
SERVICES PROVIDED BY A UNIVERSITY, INCLUDING AFFILIATION OF COLLEGES AND OTHER ALLIED SERVICES GIVEN TO STUDENTS, EXEMPT FROM SERVICE TAX: MADRAS HC

A single bench of the Hon'ble High Court of Madras in a recent judgment of *Madurai Kamraj University vs. Joint Commissioner*¹ held that services provided by a University, including affiliation of colleges and other allied services given to students, are exempted from levy of Service Tax as per Finance Act, 1994.

Background:

- Section 2(a) of the Madurai Kamraj University Act, 1965 ("University Act") defines an affiliated university as any college affiliated within the area affiliated to university and which conducts the examinations required to be cleared in order to procure the degree of the university. It also includes a college deemed to be affiliated to the University as per the said Act.
- Section 4(4) and 4(7) of the University Act prescribe the powers of the university to hold examinations and to confer degree, titles, diploma and other academic distinctions; and to affiliate colleges to the university and to withdraw such affiliations respectively.
- Clause 44 of Section 65-B of the Finance Act, 1994 ("Act") defines service as any activity carried by one person for another in lieu of consideration. Section 66-B therein prescribes the levy of service tax at the rate of twelve per cent upon the value of the services mentioned in Section 65-B.
- A list of services exempted from the levy of service tax ("negative list") has been prescribed under section 66-D of the Act, clause (1) wherein exempts services provided by way of education as part of curriculum for obtaining a qualification recognized by any law for the time being in force.

¹ WMP (MD) No. 17152 of 2019

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- The Central Government had wide powers to exempt any service from the levy of service tax by issuing a notification as per section 93(1) of the Finance Act, 1994. Therefore, some other services were also exempted from the levy of service tax by the Central Government vide a “Mega Exemption Notification”², clause 9 wherein was substituted on 11th July, 2014 to exempt the following services:-
 - a. Services provided by an educational institution to its students, faculty and staff;
 - b. Services provided to an educational institution, by way of transportation of students, faculty and staff; catering, including any mid-day meals scheme sponsored by the Government, security or cleaning or housekeeping services performed in such educational institution; and
 - c. Services relating to admission to, or conduct of examination by, such institution;
 - Educational institutions are defined under clause (oa) of the mega exemption notification as institutions providing services as per Section 66-D of the Act. Although this exemption clause (l) of section 66-D of the Act was omitted from 14th May, 2016 onwards, the meaning ascribed to educational institutions under clause (oa) of the mega exemption notification was amplified by way of another notification dated 1st March 2016³ to include institutions providing education as a part of curriculum for obtaining a qualification recognized by any law for time being in force. Therefore, clause (l) of section 66-D of the Act was operative in essence till a day prior to the inception of Goods and Services Tax, i.e., 30th June, 2017.

Brief Facts of the case:

- Madurai Kamaraj University (“Petitioner”) has sought for a writ of Certiorari for quashing of the records on the file of the Joint Commissioner GST and Central Excise (“Respondent”) on account of them being illegitimate and arbitrary.

² Notification No. 25/2012 dated 20th June, 2012

³ Notification 9/2016 dated 1st March, 2016

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- The petitioner university was established under the University Act as an affiliating university with the prime function to affiliate the colleges to the university as affiliated, professional or post-graduate colleges and also to withdraw such affiliations.
 - The Petitioner claimed exemption from service tax before the Respondents, for the services rendered by them during the period of 1st April, 2013 to 30th June, 2017, which was rejected by the Respondent, and service tax was demanded from the Petitioner alongwith interest and penalty in a show cause notice dated 23rd October, 2018. The abovementioned demand was confirmed in an order-in-original dated 30th May, 2019, on the ground that exemption clauses are only applicable to institutions imparting education directly and not to the universities providing affiliation to such institutions.
 - Instead of challenging the order before the appellate authorities, the Petitioner has challenged the action of the Respondent of issuing a show cause notice in the Writ Petition as *per se* unlawful.

Issue before the Court:

- 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.

Observations by the Court:

- The High Court provided a purposive interpretation and observed that 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 Petitioner University ie., to give affiliation can be an integral part of the educational services such as admission and examination are being

provided jointly, both by the University and the college. The college cannot be said to function independently 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, and are therefore exempted from the levy of Service Tax as per clause 9 of the mega exemption notification.
- Hence, the court set aside the order in original, thereby exempting the levy of service tax on affiliation services provided by a University.
- The court further observed that the Petitioner has rightly approached the court by way of a Writ Petition as there was no alternative remedy available to them under section 86 of the Act.

VA Comments:

- The abovementioned judgment shall have a wide beneficial impact as the Universities are also brought under the ambit of educational institutions for the purpose of providing them an exemption. It is therefore, a welcome move on the part of Universities.

For any further information/ clarification, please feel free to write to:

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