

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P.(MD)No.12879 of 2019 and  
W.M.P.(MD)Nos.9576 & 9577 of 2019

Manonmaniam Sundaranar University,  
Rep. by its Registrar,  
Abishegapatti,  
Tirunelveli District.

... Petitioner

Vs.

1. The Joint Director(GST Intelligence),  
Coimbatore Zonal Unit,  
No.151-1,Lakshmanan Street,  
Coimbatore.

2. The Joint Commissioner,  
O/o.Joint Commissioner,  
CGST & Central Excise,  
Central Revenue Building,  
Tractor Road, N.G.O.Colony,  
Tirunelveli.

3. The Senior Intelligence Officer,  
Director General of Goods & Service Tax Intelligence,  
Madurai Regional Unit,  
P & T Nagar Main Road,  
Madurai.

... Respondents

**Prayer:** Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order made by the second respondent in order in Original No.12/JC/ST/2019 dated 25.03.2019 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff,  
for M/s.Ajmal Associates.

For Respondents : Mrs.S.Raghaventhre,  
Junior Panel of CBIC.

\* \* \*

**ORDER**

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the respondents.

2. The petitioner is an University established by the Manonmaniam Sundaranar University Act, 1990. The second respondent issued notice dated 23.10.2018 calling upon the petitioner University to show cause as to why certain sums of money should not be paid by them towards service tax. It was also proposed to levy interest and penalty on the said principal amount. The show cause notice alleges that the petitioner had been collecting affiliation fees, inspection fees and other fees etc. from the affiliated colleges and charges by way of renting of immovable properties. The stand of the authority is that the University has been rendering service to the affiliated colleges also. Therefore, the fees collected by the University ought to have been reflected in the returns filed by the petitioner

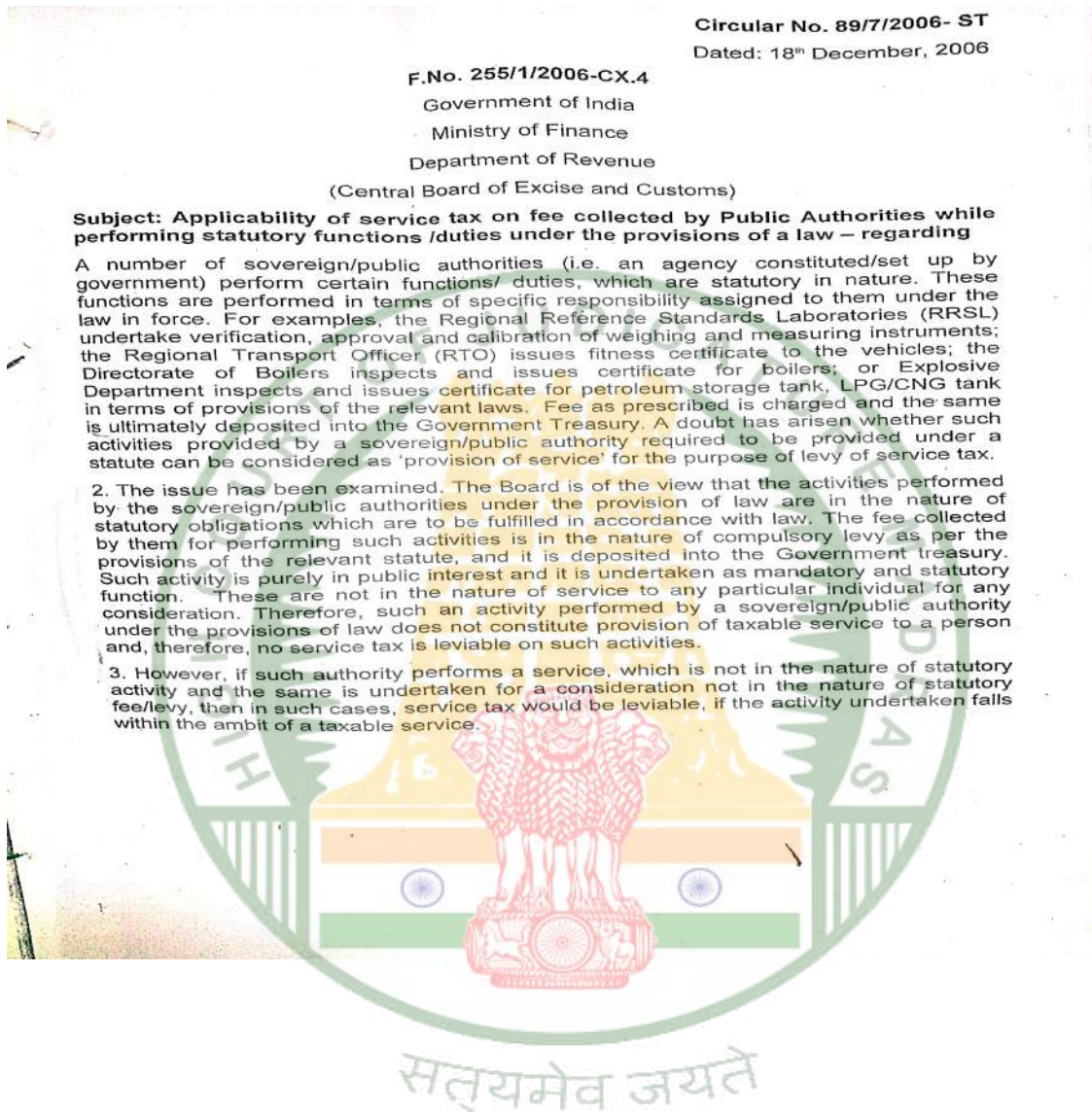
University. The second respondent also took objection that the petitioner did not even bother to register themselves as an assessee for the purpose of payment of Service Tax. The petitioner offered their objections. Not satisfied with them, the impugned order came to be passed confirming the proposals set out in the show cause notice. The said order is assailed in the writ petition.

3. The respondents have filed a detailed counter affidavit. In the said counter affidavit, the stand taken by the second respondent in the impugned order is reiterated. The learned Standing counsel took me through the averments set out in the counter affidavit and called upon this Court to sustain the impugned order and dismiss this writ petition.

4. I carefully considered the rival contentions and also went through the materials on record.

5. The learned counsel appearing for the petitioner drew my attention to the Circular No.89/7/2006-ST dated 18.12.2006 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs. The said Circular reads as follows:-





Subsequent Circular No.96/7/2007-ST dated 23.08.2007 issued by the Government of India, Ministry of Finance, Department of Revenue, Tax Research Unit, reiterated the said proposition which is clarified from the following table:-

| Reference Code<br>(1) | Issue<br>(2)   | Clarification<br>(3)   |
|-----------------------|--|--|
| 999.01 / 23.08.07     | <p>Sovereign/public authorities perform functions assigned to them under the law in force, known as "statutory functions". For example,</p> <ul style="list-style-type: none"> <li>· Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments;</li> <li>· Regional Transport Officers (RTO) issue fitness certificate to motor vehicles;</li> <li>· Directorate of Boilers inspects and issues certificates for boilers; or</li> <li>· Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws.</li> </ul> <p>Authorities providing such functions, required to be performed as per law, may collect specific amount or fee and the amount so collected is deposited into government account.</p> <p>Whether such activities of a sovereign / public authority, performed under a statute, can be considered as 'provision of service' for the purpose of levy of service tax and the amount or fee collected, if any, for such purposes can be treated as consideration for the services provided?</p> | <p>Activities assigned to and performed by the sovereign / public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account.</p> <p>Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to and performed by a sovereign / public authority under the provisions of any law, do not constitute taxable services. Any amount / fee collected in such cases are not to be treated as consideration for the purpose of levy of service tax.</p> <p>However, if a sovereign / public authority provides a service, which is not in the nature of statutory activity and the same is undertaken for a consideration (not a statutory fee), then in such cases, service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined.</p> |

6. Now the only question that arises for consideration is whether the petitioner is collecting any compulsory levy and depositing the same into the Government account. The activities performed by the petitioner University is in the nature of statutory obligation.

7. Be that as it may, the fee collected by the petitioner will be in the nature of compulsory levy as per the provisions of the relevant statute. The petitioner University was established by legislation. Section 24(16) of the said statute enables the Syndicate of the University to prescribe the fees to be charged for the approval and affiliation of colleges, for admission to the examinations, degrees, titles and diplomas of the University, for the registration of graduates, for the renewal of such registration and for all or any of the purposes specified in Section 4.

8. There can be no doubt that a college as per the UGC regulations will have to be affiliated to some University. Therefore, the affiliation fees as well as the inspection commission collected by the University are in the nature of statutory levies. By performing those activities, the petitioner is only discharging a statutory function and the fees collected by the petitioner cannot be amenable to levy of Service Tax.

9. However, the demand of the respondents with regard to renting of immovable property will stand on a different footing. The learned counsel appearing for the



petitioner draws my attention to Section 4(18) of the Act to sustain the contention that the petitioner was only discharging statutory function.

10. I am unable to accept the said proposition. It is true that authorisation is given to the University to maintain the property. But then, there is clear commercial element in these transactions. The University is renting the property to other institutions and collecting rent from them. Therefore, the second respondent was justified in raising demand for the said service. However, there is no justification in levying penalty. The assessee is not a private entity. The respondents do not allege forgery or misrepresentation. I sustain the impugned order in so far as the demand for payment of Service Tax on renting of immovable property is concerned. In all other respects, it is quashed. The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**22.02.2021**

Index : Yes / No  
Internet : Yes/ No  
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**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:**

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**G.R.SWAMINATHAN,J.**

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