CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

SERVICE TAX APPEAL No. 50266 of 2021

(Arising out of Order-in-Appeal No. 317(SM)ST/JPR/2020 dated 16.06.2020 passed by the Commissioner (Appeals), CE & CGST, Jaipur)

M/s Om Prakash Bajaj, **....Appellant**
6-a, Acharya Kriplani Marg,
Adarsh Nagar, Jaipur

Versus

Principal Commissioner of CGST, **....Respondent**
and Central Excise
Jaipur

APPEARANCE:
Ms. Priyanka Goel, advocate for the appellant

Shri S.K. Meena and Shri Rajeev Kapoor, authorised representative of the department

CORAM :
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing : 05.08.2026
Date of Decision : 21.08.2026

FINAL ORDER NO. 51355/2026

DR. RACHNA GUPTA:

The present appeal is filed to assail the Order-in Appeal bearing no. 317/2020 dated 16.06.2020 vide which the benefit of exemption under clause no. 9(b) of Notification No. 25/12-ST dated 20.06.2012, the denial thereof, has been confirmed. Briefly stated, the department received the information from the Income Tax Department about M/s Om Prakash Bajaj, the appellant herein, that despite they were rendering service in terms of section 65B(44) of Finance Act, 2012 for the period 2012-13, they were not discharging the service tax liability. From the data provided by the Income Tax Department the appellant was observed having income under sections 194(C) and 194(J) of the Income Tax Act, 1961. But the service tax returns were not filed by the appellant for the period 2012-13. Hence alleging the suppression of relevant facts that the service tax amounting to Rs. 2,15,769/- along with interest at the applicable rate and the penalties under sections 70 and 78 of the Finance Act was proposed to be recovered/imposed. The show cause notice bearing no. 84/2018/95 dated 25.04.2018 was served upon the appellant. The aforesaid proposal was confirmed by the original adjudicating authority vide Order-in-Original bearing no. 18/2019-20 dated 14.05.2019. The appeal against the said order has been dismissed by the Commissioner (Appeals) vide the impugned order. Being aggrieved the appellant is before this Tribunal.

2. We have heard Ms. Priyanka Goel, learned counsel for the appellant and Shri S.R. Meena and Shri Rajeev Kapoor, learned authorised representatives for the department.

3. Learned counsel for the appellant submitted that appellant is individual proprietor and the owner of an immovable property situated at Gopal Bari, Ajmer Road, Jaipur. Vide lease deed dated 01.05.2004, the appellant let out the said property to Ritnand Balved Education Foundation, the registered society engaged in providing education services. The premises were taken on rent for the purpose of imparting education to the students by way of conducting various courses. To such an activity, exemption is given under clause 9(b) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. It is submitted that the service tax demand confirmed vide the impugned order amounts to denial of the said exemption in favour of the appellant. The appellant was under bonafide belief of the applicability of the said exemption. Hence not only the confirmation of demand but the invocation of extended period of limitation is wrong. The

order confirming such demand is, therefore, liable to be set aside. Learned counsel has relied upon the decision in case of **M/s Unified Council Educational Services Pvt Ltd. vs. Commissioenr of Central Tax Rangareddy GST, Hederabad**[1] wherein it was held that that in case of interpretational issues the extended period of limitation is not invocable. With these submissions the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting these submissions, learned authorised representative at the outset, has reiterated the findings given in the orders by the departmental adjudicating authorities. It is further submitted that the lease deed dated 01.05.2004 between the appellant and the tenant do not specify as to whether any educational institute was being run in the given premises. The deed is silent about the nature of activities as were being carried out in those premises. The denial of the exemption benefit of clause no. 9 of Notification No. 25/2012-ST is, therefore, absolutely justified. The appellant was liable to pay the service tax for the financial year 2012-13. Despite this liability since the appellant was not filing the service tax returns. The only outcome is the suppression of facts to evade the payment of tax, hence the extended period is also been rightly invoked. With these submissions, the appeal is prayed to be dismissed.

5. Having heard both the parties, foremost we have perused the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 clause no. 9 thereof. It reads as follows:

> "G.S.R......(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the

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1. 2026(8) TMI 160 - CESTAT HEDERABAD

> Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210 (E), dated the 17 th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-
>
> 1-8 xxx
>
> 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;"

6. The bare perusal reveals that the exemption is available for the services provided to or by an educational institution which are in the nature of auxiliary education services or renting of immovable property. The nature of service in question, admittedly, is renting of immovable property. If it is received by the educational institution then only the exemption of this provision is available to the appellant. A copy of lease deed executed by the appellant while renting its immovable property is on record. Perusal thereof, shows that the property was rented to Ritnand Balved Education Foundation, that is a society registered under the Societies Registraction Act. the document nowhere defines the said lessee/tenant to be an educational institute. Though learned counsel has impressed upon clause 4(a) of the said lease. It reads as follows:

> **"4. USAGE**
>
> a. the Lessee shall use the DEMISED PREMISES for Office/Commercial use, education/councelling/research/hostel for students etc etc and the works as per the policies of RBEP only."

7. The bare perusal reveals that education is not the only purpose for the leased premises. The premises were taken on rent for various other purposes including the commercial use as well as hostel for the students. There is no other document on record to prove that the lessee/tenant is an educational institute.

8. Learned counsel has relied upon a certificate issued by Amity University, Rajasthan as another document to show that the exemption of clause 9(a) of Mega Exemption Notification was available to the appellant. The said document reads as follows:

> "(i) This is to confirm that we are an Educational Institution and are involved in providing education.
>
> (ii)This is to confirm that our office situated at Plot No.14, Gopal Bari, Ajmer Road, Jaipur 302001 was taken on rent from 01.05.2004 to till September 2018 from Shri Om Prakash Bajaj for the purpose ef imparting education.
>
> (iii)We have carried on following educational courses to the students in the said. premises during the tenure of tenancy.
>
> (a) to (g) xxx
>
> (iv)The said educational courses were exempt from payment of Service Tax under clause (_) of Mega Notification No. 25/2012 dated 20.06.2012."

9. However, it is an admitted fact that Amity University is not the lessee/tenant. This document is also absolutely silent to show that the tenant Ritnand Balved Education Foundation is an educational institute and that Amity University, Rajasthan has got any title from the tenant of the appellant. Otherwise also, the said certificate is dated 27.07.2020 and the impugned order is dated 16.06.2020, hence the document can not be relied upon at this stage.

10. We finally observe that the onus of claiming eligibility under exemption notification rests upon the assessee. In the light of the

above discussion it stands established that the assessee/the appellant herein, has failed to discharge said burden. In addition we observe that the exemption notifications are required to be interpreted strictly. We draw our support from the decision of the Hon'ble Apex Court in the case of **Commissioner of Customs (Import), Mumbai vs. M/s Dilip Kumar and Company[2].** Hence the benefit has to be given strictly when the rented premises are used by the educational institute. Ritnand Balved Education Foundation is not proven to be an educational institute. We find no infirmity when the benefit of said exemption has been denied to the appellant.

11. Finally coming to the plea of invocation of extended period of limitation, we observe it to be a settled law that it is not merely the non-payment of service tax but a positive act on part of the assessee as may prove the intention/*mens ria* of the assessee to evade the payment of tax, which is relevant for invoking the extended period of limitation. We draw our observation from the decision of the Hon'ble Apex Court in the case of **Pushpam Pharmaceuticals Company vs Collector of Central Excise, Bombay[3]**. The plea of the appellant that the society was under the bonafide belief of eligibility of exemption under Mega Exemption Notification and due to interpretational reason the tax was not paid is not acceptable as the appellant is already held to have failed to prove itself to be an educational institute and that the premises of appellant got rented for being used for education pruposes.

12. In the given circumstances we hold that the extended period of limitation has rightly been invoked while issuing the show cause

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2. AIR 2018 SUPREME COURT 3606, 2018 (5) ABR 802, AIRONLINE 2018 SC 73
3. 1995(3) TMI 100 SC

notice dated 25.04.2018 for demanding service tax for the period 2012-13. Since the normal period has to reckon from the last date of filing of service tax return, it is observed that partial demand in the question beyond five years, hence is hereby set aside. Demand for the remaining period including normal period is hereby confirmed. The penalty also is proportionately reduced.

13. With these observations the present appeal is partly allowed.

(Order pronounced on **21.08.2026**)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Apoorva