term "service" has been explained under Clause 44 of Section 65-B, which has already been quoted hereinabove.

13. While giving such explanation for the term "service", the legislature also thought it fit to introduce two sections, namely, Section 66-B and 66-D. 66-B is a charging section which makes it

clear that, there shall be levied a tax at the rate of 12% on all services other than those specified in the negative list. Therefore, what are all the services provided under the negative list are taken away from the purview of Service Tax net. The exempted services as provided under Section 66-D Clause 'l', alone has been quoted hereinabove.

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

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.

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 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. In that context

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 'l' 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 'l' 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 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 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.

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.

16.08.2021

Index : Yes / No

Internet: Yes / No

MR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

Joint Commissioner,

Office of the Commissioner of GST and Central Excise,

No.4, Lal Bahadur Sashtri Road,

C.R.Building, Bibikulam,

Madurai – 625 002.

R.SURESH KUMAR., J.

MR

ORDER MADE IN

W.P.(MD)No.20502 of 2019

16.08.2021