Service Tax on Educational Services – Over All View

1. Introduction

Education Sector has been given tax benefit all over the globe. In the post Negative List era, it was imperative to appropriately exempt educational and related services . Clause (l) of new section 66D of the Act , exempt the education services from preschool to higher secondary, education as part of curriculum for obtaining a qualification recognized by law and education as a part of an approved vocational education course from levy of service tax .

Further, services ancillary to education have been exempted by Serial No. 9 of Mega Exemption 25/2012 dated 20.6.2012 .

2. Statutory provision granting exemption

w.e.f 1.7.2012, the exemption has been provided to following services in relation to education services.

Educational Services

Clause (l) of Section 66D of the Act , exempt following education services

" Service by way of –

i) Pre-school education and education up to higher secondary school or equivalent
ii) Education as part of curriculum for obtaining a qualification recognized by any law for the time being in force.
iii) Education as part of an approved vocational education course."

Services ancillary to education

Serial No. 9 of Mega Exemption notification , the following services ancillary to education would be exempt

" 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

3. Scope of Exemption to Educational Services

- School Education
  - Education level should be Pre-school education and higher secondary school both inclusive.
- Education beyond school
  - It should be part of curriculum for obtaining a qualification recognized by any law for the time being in force.
  - Curriculum should be for obtaining qualification
  - Qualification should be recognized by law
- Vocational education
  - Education should be part of an approved vocational education course.

What is "education"

Education has not been defined either in the Act or in the Mega Exemption notification. As per Law Lexicon :

" education is the bringing up: the process and of developing and training the power and capabilities of human being. In its broadest sense , the word comprehend not merely the instruction received at school or college but the whole course of training moral, intellectual and physical ; is not limited to the ordinary instruction of the child in the pursuit literature. It is comprehend a proper attention to the moral and religious sentiment of the child. And it is some times uses as the process of training and developing the knowledge , skill, mind and character of students by formal schooling "

Level of education at school

Pre-school – Preschool is also referred to as “Preprimary education”. Preprimary education is not the fundamental right in India.

Primary Education : there are two sub levels 1. Lower primary 2. Upper primary . Lower primary is from level I to V and upper primary is from level VI to VIII.

Secondary Education : level IX and X.

Higher Secondary : level XI and XII.

What is Curriculum

Curriculum is referred to set of courses , and their contents, offered at an educational institution. I may referred to a defined and prescribed curse of studies , which student must fulfill in order to pass a certain level of education and degree or diploma.

Which Qualification are recognised by law ?

One of the activity exempt under clause (l) of Section 65D in the negative list is the education as prescribed curriculum for obtaining a qualification recognized by law for the time being in force.

In this regards the following clarification are given by the department in Circular no. 107/01/2009 dated 28.01.2009.

- So far universities are concerned , all Universities of which are creature of State or Union Act. As well as deemed universities , will fall under the category of institution “ recognized by aw for the time in force”.
- Other institution which are given affiliates status by Universities Grant Commission[UGC] under power vested in that commission as well as autonomous college promoted under the national policy on education are all to be treated as institutes which issue diploma or certificate recognized by 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’
- In addition, for recognition of professional courses, promotion of professional institutions and providing grants to various programmes, a number of ‘professional councils (Such as All India Council for Technical Education-AICTE, Medical Council of India-MCI, Indian Council for Agricultural Research-ICAR, Bar Council of India-BCI) have been created through independent Union Acts. Since, *inter alia* these councils are entrusted with ensuring norms and standards of the courses, physical and instructional facilities, undertaking assessment

etc., they have also been provided with powers to make subordinate legislations (i.e. through notifications, circulars, rules) that the institutions or the establishments within their ambit must abide. In case of default, the councils have the power to derecognize an institution or establishment or a particular course being conducted by them, even if they are recognized as a university, a deemed university or an affiliated college. If an institution or establishment is derecognized, then such institution or establishment cannot be called to be an institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by the law for the time being in force. With the result, the courses conducted would fall under the ambit of 'commercial training or coaching centers' and would be charged to tax. It may however, be noted that for exercising such power, there should be a valid rule / notification / circular, prescribing the minimum requirements or standards as also the consequences of default.

- A related issue is, that since the concept of recognition of an educational qualification in India has been dynamic in nature (i.e. the degree/ diploma/ certificate an institute or establishment may be recognized by the law at one time and not recognized at other, due to change in legal provisions) the taxability of the courses conducted would depend on the legal status of such institute or establishment at the point of time when such service is provided (i.e. course is conducted). It cannot be said that once recognized an institute or establishment would remain so even in future or was so in the past.
- Many a time private institutes conduct courses and issue diplomas or certificates in collaboration with certain foreign institutes universities. In many cases private enterprises conduct campus interviews of the students of such institutes and offer them jobs. Such certificates / diplomas may be accepted for higher education abroad. However, such a certificate / diploma cannot be called as the one 'recognized by the law for the time being in force' unless such a diploma/ certificate has been specifically recognized by the statutory authorities such as UGC, AICTE. Consequently, such institutes would not fall under the exempted category and would be subjected to tax.

What is Vocational education

Vocational training has not been defined in the Act,

The term is defined in Section 2(k) of the West Bengal State Council of Vocational education and training Act,2005 as follows:

" Vocational education and training means a systematic course of instruction and training in the field of engineering , technology, agriculture, dairy and poultry , paramedical, social science, applied acts and crafts or such other subject as the state Government in consultation with the council, may by notification , declare."

Section 2 (l) of the of the West Bengal State Council of Vocational Education and Training Act,2005 also defines "Vocational Institutes" as follows:

" Vocational Institute means an educational institutions in which instruction is provided for course of Study in the field of engineering , technology, agriculture, dairy and poultry , paramedical, social science, applied acts and crafts or such other subject leading to any pre or post vocational certificate , and include such other instruction as the state Government in consultation with the council, may by notification , declare as vocational institution."

Thus the vocational education consist of practical courses through one gains skill and experience directly linked to career in future. It helps student to be skilled and in turn , offer better employment opportunities.
Vocational education imparts skill to enable the trainee to seek employment or undertake self employment directly after the completion of such training or coaching.

Approved Vocational Education Course-

Section 65B(11) of the Act provides for definition of "approved vocational educational curses". As per the provision of the section , approved vocational training educational courses will include the following courses.

- A course run by an industrial training institute or an industrial training centre affiliated to National Council for Vocational Training, offering courses in designated trades as notified under the Apprentice Act, 1961.
- A Modular employable skill course, approved by the NCVT, run by person registered with the Directorate General of Employment and Training , Ministry of Labour and Employment , Government of India.
- A course run by institute affiliated to National Skill Development Corporation set up by the Government of India.

Bundled Services

- Service provided by Boarding School : if the school provides services of education with other services like provision of dwelling unit for residence and food and fees charges for providing these services are inseparable then these services will be treated " bundled services" and the taxability shall be determined in terms of principal laid down in Section 66F of the Act.
- Extra- Curricular activities : the incidental auxiliary courses provided by way of hobby classes or extra curricular activities in furtherance of overall well being will be considered as naturally bundled course in the ordinary course of business.

Scope of exemption to services ancillary to education

S.N. 9 of Mega exemption notification exempts two services from the levy of service tax. Service should be provided to or by an educational institution

- Auxiliary education services
- Renting of immovable property

Service should be provided in respect of education exempted from service tax.

What is Education institution

It has not been defined in the Act or Mega exemption notification .

Auxiliary education services

This is defined in the Mega exemption notification as follows:

" Auxiliary education service" means any services relating to imparting any skill, knowledge, education, or development of course contents or any other knowledge- enhancement activity , whether for the student or the faculty or any services which educational institutes ordinarily carries out themselves but may obtain a outsource services from any other person, including services relating to admission to such institution ,conduct of examination, catering for student under the mid day meal scheme sponsored by Government , or transportation of student , faculty or staff of such institution.

Thus the essential ingredient of auxiliary educational services are as follows;

- Service should relate to imparting of skill, knowledge or education for the student or the faculty, or
- Development of course contents, or
- Any other knowledge – enhancement activity for student or faculty , or
- Services which education institute normally carry out them selves but may obtain as outsource services from any other person , including following services;
    - ✓ Admission to such institution
    - ✓ Conduct of examination
    - ✓ Catering for the student under mid day meal scheme sponsored by Govt.

- ✓ Transportation of student, faculty or staff o such institution

IMPARTING SKILL , KNOWLEDGE OR EDUCATION

Skill ; skill is learned capacity to carry out predetermined results often with the minimum outlay of time.

Knowledge ; knowledge means awareness or understanding of fact or circumstances a state of mind in which person has no doubt about existence of a fact

Education ; Education is already discussed in the previous para.

Enhancement of knowledge ; service that result in improving the knowledge of either the student or staff of an educational institute will be eligible for exemption subject to fulfillment of other conditions.

Renting of immovable property

Services pertaining to renting of immovable property to or by an educational institute in respect of education exempted from service tax will be eligible for the exemption.

Ministry of Finance has clarified the issue's on educational services by Circular no. 172/7/2013 –ST which has been reproduced hereunder;

F. No.B1/14/2013-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise& Customs
Tax Research Unit

146-F, North Block
New Delhi, 19th September, 2013

To
Chief Commissioners of Central Excise and Service Tax (All),
Director General (Service Tax), Director General (Central Excise Intelligence),
Director General (Audit),
Commissioners of Service Tax (All),
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

Subject: Education services – clarification -- reg.

The following representations have been received seeking clarifications regarding the levy of service tax on certain services relating to the education sector:

1. Private Schools Correspondents Confederation, Madurai.
2. Tamil Nadu Nursery, Primary, matriculation and Higher Secondary Schools Association, Chennai.
3. Punjab Association, Chennai.
4. Association of Self financing Universities of Rajasthan
5. Unaided Schools' Forum, Mumbai.
6. Vedavalli Vidyalaya, Wallajapet.
7. Independent Schools Associations, Chandigarh.
8. Mother Teresa Public School, New Delhi.
9. BVM Global, Chennai.
10. Sastra University, Tanjavur.
11. HLC International, Chennai.
12. Sodexo Food Solutions, Mumbai.
13. Federation of Associations of Maharastra, Mumbai.

2. The matter is covered by two provisions of the Finance Act, 1994. Section 66D of the Finance Act contains a negative list of services and clause (l) thereof reads as under:

"services by way of –

(i) pre-school education and education upto higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

(iii) education as a part of an approved vocational education course;".

Further section 93(1) of the Finance Act, 1994, enables the Government to exempt generally or subject to such conditions taxable service of specified description. By virtue of the said power, Government has issued a notification No.25/2012-ST dated 20th June, 2012, exempting certain services. Sl.no.9 thereof reads as follows:

"Services provided to an educational institution in respect of education exempted from service tax, by way of,-
(a) auxiliary educational services; or
(b) renting of immovable property;".

As defined in the said notification, *"auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge–enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme* *sponsored by Government, or transportation of students, faculty or staff of such institution.*

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.

4. In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc.

5. Thus the apprehensions conveyed in the representations submitted by certain educational institutions and organizations have no basis whatsoever. These institutions and organizations are requested not to give credence to rumours or mischievous suggestions. If there is any doubt they are requested to approach the Chief Commissioner concerned.

6. All concerned are requested to acknowledge the receipt of this circular.

(J.M.Kennedy)
Director, TRU
Tel: 011-23092634

Article written By CA. Sanjeev Singhal, FCA, DISA [ICAI]