



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20211264SX0000616826

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| क | अपील / फाइल नं./ Appeal / File No. | मूल आदेश सं / O.I.O. No. | दिनांक/ Date |
| | V2/1/EA2/BVR/2021 | BHV-EXCUS-000-JC-MR- 003-2020-21 | 4/3/2021 |

अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-010-2021

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|------------------------------------|------------|----------------------------------------|------------|
| आदेश का दिनांक / Date of Order: | 17.12.2021 | जारी करने की तारीख / Date of issue: | 22.12.2021 |
|------------------------------------|------------|----------------------------------------|------------|

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham:

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Bhakta Kavi Narsinh Mehta University, Bilkha Road, Government Polytechnic Campus,, Khadiya, Junagadh-362640

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सामान्य शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलनीय न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) बर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलनीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलनीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरावा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलनीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलनीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलनीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलनीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलनीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलनीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 of the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बलते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बलते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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 dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणवाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रांटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समावधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशोधन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्री कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: ORDER-IN-APPEAL ::

The Deputy Commissioner, CGST Division, Junagadh has filed the present Appeal No. V2/01/EA2/BVR/2021 in pursuance of the direction and authorization issued by the Commissioner, Central GST & Central Excise, Bhavnagar (*hereinafter referred to as "Appellant Department"*) under Section 84(1) of the Finance Act, 1994 (*hereinafter referred to as 'Act, 1994'*) against Order-in-Original No. BHV-EXCUS-000-JC-MR-003-2020-21 dated 04.03.2021 passed by the Joint Commissioner, CGST Commissionerate, Bhavnagar (*hereinafter referred to as 'Adjudicating Authority'*) in the case of M/s Bhakt Kavi Narsinh Mehta University, Bilkha Road, Government Polytechnic Campus, Khadiya, Junagadh – 362640 (*hereinafter referred to as 'Respondent'*).

2. The facts of the case, in brief, are that the Respondent is engaged in providing affiliation to various colleges and for which they were collecting affiliation fee for the same. The Officers of the Directorate General of Goods & Service Tax Intelligence (*hereinafter referred to as 'DGGI'*), Vapi Regional Unit conducted enquiry in the matter and collected various documents /data from the Respondent under Section 14 of the Central Excise Act, 1944 (*hereinafter referred to as 'Act, 1944'*) read with Section 83 of the Act. The DGGI was of the view that the said activities were taxable as service under the provisions of the Finance Act, 1994. Investigation revealed that the Respondent had collected total amount of Affiliation Fee and Affiliation related fees amounting to Rs.6,05,93,000/- from various colleges during the period from 01.04.2016 to 30.06.2017 on which they did not pay Service Tax amounting to Rs.90,53,975/- (including applicable cesses). On conclusion of investigation, Show Cause Notice No. DGGI/SZU/36-35/2018-19 dated 29.03.2019 was issued to the Respondent. The said show cause notice culminated in issuance of the impugned order wherein the Adjudicating Authority has held as under:

(i) The activity of providing affiliation service to colleges and activity of Renting out of Premises to various parties by the Respondent are taxable services as provided under Section 65B(51) of the Act, 1994

(ii) The Respondent being a Government authority became eligible for exemption from payment of Services tax on the services of granting affiliation to various colleges with effect from 14.05.2015 as the activities carried out by the Respondent in terms of Levy of fee for recognition of affiliation to various educational institutions cannot be equated as services for charging of service tax. Accordingly, the Adjudicating Authority has held that the Respondent is not liable to pay Service Tax



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on consideration received for Affiliation Fee, Application Processing Fees and Additional Affiliation Fee etc. from by the Respondent.

(iii) In view of the above, demand of service tax of Rs.90,53,975/- is liable to be dropped as the same was legally unsustainable.

3. The impugned order was reviewed by the Appellant Department and appeal has been filed on various grounds, *inter alia*, as below:-

(i) The Adjudicating Authority has dropped the entire demand of Service Tax of Rs.90,58,475/- for the period from 01.04.2016 to 30.06.20217 on the ground that with effect from 14.05.2015, the University is covered under the definition of Government/Governmental authority and being a Government/Governmental authority because eligible for exemption from payment of service tax on granting affiliation to various educational institutions/colleges, as the activities carried out by the University in terms of levy of fee for recognition of affiliation to various educational institutions cannot be equated as service for charging service tax for the period from 01.04.2016 to 30.06.2017.

(ii) "Government" was defined by clause (26A) of Section 65B of the Act, 1994 inserted with effect from 14.05.2015. The said definition reads as under:

"Government" means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder".

That the above definition of 'government' is both, an inclusive and an exclusive definition. The expression, 'government' means and includes – (1) Department of Central Government, (2) State Government and its Departments and (3) a Union Territory and its Departments; that nothing except the aforementioned three classes of Governments / Departments shall constitute the 'Government. According to the definition, 'Government' shall not include any entity, which has been created under a statute or otherwise, the accounts of which are not required to be kept as per article 150 of the constitution or any rules framed under Article 150 of the Constitution of India; that according to Article 150 of the Constitution of India, the accounts of the union and of the states shall be kept in such form as the President of India may, on the advise of Comptroller and Auditor General (CAG) of India prescribe.



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In view of the above only the "Government" as explained above shall be considered as government and entitled to benefits and privileges of negative list and exemptions available to Government.

(iii) In terms of the definition of 'Government', the University cannot be treated as a Department of the Central Government, a State Government and its department and a Union Territory and its department and hence, the University is not covered under the inclusive clause of said definition; that the Adjudicating Authority has relied upon the exclusion clause of above definition that as accounts of University are required to be maintained in accordance with the Article 150 of the Constitution, it should be treated as Government and its services in the nature of providing affiliation to various educational institutions/colleges should be exempted since 14.05.2015. The Adjudicating Authority has erred in upholding the same. In view of the definition the Respondent should not have been treated as Government for exemption benefit.

(iv) That as per Section 3(2) of the Bhakta Kavi Narsinh Mehta University Act, 1965 (Gujarat Act No. 23 of 2015), the University is considered as a body corporate by the name of "The Bhakta Kavi Narsinh Mehta University"; thus the Respondent being legal entity is not covered by the definition of 'Government and thus their said activity viz. granting affiliation to various educational institutions/colleges, is neither covered under Section 66D of Finance Act, 1994 pertaining to negative list of services provided by the Government nor under Serial No. 09 of Notification 25/2012-ST dated 20.06.2012.

(v) That even if the Respondent is treated as Government entity, all services provided by government itself are not exempted from the service that; that Government itself is covered under the definition of 'person' under Section 65(B) under clause 37(viii); that only those services of Government are exempted, which falls under the negative list or are specifically exempted vide any notification; that the services i.e. granting of affiliation and approval to various colleges/educational institutions provided by the Respondent are neither covered under the negative list nor are specifically exempted vide any notification.

(vi) That the Adjudicating Authority has failed in appreciating that the Circular No. 89/7/2006-ST dated 18.12.2006 of Board as relied upon by him



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was relevant to the period prior to introduction of negative list in Finance Act, 1994 with effect from 01.07.2012.

(vi) That the decision of Tribunal in the case of Sikkim Nationalized Transport Vs. Commr of Central Excise and Service Tax, Siliguri reported in 2018 (9) GSTL 397 (Tri. Kolkata) and the decision of Hon'ble Supreme Court in the case of M/s. Malwa Industries Ltd. reported as 2009 (235) ELT 214 (SC) relied upon the Adjudicating Authority are not applicable to the present case.

(vii) The extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 is rightly invocable in respect of demand of service tax as they have suppressed the facts and intent to evade payment of service tax and therefore, imposition of penalty under Section 78 of the Act, 1994 is required to be imposed.

(viii) The Respondent is liable for penalty under Section 77 (1) of the Act, 1994 as they have not registered themselves for providing taxable services.

(vii) The Respondent is liable for penalty under Section 77 (2) of the Act, 1994 as they have not filed periodical returns.

4. The Respondent vide letter/cross objection dated 22.07.2021 submitted that the departmental appeal deserves to be dismissed on the following grounds:

(i) That the Respondent is an extended hand of the Government and the accounts are being audited by the State Government as also CAG;

(ii) That they relied upon the Order No. RAJ-EXCUS-000-COM-06-19-20 dated 17.02.2020 passed by the Commissioner of CGST, Rajkot in the case of Saurashtra University wherein University has been considered as the department of Government with effect from 14.05.2015.

(iii) That the University is an educational institution and is eligible for exemption under Notification No. 25/2012-ST dated 26.02.2012 as amended and also as per CBEC Circular No. 172/7/2013-ST dated 19.09.2013; that they relied upon the decision of Hon'ble High Court of Gujarat in the case of Sahitya Mudranalaya Private Limited in SCA No. 20748 of 2018 whereby the law is settled that the university is an educational institution.

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(iv) That the Respondent has provided sovereign services and therefore also no service tax can be charged.

(v) That since the University is a department of Government as also institution working for the benefit of the student, cannot have any intention to evade the payment of service tax and, therefore, the show cause notice is clearly barred by limitation.

(vi) The respondent has submitted further written submission dated 08.11.2021 wherein they relied upon the following decisions:

- a) Madurai Kamaraj University – TS – 391- HC-2021-MAD-ST.
- b) Sahitya Mudranalaya Pvt. Ltd. – 2021– 46-GSTL-245-Guj. HC
- c) International Foundation for Research and Education 2020-41-GSTL-339-Trib-Chan.

(vii) The respondent has also submitted further written submission dated 11.11.2021 wherein it was contended that the Supreme Court in the case of M/s. Canon India Pvt. Ltd. Reported in 2021-376-ELT-3 has held that the show cause notice issued by DRI is not valid and the proceedings cannot be sustained; that in their case show cause notice is issued by DGGI which is pari materia with the authority of DRI and hence the ratio laid down by the Hon'ble Supreme Court is applicable to the present case.

5. Personal hearing in the case was held in virtual mode on 01.12.2021. Shri Paresh Sheth, Advocate, appeared on behalf of the Respondent. He reiterated the submissions made in cross-objection to appeal. He relied upon the case laws submitted in the submission dated 08.11.2021 as well as dated 11.11.2021.

6. I have carefully gone through the facts of the case, the impugned order, grounds of appeal filed by Department and cross objections and submission made by the respondent at the time of personal hearing. The issue to be decided in the present case is whether 'Affiliation Charges' received by the respondents from various colleges are liable to service tax or not. The demand pertains to the period from 01.04.2016 to 30.06.2017.

7. I find that the Adjudicating Authority has held that the Respondent is providing services by way of affiliation to educational institutions and the same is considered as taxable services as defined under Section 65B (44) read with Section 65B (51) of the Finance Act, 1994 during the period from 01.04.2016 to 30.06.2017. However, the Adjudicating Authority has further held that the respondent being a Governmental Authority, they are eligible for exemption from payment of Services Tax on the services of granting affiliation to various colleges



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with effect from 14.05.2015 and dropped proceedings initiated via the SCN. The Department-Appellant has mainly contended that the University cannot be covered under the definition of 'Government' and hence the dropping of demand by the adjudicating authority was not proper.

8. I find that the Respondent has contended that that the University is an educational institution and is eligible for exemption under Notification No. 25/2012-ST dated 26.02.2012 as amended and also as per CBEC Circular No. 172/7/2013-ST dated 19.09.2013. They have also relied upon the decision of Hon'ble High Court of Gujarat in the case of Sahitya Mudranalaya Private Limited in SCA No. 20748 of 2018, whereby the law is settled that the university is an educational institution. They also relied upon the decision of Hon'ble High Court of Madras in the case of M/s. Madurai Kamaraj University being passed in similar set of facts.

9. I find that in the notice, issued to the Respondent, it has been alleged that the services rendered to colleges by the appellant were not by way of education but by way of recognition/affiliation and hence, did not appear to be covered by clause (l) of Section 66D of the Finance Act, 1994 (till 14.05.2016) or by Entry No. 9 of Notification No. 25/2012-ST dated 20.6.2012 (read with clause (oa) of Para 2 of the said notification) as amended by Notification No. 9/2016-ST dated 01.03.2016.

9.1 I find that clause (l) of Section 66D of the Finance Act, 1994, prior to its omission with effect from 14.05.2016, providing negative list of services read as:

“(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 recognized by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;”

9.2 Further, Entry No. 9 of Notification No. 25/2012-ST dated 20.6.2012, as amended by Notification No. 3/2013-ST dated 01.03.2013, with effect from 01.04.2013, which exempted certain education services is reproduced as under :

- “9. 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;"

9.3 The said Entry No.9 of the above said notification was substituted vide Notification No.06/2014-ST dated 11.07.2014, with effect from 11.07.2014 and the substituted entry read as:

"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:"

9.4 Clause (oa) was inserted in Notification 25/2012-ST dated 20.6.2012 vide Notification No.06/2014-ST dated 11.07.2014, with effect from 11.07.2014, to define educational institution and it reads as:

"(oa) "educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994).";

The aforesaid clause was amended vide Notification No.9/2016-ST dated 01.03.2016 with effect from 14.5.2016, and the amended clause (oa) reads as:

"educational institution" means an institution providing 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 recognized by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;"

9.5 It follows from the above that the exemption provided under Section 66D (l) of the Finance Act, 1994 from 12.07.2012 till 13.05.2016 was later on from 14.05.2016 continued through Entry No.9 read with clause (oa) of Notification No. 25/2012-ST dated 20.6.2012.

10. In view of the above provisions under the Finance Act, 1994 as well as under Notification No.25/2012-ST dated 20.06.2012, the issue is required to be examined. It is not a matter of dispute that the appellant is an educational



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institution. Therefore, what is required to be determined is whether the services provided by them i.e. affiliation to other colleges falls within the ambit of educational services. It is alleged in the SCN that the activity undertaken by the University of according affiliation to an institution and the activity undertaken by such an institution, of facilitating students to take the examinations conducted by them (for the purpose of obtaining a degree in the relevant subject awarded by the University) are two distinct and separate identifiable activities. In this regard, I find it relevant to refer to the judgment of the Hon'ble High Court of Gujarat in the case of Sahitya Mudranalaya Pvt Ltd Vs. Additional Director General – 2021 (46) GSTL 245 (Guj.). It is also pertinent to mention that the judgment of the Hon'ble High Court of Gujarat was subsequently affirmed by the Hon'ble Supreme Court of India - 2021 (48) GSTL J62 (S.C.). The Hon'ble Gujarat High Court had in Paras 13.21, 13.22 and 13.23 of their judgment held that:

“13.21 In the light of the above principles enunciated in the decisions referred to hereinabove, this Court is of the opinion that the word “education” cannot be given a narrow meaning by restricting it to the actual imparting of education to the students but has to be given a wider meaning which would take within its sweep, all matters relating to imparting and controlling education. Examination is an essential component of education as it is one of the major means to assess and evaluate the candidate’s skills and knowledge, be it a school test, university examination, professional entrance examination or any other examination. As held by the Supreme Court, the examination is considered as a common tool around which the entire education system revolves.

13.22 Thus, education would mean the entire process of learning, including examination and grant certificate or degree or diploma, as the case may be and would not be limited to the actual imparting of education in schools, colleges or institutions only. Unless the School Boards hold examinations, the education of school students would not be complete, so is the case with college students, whose education would be complete only when the University conducts examinations and awards degrees or diplomas. It is the School Boards which issue the Secondary and Higher Secondary School Certificates after holding examinations and the University which confers degrees/diplomas etc. after holding examinations. Unless a student holds a certificate issued by a Board, his or her school education would not be complete, similarly, without a degree or diploma being conferred by the University, college education would not be complete. Therefore, examinations are an indispensable component of education, without which such education is incomplete. Therefore, to say that Boards/Universities are not “educational institutions” would amount to divorcing examinations from education.

13.23 Clause (l) of Section 66D of the Finance Act may be examined in the light of the above. Sub-clause (i) of clause (l) refers to pre-school education and education up to higher secondary school or equivalent. When the sub-clause says education up to higher secondary school or equivalent, it goes without saying that it includes the examination leading to

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conferment of a certificate of having passed the higher secondary school or equivalent. Similarly when sub-clause (ii) says education, as a part of the curriculum for obtaining a qualification recognized by any law for the time being in force, it is apparent that the Legislature meant the entire process of preparation of curriculum to the holding of examination leading to obtaining of a qualification recognized by any law for the time being in force. If the contribution of the Boards/Universities is excluded, there would be no curriculum for obtaining a qualification nor would there be examination leading to conferment of such qualification. Clearly, therefore, it was not the intention of the Legislature to exclude preparation of curriculum and holding of examinations from the ambit of clause (l) of Section 66D of the Finance Act, 1994. As a necessary corollary, therefore, the School Boards and the University in question would clearly fall within the ambit of the expression "educational institution" as contemplated under clause (oa) of Entry No. 2 of Notification No. 25/2012-S.T. and services provided by such Boards/University would also fall within the ambit of the services as postulated under clause (l) of Section 66D of the Finance Act."

10.1 It, therefore, follows from the above judgment of the Hon'ble High Court that education would not be limited to the actual imparting of education but also include the entire process including grant of degree or diploma. The question that arises, therefore, is whether affiliation is part of the education. It would be fruitful to refer to clause (l) of Section 66D of the Finance Act, 1994 as well as clause (oa) of Notification No. 25/2012-ST dated 20.6.2012 which reads as "*education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force*". It is evident that qualification obtained as part of the education is that which is recognized by any law for the time being in force. A diploma or degree or any certificate issued by a college which is not affiliated to any University established under the act passed by the legislature is not a qualification recognized by law. It is only the diploma, degree or any certificate issued by an affiliated college which are granted recognition under the law. Therefore, undeniably affiliation is an integral part of the process of education and consequently services by way of affiliation would be covered by the provisions of the Finance Act, 1994 and the notification referred to above.

11 I further find that the Respondent have relied upon the judgment dated 16.08.2021 of the Hon'ble High Court of Madras passed in W.P (MD) No. 20502 of 2019 in the case of Madurai Kamaraj University Vs. Joint Commissioner, Madurai reported in 2021-TIOL-1812-HC-MAD-ST. I have gone through the judgment and find that the issue involved in the case before the Hon'ble High Court and that in the present appeal is same. The relevant portion of the judgment is reproduced as under:

"15. When an educational institution is imparting education as part of curriculum for obtaining a qualification as stated supra,



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no doubt, such services are being exempted and in this context, there can be no quarrel from the revenue side also.

16. However, whether such kind of service of imparting education as part of curriculum for obtaining a qualification whether is rendered by the petitioner university is a question where, it is the stand of the revenue that, the university is not directly imparting any education except providing affiliation to the institution, but would not deal with imparting education to the students. Therefore, the activities of affiliation and allied activities like inspection etc., cannot be treated as imparting education by the educational institution concerned.

17. However, insofar as the said stand taken by the revenue is concerned, we must take into aid the expanded provision which has subsequently been inserted under mega notification referred to above, whereby, clause 9 has been inserted with effect from 11.07.2014, where, the services provided by the educational institution to its students, faculty and staff are mentioned. The word "students", that we can understand, with, the services provided, is nothing but imparting education, whereas, the services to be provided by the educational institution to its faculty and staff is concerned, certainly, it may not be a direct activity of imparting education. No staff or faculty is going to get any imparting of education either from the institution or from the university. Hence, it is not limited to the services of imparting education to students alone for the purpose of exemption, but, it expands beyond which, where, whatever the services to be provided by the educational institution to its faculty and staff shall also form part of the activity of education being provided by way of services by the educational institution. If we take up this language used, exactly, the services provided by the educational institutions including the university not only for students but also for faculty and staff would be covered under the exempted purview.

18. Not stopping with that, it goes further saying that, an educational institution can render services by way of transportation of students, transportation of faculty and transportation of staff. Like that it further goes, like, catering including any mid-day meal scheme sponsored by the Government. It further expands to security or cleaning or housekeeping services performed in such educational institutions. It also expands to services relating to admission or conduct of examination by such institutions. The word -such institution- according to the revenue is nothing but the institution which impart education and conduct examination i.e. affiliated college and not the university. But, in the considered view of this Court, that kind of interpretation is not possible, in view of the expanded meaning that has been given and the explanation given, which shows the intention of the Central Government who issued the mega exemption notification, under which, we can understand that, what are all the allied services that shall form part of the educational services, which may be services provided to the staff, services provided to the faculty, expanded services like transportation, boarding and lodging and other allied activities enabling the students as well as the staff and faculty to come to the institution and getting imparted the education.



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19. In this context, sub-clause (iv) of clause 9 referred to above is so important, which says that, services related to admission or conduct of examination by such institution are exempted services. Here, the services rendered to admission is two folds, one is the admission being made for the students in a particular institution. However, such admission can be made legally by the said institution, only on the basis of the affiliation granted by the University, fixing the intake strength of each and every course for the particular academic year. Illustratively, if there is a class where the university has given permission/affiliation for 100 students, not even 101 students can be admitted by the college. Therefore, that admission of the students strictly relates to the affiliation granted by the university. Therefore, 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 educational institution like the petitioner institution i.e., the university to give affiliation can be an integral part of the educational services, being provided jointly, both by the University and the college. The college cannot independently function 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.

20. This is the purposive interpretation which is only possible, because, the services relating to admission and also the conduct of examination by such institution has been exempted. When we talk about the conducting of examination, it is the vehement contention of the revenue as submitted by the learned Standing Counsel by relying upon the advance ruling referred to above, stating that, exempted service on the conduct of examination is that, it relates to admission to institution and anything related to examination, based on which, degree, title or diploma is conferred to the students.

21. With respect, this Court is of the concerned view that, that kind of narrow or pedantic interpretation cannot be possible in the words "conduct of examination". The reason being, the very prime function of the petitioner university under the statute, under which it has been created, under Section 4(4) of the University Act, which has been quoted herein above, is to hold examinations and to confer degrees, titles, diplomas and other academic distinctions. Therefore, holding or conducting an examination is primarily a job of the university and the colleges affiliated to the university are only facilitators. Therefore, examinations are not conducted directly by the colleges, it is being conducted by the university, but the facilitator is the college. Therefore, the word "conduct of examination by such institution" means, conduct of examination by the university and the college and not by the college alone. The examination is the examination of the university, for which, facilitation is given by the college, wherein the examinations are conducted and ultimately, valuation is to be done by the university and marks are awarded and degree is conferred by the university. Therefore, it is the university, where, the facilitator is the college, where, the examination is being taken place and therefore, the word



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“conduct of examination”, cannot have such a narrow and pedantic interpretation as has been given by the Advance Ruling Authority in their order dated 19.11.2020, which has been in fact, heavily relied upon by the respondent revenue. Therefore, this Court is not subscribing the said view given by the Advance Ruling Authority in their order dated 19.11.2020.

22. In this context, it is further to be noted that, the very Advance Ruling Authority in the said order in paragraph No.7.6 has also made it clear that, we do not part any opinion on the claim of the applicant that they extend such services to the institutions by extending the affiliation. Therefore, the said issue as claimed by the said university in the said ruling of the Advance Ruling Authority has not been answered and it has been kept open by stating the aforesaid that they do not want to express any opinion on such claim. Therefore, the claim made by the university on that aspect even though was indicated, the issue was kept open. In that context also, this Court feels that, no such pedantic or narrow view can be taken as that would destroy the very concept of providing exemptions to the services rendered by the educational institutions. The word “educational institution”, cannot denote only the college affiliated to the university, but, it includes the university. As stated above, without the university, college cannot impart education on its own.

23. Moreover, the regime of service tax, i.e., prior to the GST came into the field, had continuously made available the exemption provisions, initially by Section 66-D, from 2012, subsequently the mega notification, wherein, in the year 2014 clause 9 was inserted and subsequently by notification 9 of 2016, Clause ‘1’ of Section 66-D, which was omitted from the year 2016, had been reintroduced by introduction of clause (oa), where, under the heading “educational institution”, the exact Clause ‘1’ of Section 66-D has been inserted. Therefore, throughout the regime between 2012 and 2017, the educational institution had been provided with the exemption as has been stated in various provisions of the Act as well as the mega notification, followed by the amended notification and during all these periods, these institutions including the universities can very well enjoy the exemption. Accordingly, the stand taken by the revenue for levying service tax for the services being provided by the petitioner university cannot be approved.”

11.1 The Hon'ble High Court had by the above judgment held that affiliation charges are not chargeable to Service Tax. The above judgment of the Hon'ble High Court of Madras is binding upon me in terms of judicial discipline. Therefore, following the judgment of the Hon'ble High Court of Gujarat and Madras in the aforementioned cases supra, I hold that the affiliation charges collected by the Respondent are not chargeable to service tax.

12. In view of the above discussions, since, levy of service tax on the affiliation charges does not sustain on the merits in view of the above deliberations and



findings, the question whether the University can be considered as Governmental Authority or not is infructuous. Hence, I do not find it necessary to examine this contention raised in the departmental appeal.

13. In view of above, I uphold the impugned order and reject the appeal filed by the Department.

14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

14. The appeal filed by the Department-Appellant is disposed off as above.


जतिन कुशलया
आधक्षक


17th December, 2021
(AKHILESH KUMAR)
Commissioner (Appeals)

F. No. V2/1/EA-2/BVR/2021

Date : 17.12.2021

By R.P.A.D.

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| To, M/s. Bhakta Kavi Narsinh Mehta University, Bilkha Road, Government Polytechnic Campus, Khadiya, Junagadh - 362640 | सेवा में, मेस्सर्स भक्त कवि नरसी मेहता यूनिवर्सिटी, बिलखा रोड, गवर्नमेंट पॉलिटेक्निक कैम्पस खड़िया जूनागढ़ - 362640. |
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, को आवश्यक कार्यवाही हेतु।
- 3) उप / सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जूनागढ़ मण्डल, जूनागढ़, को आवश्यक कार्यवाही हेतु।

गाई फाइल।



