

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JULY 2022

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION NO.112 OF 2019 (T-TAR)

BETWEEN:

M/S BANGALORE UNIVERSITY
JNANABHARATHI CAMPUS
OFF BANGALORE-MYSORE ROAD
BENGALURU-560 056, KARNATAKA
(REPRESENTED BY DR B K RAVI
REGISTRAR AGED ABOUT 56 YEARS
S/O LATE SRI KRISHNAN)

... PETITIONER

(BY SRI.V. RAGHURAMAN, SR. ADV.,
SRI. RAGHAVENDRA C.P., ADV. &
SRI. BHANUMURTHY J.S., ADV.)

AND:

- 1 . PRINCIPAL ADDITIONAL DIRECTOR GENERAL
DIRECTORATE GENERAL OF GST INTELLIGENCE
BENGALURU ZONAL UNIT
112 K H ROAD, S P ENCLAVE
ADJ. TO KARNATAKA BANK
BENGALURU-560 027
- 2 . PRINCIPAL COMMISSIONER OF CENTRAL GST
WEST GST COMMISSIONERATE
BMTc BUILDING BANASHANKARI II STAGE
BENGALURU-560 070
- 3 . CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS
NORTH BLOCK, NEW DELHI-110 001

4 . UNION OF INDIA
MINISTRY OF FINANCE
REPRESENTED BY SECRETARY
NORTH BLOCK NEW DELHI-110 001

... RESPONDENTS

(BY SRI.JEEVAN J. NEERALGI, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE PROVISIONS OF SECTION 174 OF CENTRAL GOODS AND SERVICES TAX ACT 2017 (ENCLOSED AS ANNEXURE-A) IS ULTRA VIRES CONSTITUTIONAL (101ST) AMENDMENT ACT, 2016 LACKING LEGISLATIVE COMPETENCE AND IS VIOLATIVE OF ARTICLE 14/19/265 OF THE CONSTITUTION AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner is Bangalore University and is in receipt of certain amounts collected by way of affiliation fee from Institutions affiliated to it.

2. Respondent No.1 has issued a show cause notice proposing to levy service tax on the affiliation fee collected by the petitioner. Aggrieved by the same, the instant writ petition is filed.

3. In the writ petition, the petitioner has challenged several provisions of Finance Act, 1994 (for short hereinafter referred to as 'Act') and the notifications issued thereunder along with the impugned show cause notice dated 20.06.2018 bearing No.SCN Sl.No.67/2018-19 vide Annexure-'B' to the writ petition. However, during the course of arguments, petitioner confines its prayer to the show cause notice at Annexure-'B' to the writ petition and does not insist upon other prayers.

4. The case of the petitioner is that, it is imparting education and the entire affiliation fee received by it is towards the same and as per the provisions of Section 66D of the Act and notification No.25/2012-ST dated 20.06.2012 as amended from time to time, consideration received by providing service by way of education as a part of curriculum for obtaining a qualification recognised by any law for the time being in force is exempted from service tax and thereby, the affiliation fee received by the petitioner – University is exempted from service tax and that respondent No.1 does not have the jurisdiction to issue

show cause notice proposing to levy service tax on the affiliation fee received by the petitioner – University.

5. The learned counsel for the respondents admit that the consideration received from the Institutions for services by way of education as a part of curriculum for obtaining qualification recognized by any law for the time being in force is exempted from service tax. However, he contends that the affiliation fee received by the petitioner – University cannot be considered as part of the said services and that it is a consideration received towards the services provided to private Institutions by affiliating the same.

6. It is further submitted that what is under challenge is only the show cause notice and the petitioner is required to answer the same instead of approaching this Court. On the said ground, it is prayed that the writ petition be dismissed.

7. By way of the impugned show cause notice, the respondents have sought to impose service tax on the petitioner – University for the affiliation fee collected by it

during the academic year – 2013-2014 to 2017-2018. As per the Act, the negative list of services which are not chargeable to service tax is contained in Section 66D and Clause(I) of Section 66D of the Act.

Clause(I) of Section 66D reads as under:-

"(I) 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;"

8. The petitioner – University is established under the Karnataka State Universities Act, 2000 and Universities are established by the State for furthering the advancement of learning and pursuing of higher education and research. For this purpose, apart from they themselves imparting education through their constituent colleges, it also admits educational Institutions not maintained by the University as affiliated colleges and in the process regulates the manner in which education has to be imparted in the said Colleges

and also conducts examinations. In the process, for providing services for imparting education, it charges affiliation fee to the said colleges and the University has to be considered as an Educational Institution imparting education by itself and also through its affiliated colleges and the services being provided by the University by collecting affiliation fee has to be considered as the service by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force.

9. The said activity of service by way of providing education as contemplated in Clause(I) of Section 66D of the Act was issued under Finance Act, 1994 by placing the said activity under exemption list.

10. It is not the case of the respondents that the consideration received towards the educational activity is taxable for service tax. It is their case that affiliation fee collected by the petitioner – University cannot be considered as a consideration for providing educational services.

11. As already stated above, the act of University in granting affiliation to a private college has to be considered as a service in furtherance of providing education and the decision of the respondents to consider otherwise is erroneous.

12. Thus, the question that arises for consideration is whether the petitioner is entitled to approach this Court merely on the issuance of show cause notice.

13. Normally, a person is bound to reply to the show cause notice issued by the Authority and it is not appropriate for him to approach the Court without doing the same. However, in the instant case, the dispute does not pertain to quantification of service tax, but whether the respondents – Authorities have jurisdiction to demand service tax for the activity of petitioner – University in providing education. Further, it is the clear stand of the respondents – Authorities before this Court that the activity of the petitioner – Institution in granting affiliation to Colleges and consideration received towards it is taxable under the Service Tax.

14. Under the circumstances, it is not appropriate to relegate the petitioner before the adjudicating Authority.

15. For the aforementioned reasons, the following:-

ORDER

i. The show cause notice dated 20.06.2018 bearing No.SCN Sl.No.67/2018-19 vide Annexure-'B' to the writ petition is hereby set aside and consequently, all further actions pursuant to the said show cause notice is hereby set aside.

ii. Writ petition is ***disposed of*** accordingly.

**Sd/-
JUDGE**

VMC