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11/12/18

BY SPEED POST

कार्यालय आयुक्त(अपील्स)

CGST, CUSTOMS & CENTRAL EXCISE, GST BHAVAN, 48, ADMINISTRATIVE AREA, ARERA HILLS, BHOPAL (M.P.)-462011

सं० 974-ST/BPL/APPL/2018 2031 दिनांक: 29.11.2018

वित्तअधिनियम, 1994 की धारा 85 के तहत आर. एस. माहेश्वरी,आयुक्त (अपील्स), वस्तु एवं सेवा कर केन्द्रीय उत्पाद एव सीमा शुल्क भोपाल (म.प्र.) द्वारा जारी आदेश संख्या **BHO-EXCUS-001-APP-280-18-19 DT 30.11.2018** यह आदेश the Assistant Commissioner, CGST & Central Excise, Division-Sagar (M.P.) द्वारा पारित मूल आदेश कमांक 13/ST/AC/SGR/2018 dated 10.08.2018 के संबंध में पारित किया गया हैं।

अपीलार्थी का नाम एवं पता

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M/s.Doctor Hari Singh Gour Vishwavidyalaya,
Sagar (M.P)-470003

1. An appeal against this order shall lie before the tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in disputed or penalty, where penalty alone is in dispute.

2. इस आदेश के विरुद्ध अपील, वित अधिनियम, 1994 के तहत, सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सर्विस टेक्स अपीलीय ट्रिब्यूनल west Block No.2 R.K.Puram, New Delhi-110006 में धारा 86 के अन्तर्गत आदेश प्राप्ति की तारीख से 3 माह के भीतर प्रस्तुत किया जाना चाहिए

3. अपील निर्धारित फार्म ST-5 / ST-7 में चार प्रतियों में दायर की जानी चाहिए।सभी प्रतियों के साथ आदेश, जिसके विरुद्ध अपील दायर की गई है, की चार प्रतियॉ संलग्न होनी चाहिए (जिसकी कम से कम एक प्रति अभिप्रमाणित प्रतिलिपि होनी चाहिए)। न्याय निर्णयन अधिकारी के आदेश की भी दो प्रतियॉ इस के साथ जहॉ लागू हो, संलग्न होनी चाहिए (जिसकी कम से कम एक प्रति अभिप्रमाणित होनी चाहिए)

4, प्रत्येक मूल प्रकरण के मामले में अपील के साथ उस स्थान के किसी भी राष्ट्रीयकृत बैंक की शाखा (जहॉ कि ट्रिब्यूनल बेंच स्थित है), द्वारा जारीं सहायक रजिस्ट्रार के नाम का कास्ड बैंक ड्राफ्ट शुल्क के रुप में संलग्न होना चाहिए (रुपये 1000/—जहॉ शुल्क, ब्याज एवं पेनाल्टी रु पॉच लाख तक हो रु 5000/—जहॉ शुल्क, ब्याज एवं पेनाल्टी रु पॉच लाख से अधिक एवं पचास लाख से कम हो; रु 10000/—जहॉ शुल्क, ब्याज एवं पेनाल्टी मिलाकर पचास लाख से अधिक हो एवं स्थगन विसंगति के संशोधन अपील या आवेदन के प्रत्यावर्तन अथवा किसी अन्य उद्देश्य के लिए कोई आवेदन होतो रु 500)।

5. अपील को इस कार्य के लिए प्राधिकृत रजिस्ट्रार अधिकारी के नाम से सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सर्विस टेक्स नियंत्रण । अपीलीय ट्रिब्यूनल । के कार्यालय में पंजीकृत डाक से भेजा जाय ।

6. आदेश जिस क विरुद्ध अपील की गई है और न्याय निर्णयन अधिकारी के आदेश के विरुद्ध दायर की गई अपील के एक प्रति पर न्यायालय शुल्क अधिनियम 19 के अनुच्छेद मद 6 यथासंशोधित के तहत तथानिर्धारित शुल्क का न्यायालय स्टैम्प लगा होना चाहिए ।

7. केन्द्रीय उत्पाद शुल्क 11 वॉ संशोधित नियमावली 1982 एवं सीमा शुल्क व सर्विस टैक्स अपीलीय ट्रिब्यूनल कार्यवाही नियमावली 1982 में निहित इस तथा अन्य संबधित मामलों के नियमों की ओर भी घ्यानाकर्षित कराया जाता है ।

Dis. No – 590
10/12/18

AR (F&A)
Sh. Mirza, Tax Section
Keep in Record.
11/12/18

OFFICE OF THE COMMISSIONER (APPEALS)
CGST, CUSTOMS & CENTRAL EXCISE
GST BHAVAN, 48, ADMINISTRATIVE AREA, ARERA HILLS, BHOPAL-462011
TEL: 0755-2557529 Email-commrappeal@gmail.com **FAX: 0755-2559407**

F.No. 974-ST/BPL/APPL/2018/ Dated:-29.11.2018
(Appeal No. 974-ST/2018)

ORDER–IN–APPEAL No. BHO-EXCUS-001-APP- 280-18-19 dated 29.11.2018
PASSED by Sh. R.S. MAHESHWARI, COMMISSIONER (APPEALS)
CGST, CUSTOMS & CENTRAL EXCISE: BHOPAL (M. P.)

This order is being passed in appeal no. 974-ST/2018 filed by M/s.Doctor Hari Singh Gour Vishwavidyalaya, Sagar (M.P)-470003 (here-in-after referred to as the 'appellant') against the Order-in-Original No. 13/ST/AC/SGR/2018 dated 10.08.2018 passed by the Assistant Commissioner, CGST & Central Excise, Division-Sagar (M.P.) (here in after called as 'adjudicating authority').

2.1 Brief fact of the case is that Dr. Hari Singh Gour Vishwavidyala, Sagar (M.P.) is established under Madhya Pradesh Vishwavudyalaya Adhiniyam,1973 and is a Central University incorporated under the central university Act,2009. The unversity is engaged in imparting higher education to the aspirant student. University was granting affiliation to various colleges for which they were collecting charges viz. affiliation fees from the affiliated colleges. The university collected Rs.3,44,90,550/- on account of affiliation fees for the period July'2012 to June'2017. The university also provided renting of immovable property service to various parties during the period july'2012 to june'2017 and collected Rs. 31,68,212/- on account of rental income.

2.2 The university collected amount from colleges as they rendered services of providing affiliation to them, which are neither covered under the negative list of services under clause (l) of Section 66D of the Finance Act,1994 nor covered under the exemption extended vide notification no. 25/2012-ST dated 02.06.2012 as amended. Therefore, they are liable for payment of service tax on affiliation fees and rental income. The university not agreed to deposit service tax on the services provided by them.

2.3 Therefore, a show cause notice No. 33/RUJ/DD/ST/2018 dated 23.03.2018 was issued to them and subsequently the proceedings were finalized by the adjudicating authority vide Order-In-Original No. 13/ST/AC/SGR/2018 dated 10.08.2018 wherein demand of service tax of Rs. 49,57,444/- was confirmed with interest under Section 75 of the Finance Act, 1994 and a penalty amount of Rs. 49,57,444/- under Section 78. He imposed late fee amounting to Rs. 1,600/- under Rule 7C of the Service Tax Rules,1994.

3. Aggrieved by the said order, the appellant has preferred this appeal on following grounds:-

6. The adjudicating authority has held that the activity of affiliation/recognition of colleges by university is actually services provided to such affiliated colleges and not to the students and hence not covered by entry 9(a) of the notification no. 25/2012-ST dated 20.06.2012. Hence, the service rendered to affiliation colleges by the appellant by way of affiliation are not exempted as claimed by them. Further it is very clear that they were receiving consideration in the form of rent from the tenants and the same is covered under the category of declared services as per Section 66E(a). Therefore, the adjudicating authority has confirmed the demand of service tax amounting to Rs. 49,57,444/- for the period July'2012 to June'2017 along with interest and equal mandatory penalty.

7. The appellant in their defence have made elaborate submissions. The appellant explained the nature of affiliation fees collected by the university. Vishwavidyalaya collected affiliation fees from education institution for providing education, preparation of curriculum under its board of studies for providing qualified degree courses covering under the ambit of Section 66D clause (L) of Finance Act 1994, which governs the Negative List, on which service tax is not applicable. Education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force. Such educational institutions do not collect fees in the name of affiliation from the students enrolled. where the university is providing distance education for it has established, maintained learning centres /Study Centres in different parts of the country. They have submitted that the service tax on affiliation fees is not chargeable.

8. Collection of Affiliation fees under the provisions of The Madhya Pradesh Vishwavidyalaya Adhiniyam 1973 and University Grants Commission Regulations, 2009. It is mandatory for vishwavidyalaya to collect affiliation fees from education institution as per provisions and guidelines provided under Statue No.27 of Section 35 of the Madhya Pradesh Vishwavidyalaya Adhiniyam 1973 and University Grants Commission (Affiliation of colleges by Universities) Regulations, 2009. Further, as per the guidelines of the university grant commission, grant-in-aid provided by the government to university is accordingly reduced with the amount of affiliation fees collected by the university from the education institutions. Hence, affiliation fees are deducted while providing grant-in-aid provided by the government to university.

9. I have examined their submission. The appellant is a Central University incorporated under the Central University Act, 2009. They have collected affiliation fee from colleges in terms of Section 35 of the Madhya Pradesh Vishwavidyalay Adhiniyam, 1973 and University Grants Commission (Affiliation of colleges by Universities Regulations, 2009. The grant in aid received by the appellant from the government is reduced to the extent of affiliation fee collected by the university. The university provides various privileges to the affiliated colleges in the course of admission of the students, the curriculum and the conduct of exam leading to award of degree recognized by the law.

10. The university may lay down the procedure of admission of the students for instruction in any course/subject, which shall be binding on the college. The university may, for the purpose raising the standards of instruction in any course/subject and achieving academic excellence, issue guidelines, list of facilities equipment and teaching aids to be maintained in college, teaching methodology to be adopted,

refresher courses to be imported to teachers, and such other directions as may be considered necessary by the Academic Council or its standing committee. In other words, the services provided by a university to affiliated colleges are in relation to higher education as under :-

- Curriculum structure
- System of evaluation and examination
- Content
- Eligibility criteria for admitting students
- Process of teaching and learning

11. The adjudicating authority has erred in holding that services provided by the university is neither covered by the negative list nor mega exemption notification. The clause (l) of the negative list provides as under:-

***66D. Negative list of services.** — The negative list shall comprise of the following services, namely :—*

....

(l) 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;

12. The clause (l) of section 66D of the Act [Negative List] covers specified educational services. These services were omitted from the Negative List vide Finance act,2016 but the service tax exemption on them was continued by incorporating them in the general exemption notification (Notification No. 25/2012-ST as amended by notification No. 09/2016-ST, dated 1st March, 2016 refers). The serial number 9 of the mega exemption notification no 25/2012 granted exemption to following taxable services :-

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;

13. The said entry was substituted vide Notification no. 6/2014-ST dated 11.07.2014. The amended entry read as under:-

"9. Services provided, -
(a) by an educational institution to its students, faculty and staff;
(b) to an educational institution, by way of,-
(i) transportation of students, faculty and staff;
(ii) catering, including any mid-day meals scheme sponsored by the Government;
(iii) security or cleaning or house-keeping services performed in such educational institution;
(iv) services relating to admission to, or conduct of examination by, such institution;";

14. The Board vide Circular No. 172/7/2013-ST, dated 19,09.2013 has also clarified as under :-

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.

15. It may be seen that all services relating to education have been exempted including the auxiliary educational services such as catering and transport. As discussed above, the services provided by the appellant are the core services in the field of higher education which results in grant of degree/certificate/diploma recognized by the law and the said activity is covered by the clause (l) of the negative list. The adjudicating authority has not examined the applicability of the clause (l) of the negative list. He has examined the scope of Sr. No. 9 of the mega exemption notification and erroneously held that the said services are not covered by the exemption. He has also not given any finding as to why the impugned services are not covered by the clause (iv)- *services relating to admission to, or conduct of examination by, such institution;";*

16. Even before the introduction of negative list, the educational services relating to award of degrees recognized by the law was exempted from the service tax and the position has not changed even after the introduction of negative list in so far as education services are concerned. In this regard, attention may be drawn to the Board Circular No. 107/1/2009-S.T., dated 28-1-2009 wherein the taxability of higher education was thoroughly examined as under:-

3. Post School Education

3.1 Determination of taxability of education, other than school education is more complex and poses more questions. This is because, it covers an entire gamut of educational courses, such as formal higher education (i.e. bachelors, masters, doctoral, post doctoral course), specialized education, vocational education, language (including foreign language) courses etc. These vary in terms of their content; purpose; scope; and the type of institutes or establishments, which impart them.

3.2 The system of statutory recognition of educational establishments or institutions in India is still in the state of evolution. As regards university education, University Grants Commission (UGC) is the apex regulating body. As per the objects of the University Grants Commission Act, 1956 (which established UGC) the said Act is 'to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission'.

As per the definition, in terms of Section 2(f) of the Act, a University means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and *includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act. Therefore, all universities which are a creature of a State or Union Act fall within this definition of 'University'.*

Further, Section 3 of the Act, explains the scope of a 'deemed university' and defines that the Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2.

Also, UGC, with the approval of Central Government and under the Recognition of College in Terms of Regulations, 1974 framed under the UGC Act, can grant recognition to a college or institution run by a trust, a registered society or a body corporate or body incorporated under Central or State Act as an institution affiliated to or form as constituent member with a university, providing education up to a bachelors degree, masters degree or diploma of a duration of minimum one academic year.

As per National Policy on Education, 1986, a scheme of autonomous colleges was promoted. In the autonomous colleges, whereas the degree continues to be awarded by the university, the name of college is also included. These colleges develop and submit new courses of study for approval by the university. These autonomous colleges are fully responsible for the conduct of examination.

As all these institutions or establishment are either created or recognized in terms of the power conferred by statutes, they would fall in the category of institutes/establishments which issues diploma or certificate recognized by the 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' (as defined above).

17. Therefore that only the services provided by colleges to students leading to award of recognized degree is not chargeable to service tax, the services provided by university to the college is also connection with award of degree and the same is also covered by exemption. Therefore, the appellant is not liable to pay service tax on the affiliation fee collected from the affiliated colleges. As regards service tax on renting of immovable property service, the aggregate value of such rental services does not exceeding Rs. 10 Lacs in a particular one financial years. Therefore. The appellant is eligible for the benefit of SSI exemption and they are not liable to pay any service tax on such services.

18. In view of the above, the order passed by the adjudicating authority is set aside and the appeal filed by the appellant is allowed.

29.11.18

(R. S. Maheshwari)
Commissioner (Appeals)

To,

M/s.Doctor Hari Singh Gour Vishwavidyalaya,
Sagar (M.P)-470003

F.No. -974-ST/BPL/APPL/2018

Copy to:-
(1) The Chief Commissioner, GST, Customs, & Central Excise, Bhopal
(2) The Commissioner, CGST, Customs & Central Excise, Bhopal
(3) The Assistant Commissioner, CGST & Central Excise, Division-Sagar (M.P.)
(4) Guard file.

Superintendent (Appeals)