

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Service Tax Cross Application No. 50103 of 2020
In
Service Tax Appeal No. 52139 of 2019

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-014-18-19 dated 29.04.2019 passed by the Commissioner of CGST, Customs & Central Excise (Appeals), Bhopal]

**Principal Commissioner of CGST
& Central Excise, Jabalpur**

C.R. Building, Mission Chowk,
Napier Town, Jabalpur,
Madhya Pradesh - 482001

...Appellant

VERSUS

M/s. Rani Durgawati Vishwavidyalaya

Saraswati Vihar, Pachpedi,
Jabalpur, Madhya Pradesh - 482001

...Respondent

APPEARANCE:

Shri Anand Narayan, Authorized Representative for the Appellant
None for the Respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 07.05.2025

DATE OF DECISION: **16.05.2025**

FINAL ORDER No. 50698/2025

BINU TAMTA

Revenue has challenged the Order-in-Appeal No. BHO-EXCUS-001-APP-014-18-19 dated 29.04.2019, set aside the demand of service tax on affiliation, fees charged from educational institutions and also with respect to the renting of immovable property service.

2. Brief fact of the case is that M/s. Rani Durgawati Vishwavidyalaya, Jabalpur (M.P.) is established under Madhya

Pradesh Vishwavidyalaya Adhiniyam, 1973 and is a Central University incorporated under the Central University Act, 2009. The university is engaged in imparting higher education to the aspirant students. University was granting affiliation to various colleges for which they were collecting charges viz. affiliation fees from the affiliated colleges. The university collected Rs. 11,85,56,128/- on account of affiliation fees for the period July 2012 to Dec. 2016. The university also provided renting of immovable property service to various parties during the period July 2012 to Dec. '2016 and collected Rs. 9,25,250/- on account of rental income on which service tax leviable works out to be Rs. 1,21,917/-.

3. Therefore, a show cause notice dated 11.04.2018 was issued to them and subsequently the proceedings were finalized by the adjudicating authority vide Order-In-Original dated 04.01.2019 wherein demand of service tax of Rs. 1,58,18,823/- was confirmed with interest and equal mandatory penalty. Challenging the order in original, an appeal was filed by the appellant which has been allowed by the impugned order. Reviewing the said order, the revenue has filed the present appeal.

4. Heard both sides and perused the records of the case. The two issues for our consideration are:

(i) Whether the affiliation fees charged by the appellant from the educational institutions /colleges can be subjected to levy of service tax under the Finance Act, 1994?

(ii) Whether the appellant is entitled to the benefit of SSI exemption on renting of immovable property service as the aggregate value of such rental services does not exceed ₹10 lakhs in a particular financial year?

5. Both the issues have been decided in favour of the appellant by the Tribunal in the case of **M/s Jiwaji Vishwavidhyalaya versus Commissioner, CGST & CE, Bhopal**¹. On the first issue of affiliation fees, the Tribunal has relied on the decision of the Karnataka High Court in **Rajiv Gandhi University of Health Sciences, Karnataka**² where it has been held that the act of University in granting affiliation to a private college has to be considered as a service in furtherance of providing education and the decision of the respondents to consider otherwise is erroneous. We concur with the view taken by the High Court and the same is squarely applicable to the controversy in the present case.

6. The learned AR has relied on the decision of the Madras High Court in Pondicherry University versus Joint Commissioner of GST & CE 2024 (14) Centax 160 (Mad.) where the learned Single Judge had dismissed the writ petition challenging the levy of service tax on affiliation fees. However, we find that the decision relied on by the appellant in the case of Rajiv Gandhi University by the High Court of Karnataka was challenged by the revenue in SLP(C) D No.59470/2024 before the Supreme Court and the same was dismissed at the miscellaneous stage observing as under:

¹ Final Order No. 50518/2025 dated 17.04.2025

² 2022 (64) GSTL 465 (Kar.)

"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."

7. From the impugned order, we find that the Commissioner (Appeals) after considering the provisions in the post negative era, analysed the nature of affiliation fees paid by the educational institutions to the appellant and also the nature of activity involved in the process of receiving affiliation fees, concluded that the same is not chargeable to service tax. We do not find any error in the findings arrived at by the Commissioner (Appeals), which are in conformity with the decision of the High Court. The observations made in the impugned order are quoted herein below:

"9. The university may lay down the procedure of admission of the students for instruction in any course/subject, which shall be binding on the college. The university may, for the purpose raising the standards of instruction in any course/subject and achieving academic excellence, issue guidelines, list of facilities equipment and teaching aids to be maintained in college, teaching methodology to be adopted, refresher courses to be imported to teachers, and such other directions as may be considered necessary by the Academic Council or its standing committee. In other words, the services provided by a university to affiliated colleges are in relation to higher education as under :-

- Curriculum structure
- System of evaluation and examination
- Content
- Eligibility criteria for admitting students
- Process of teaching and learning

10. The adjudicating authority has erred in holding that services provided by the university is neither covered by the

negative list nor mega exemption notification. The clause (I) of the negative list provides as under.-

66D. Negative list of services. - *The negative list shall comprise of the following services namely:-*

(1) 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;

11. *The clause (I) of section 66D of the Act [Negative List] covers specified educational services. These services were omitted from the Negative List vide Finance act, 2016 but the service tax exemption on them was continued by incorporating them in the general exemption notification (Notification No. 25/2012-ST as amended by notification No. 09/2016-ST, dated 1st March, 2016 refers). The serial number 9 of the mega exemption notification no 25/2012 granted exemption to following taxable services:-*

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property,

12. *The said entry was substituted vide Notification no. 6/2014-ST dated 11.07.2014. The amended entry read as under.-*

"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,*

13. *The Board vide Circular No. 172/7/2013-ST, dated 19.09.2013 has also clarified as under :-*

3. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

14. *It may be seen that all services relating to education have been exempted including the auxiliary educational services such as catering and transport. As discussed above, the services provided by the appellant are the core services in the field of higher education which results in grant of degree/certificate/diploma recognized by the law and the said activity is covered by the clause (I) of the negative list. The adjudicating authority has not examined the applicability of the clause (I) of the negative list. He has examined the scope of Sr. No. 9 of the mega exemption notification and erroneously held that the said services are not covered by the exemption. He has also not given any finding as to why the impugned services are not covered by the clause (iv)- services relating to admission to, or conduct of examination by, such institution;*

15. *Even before the introduction of negative list, the educational services relating to award of degrees recognized by the law was exempted from the service tax and the position has not changed even after the introduction of negative list in so far as education*

services are concerned. In this regard, attention may be drawn to the Board Circular No. 107/1/2009-S.T., dated 28-1-2009 wherein the taxability of higher education was thoroughly examined as under:-

3. Post School Education

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As per National Policy on Education, 1986, a scheme of autonomous colleges was promote In the autonomous colleges, whereas the degree continues to be awarded by the univers the name of college is also included. These colleges develop and submit new courses of study for approval by the university. These autonomous colleges are fully responsible for the condut of examination.

As all these institutions or establishment are either created or recognized in terms of the power conferred by statutes, they would fall in the category of institutes/establishments which issues diploma or certificate recognized by the law for the time being in force. As regards issuance of degree, Section 22(1) of the said Act, provides for right of conferring or granting degrees only by a 'university' (as defined above) or a 'deemed university' (as defined above)."

8. On the second issue of service tax on the activity of Renting of Immovable Property Service, we find that both the, Hon'ble High Court of Karnataka in the case of **Rajeev Gandhi University of Health Sciences (supra)** followed by the Tribunal in the case of **M/s. Jiwaji Vishwavidhyalaya (supra)** has held that Notification No. 33/2012-ST dated 20.06.2012 prescribes exemption from payment of tax if the amount received in the previous Financial Year is less than the threshold limit of Rs. 10 lakhs. On this principle, the Commissioner (Appeals) have categorically recorded

the finding that the aggregate value of such rental services does not exceed Rs. 10 lakhs in a particular one financial year and therefore, the appellant is entitled to the benefit of SSI exemption. Consequently, they are not liable to pay any service tax on such service. We do not find any reason to interfere with the findings recorded by the Commissioner and therefore accept the same.

9. The impugned order is affirmed and the appeal filed by the Revenue accordingly stands dismissed. The miscellaneous application is also disposed off.

[Order pronounced in the open court on **16.05.2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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