

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JULY 2022

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION NO.57941 OF 2018 (T-RES)

BETWEEN:

M/S RAJIV GANDHI UNIVERSITY
OF HEALTH SCIENCES, KARNATAKA
4TH T BLOCK, JAYANAGAR
BANGALORE-560 041
KARNATAKA, (REP BY MR.SHIVANAND KAPASHI
REGISTRAR, AGED ABOUT 51 YEARS
S/O MR.BHIMAPPA KAPASHI) ... PETITIONER

(BY SRI.V. RAGHURAMAN, SR. ADV.,
SRI. RAGHAVENDRA C. R., ADV.,
SRI. BHANUMURTHY J. S., ADV.)

AND:

- 1 . PRINCIPAL ADDITIONAL DIRECTOR GENERAL
DIRECTORATE GENERAL OF GST INTELLIGENCE
BENGALURU ZONAL UNIT, # 112, K.H.ROAD
S.P.ENCLAVE, ADJ. TO KARNATAKA BANK
BENGALURU-560 027
- 2 . PRINCIPAL COMMISSIONER OF CENTRAL GST
SOUTH COMMISSIONERATE
C.R.BUILDINGS, QUEENS ROAD
BANGALORE-560 001
- 3 . CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS NORTH BLOCK
NEW DELHI-110 001

- 4 . UNION OF INDIA
MINISTRY OF FINANCE
REP. BY SECRETARY
NORTH BLOCK, NEW DELHI-110 001
5. ASSISTANT COMMISSIONER OF CENTRAL TAX
SOUTH DIVISION-6, 2ND FLOOR, TTMC/BMTC
BUILDING, KANAKAPURA ROAD
BANASHANKARI, BENGALURU – 560 070

... RESPONDENTS

(BY SRI.AMIT DESHPANDE, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE PROVISIONS OF SECTION 174 OF CENTRAL GOODS AND SERVICES TAX ACT 2017 [ENCLOSED AS ANNEXURE-A] IS ULTRA VIRES CONSTITUTIONAL [101ST] AMENDMENT ACT, 2016 LACKING LEGISLATIVE COMPETENCE AND IS VIOLATIVE OF ARTICLE 14/19/265 OF THE CONSTITUTION AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner is Rajiv Gandhi University of Health Sciences and is in receipt of affiliation fees, penalty / fine for delayed payment from Colleges affiliated to it and also rents from certain buildings rented out by it.

2. Respondent No.1 has issued a show cause notice proposing to levy service tax on the affiliation fees,

penalty / fine for delayed payment from Colleges affiliated to it and also rents from certain buildings rented out by it. Aggrieved by the same, the instant writ petition is filed.

3. In the writ petition, the petitioner has challenged several provisions of Finance Act, 1994 (for short hereinafter referred to as 'Act') and the notifications issued thereunder along with the impugned show cause notice dated 20.04.2018 bearing No.SCN Sl.No.22/2018-19 vide Annexure-'C' and also Statement of Demand dated 28.02.2019 bearing No.C.No.IV/09/01/2019-SD6 877/19 vide Annexure-'U' to the writ petition. However, during the course of arguments, petitioner confines its prayer to the show cause notice at Annexure-'C' as well as Annexure-'U' to the writ petition and does not insist upon other prayers.

4. The case of the petitioner is that, it is imparting education and the entire affiliation fee received by it is towards the same and as per the provisions of Section 66D of the Act and notification No.25/2012-ST dated 20.06.2012 as amended from time to time, consideration received by providing service by way of education as a part of

curriculum for obtaining a qualification recognised by any law for the time being in force is exempted from service tax and thereby, the affiliation fee received by the petitioner – University is exempted from service tax and that respondent No.1 does not have the jurisdiction to issue show cause notice proposing to levy service tax on the affiliation fee received by the petitioner – University.

5. The learned counsel for the respondents admit that the consideration received from the Institutions for services by way of education as a part of curriculum for obtaining qualification recognized by any law for the time being in force is exempted from service tax. However, he contends that the affiliation fee received by the petitioner – University cannot be considered as part of the said services and that it is a consideration received towards the services provided to private Institutions by affiliating the same.

6. It is further submitted that what is under challenge is only the show cause notice and the petitioner is required to answer the same instead of approaching this

Court. On the said ground, it is prayed that the writ petition be dismissed.

7. By way of the impugned show cause notice, the respondents have sought to impose service tax on the petitioner – University for the affiliation fee collected by it during the academic year – 2012-2013 to 2016-2017. As per the Act, the negative list of services which are not chargeable to service tax is contained in Section 66D and Clause(I) of Section 66D of the Act.

Clause(I) of Section 66D reads as under:-

"(I) 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;"

8. The petitioner – University is established under the Karnataka State Universities Act, 2000 and Universities are established by the State for furthering the advancement

of learning and pursuing of higher education and research. For this purpose, apart from they themselves imparting education through their constituent colleges, it also admits educational Institutions not maintained by the University as affiliated colleges and in the process regulates the manner in which education has to be imparted in the said Colleges and also conducts examinations. In the process, for providing services for imparting education, it charges affiliation fee to the said colleges and the University has to be considered as an Educational Institution imparting education by itself and also through its affiliated colleges and the services being provided by the University by collecting affiliation fee has to be considered as the service by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force.

9. The said activity of service by way of providing education as contemplated in Clause(I) of Section 66D of the Act was issued under Finance Act, 1994 by placing the said activity under exemption list.

10. It is not the case of the respondents that the consideration received towards the educational activity is taxable for service tax. It is their case that affiliation fee collected by the petitioner – University cannot be considered as a consideration for providing educational services.

11. As already stated above, 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.

12. The case of the petitioner is that it is not in real estate business and certain buildings are let out by it to carry on certain activities like canteen, Bank facility and the like which are essential in running a University for imparting education.

13. Clause (3) of Section 66(F) of the Act, reads as under:-

"(3) Subject to the provisions of sub-section(2) the taxability of a bundled services shall be determined in the following manner, namely:-

a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which give such bundle its essential character;

b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation. – For the purpose of sub-section(3), the expression "bundled service" means bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services."

14. It is not in dispute that petitioner has let out some of its buildings for canteen, Bank and other facilities which are essential for effective running of an University in

furtherance to imparting education and the said activity has to be considered as an activity incidental to provide services of education and it is a service naturally bundled in the ordinary course of business as contemplated in the aforementioned Clause (3) of Section 66(F) of the Act and the rent received also deserves to be exempted once the activity of providing education by the petitioner – Institution is exempted from service tax.

15. The only question that arises for consideration is whether the petitioner is liable to pay the service tax on the rent received by it from the buildings let out by it.

16. Normally, a person is bound to reply to the show cause notice issued by the Authority and it is not appropriate for him to approach the Court without doing the same. However, in the instant case, the dispute does not pertain to quantification of service tax, but whether the respondents – Authorities have jurisdiction to demand service tax for the activity of petitioner – University in providing education. Further, it is the clear stand of the respondents – Authorities before this Court that the activity

of the petitioner – Institution in granting affiliation to Colleges and consideration received towards it is taxable under the Service Tax.

17. Under the circumstances, it is not appropriate to relegate the petitioner before the adjudicating Authority.

18. For the aforementioned reasons, the following:-

ORDER

i. The show cause notice dated 20.04.2018 bearing No.SCN Sl.No.22/2018-19 vide Annexure-'C' and statement of demand dated 28.02.2019 bearing No.C.No.IV/09/01/2019-SD-6 877/19 vide Annexure-'U' to the writ petition are hereby set aside and consequently, all further actions pursuant to the said show cause notice is hereby set aside.

ii. Writ petition is ***disposed of*** accordingly.

**Sd/-
JUDGE**

VMB