



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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रजिस्टर्ड डाक ए.डी. द्वारा

DIN:20210464SW0000223252

क फाइल संख्या : File No : GAPPL/17/2020

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP- 71/2020-21

दिनांक Date : 23-03-2021 जारी करने की तारीख Date of Issue

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No 05/D/GNR/NRM/2020-21 dated 28.04.2020 issued by Assisant Commissioner, CGST, Gandhinagar Division, Gandhinagar

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

M/s Kamdhenu University, Karmyogi Bhawan, Block-1, Wing-B/1, 4TH Floor, Sector-10A, Gandhinagar-382006.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

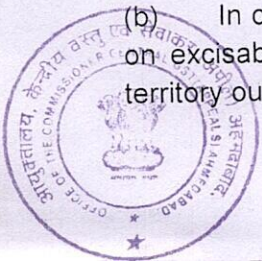
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

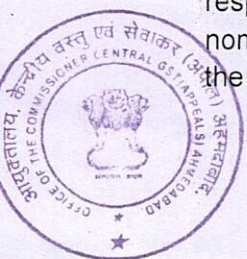
- (1) **केन्द्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-**

Under Section 112 of CGST act 2017 an appeal lies to :-

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.



- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs. 100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

- (7) केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

(x) (Section) खंड 11D के तहत निर्धारित राशि;

(xi) लिया गलत सेनवैट क्रेडिट की राशि;

- (xii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xlix) amount determined under Section 11 D;
(l) amount of erroneous Cenvat Credit taken;
(ii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

8(l) In view of above, 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."

II. Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to states) Act, 2017, may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.



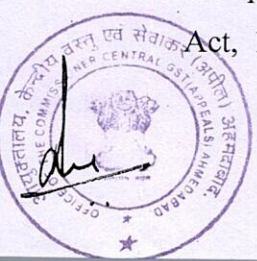
ORDER-IN-APPEAL

M/s. Kamdhenu University, Karmyogi Bhawan, Block-1, Wing-B/1, 4th Floor, Sector-10A, Gandhinagar-382006 (hereinafter referred to as '*appellant*') has filed the present appeal against Order-in-Original No. 05/D/GNR/NRM/2020-21 dated 28.04.2020 (hereinafter referred to as '*impugned order*') passed by the Assistant Commissioner, Central GST & Central Excise, Gandhinagar Division, Gandhinagar Commissionerate (hereinafter referred to as '*adjudicating authority*').

2(i). The facts of the case, in brief, are that the appellant is a University, established under the legislature of the State of Gujarat vide Gujarat Act No.9 of 2009, which is referred as 'Kamdhenu University Act, 2009', to establish and incorporate teaching and affiliating University for development of Veterinary and Animal Sciences and for furthering the advancement of learning, conducting of research and dissemination of finds of research and other technical information in Veterinary and Animal Sciences including Dairy Science, Fisheries and allied sciences in the State of Gujarat. It was established as a body corporate and started functioning in the year 2014.

2(ii). On the basis of the intelligence gathered by the officers of Directorate General of Goods & Service Tax Intelligence, Vapi Regional Unit, (hereinafter referred to as '*DGGI*') that the appellant is engaged in granting affiliation to various colleges/ technical institutes/ education institutions in lieu of payments like Affiliation Fee, Application Processing Fee, Additional Affiliation Fee and PG Affiliation Fee and not paying service tax, certain documents/records were called for and Statement of Ms. Nisha R. Talsania, Incharge Comptroller of the appellant, was recorded on 13.02.2017 in this regard. On examination of records, it was observed that the appellant has received the amounts (a) towards Affiliation Form Fee, Affiliation Inspection Fee, Non-Refundable Affiliation Fee during the period from 2014-15 to 2017-18 (upto June-2017), (b) towards renting of immovable property during the period June-2016 to March-2017 and (c) towards Advertisement during the period 2015-16.

2(iii). It appeared to the DGGI that the amount received by the appellant, towards the activity carried out by them, falls under the purview of service tax and they are liable to pay service tax on the amount so received in this respect as these services were neither falling under Negative List nor were exempted by virtue of Notification No.25/2012-ST dated 20.06.2012, as amended. Therefore, a Show Cause Notice (hereinafter referred to as '*SCN*') dated 18.04.2019 was issued by the Joint Director of DGGI, proposing activity carried out by the appellant to be considered to be Service under Section 65B(44) of the erstwhile Finance Act, 1994 and accordingly proposing demand of service tax amounting to Rs.10,57,832/-



(Rs.10,54,049 + Rs.3,628 + Rs.158) upon the amount received towards various Affiliation Fee, Advertisement, and Rent respectively under proviso to Section 73(1) alongwith interest under Section 75 of the erstwhile Finance Act, 1994. Penalties were also proposed to be imposed upon the appellant under Section 77(1), 77(2) and 78(1) of the erstwhile Finance Act, 1994.

2(iv). The adjudicating authority vide the impugned order confirmed the demand along with interest and also imposed penalties upon the appellant as proposed under the said SCN. The details regarding the amount received by the appellant and service tax applicable on the same is shown in the table below :

(Amount in Rupees)

Financial Year	Various Fee pertaining to Affiliation	Rent Income	Advertisement Income	Total Taxable Value	Service Tax (inclgd Cess)
2014-15	195000	0	0	195000	24102
2015-16	1535000	0	25000	1560000	216047
2016-17	9845000	1055	0	9846055	697683
2017-18 (upto 30.06.2017)	800000	0	0	800000	120000
					1057832

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds :

- (i) *that they were established as Educational Institution and provide education and related Auxiliary Services to colleges and large number of students are benefited with educational degree and qualify for further studies;*
- (ii) *that main object of their institution is to incorporate teaching for development of Veterinary and Animal Sciences including Dairy Science, Fisheries and Allied Sciences in the State of Gujarat and conferring Degrees, Diploma Certificates and other Academic Distinctions as the University (i.e. appellant) may deem fit.*
- (iii) *that by giving affiliation to various colleges/institutions, they provide quality education to students through these colleges/institutions and set standard to universal format of exam, degree to students which is part of education only;*
- (iv) *that clause (l)(ii) of Section 66D incorporates the service by way of 'Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force' and thus conduction of degree courses by Colleges, Institutions or Universities which lead to grant of qualification recognized by law would be covered. The training given by private coaching institutes would not be covered as such training did not lead to grant of a qualification recognized by law. Affiliation is not a separate activity, but part of education activity, which leads to providing education to the students through these affiliated colleges/ institutions and subsequently enabling them obtaining qualification recognized by law. Thus, affiliation is part and parcel of educational activities and not a separate service to colleges/institutions;*
- (v) *that since education as part of a curriculum for obtaining a qualification recognized by any law for the time being in force and the main object of them is also providing*



education recognized by law, by affiliating other colleges, they are covered under the negative list;

- (vi) *that they are providing service to other colleges mainly for admission, conducting exam, preparing syllabus etc. and in turn charging one time affiliation fee as well as enrolment and exam fee from students of affiliated colleges which fall under exemption under clause (iv) of auxiliary education service under mega exemption notification;*
- (vii) *that the affiliation fee is covered under the provisions of bundled service as per Section 66F of Service Tax and hence should not be taxed;*
- (viii) *that Commissioner (Appeals), CGST, Bhopal (MP) vide Order-in-Appeal (hereinafter referred to as 'OIA') No.BHO-EXCUS-001-APP-280-18-19 dated 29.11.2018 has allowed the appeal in favour of the appellant M/s. Doctor Hari Singh Gour Vishwaidyalaya, Sagar(MP) under identical facts;*
- (ix) *that there are number of universities running all over India who are normally considered to be part of Government;*
- (x) *that service tax is charged on the amount received, without considering that where service tax is not charged separately on pretext that services are not taxable, then the amount so received should be treated as cum tax and they rely upon the case law of M/s. Advantage Media Consultant reported at 2008(10)STR 449(Tri-Kolkata) in this respect;*
- (xi) *that once it was established that there was no liability of service tax on affiliation fee, Rental Income and Advertisement Income would be below exemption limit and there would not be any service tax liability;*
- (xii) *since University is educational institution having exempted service for Affiliation Fee and the taxable service viz. rent and advertisement Income is below the taxable limit, they were neither liable to have service tax registration nor liable to pay service tax. Thus, charging of interest and imposition of penalty should be dropped.*

4. Personal hearing in the matter was held on 19.01.2021. Shri Samir M. Shah, Chartered Accountant, appeared for the appellant. He reiterated the submissions made in appeal memorandum and further stated that he would submit additional submission containing judicial pronouncement of Hon'ble High Court of Gujarat in similar matter. Subsequently, they vide letter dated 20.01.2021 made additional submission wherein they reiterated the submission made in appeal memorandum. They submitted the judgement of Hon'ble Gujarat High Court in case of M/s. Gujarat Technological University in SCA No.489 of 2021.

5. I have carefully gone through the facts of the cases, the records/documents available in the matter and the submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The period involved in the matter is from 01.04.2014 to 30.06.2017 and thus pertains to post negative-list regime of Service Tax i.e. after 01.07.2012. The issue to be decided in this case is whether in the facts and



circumstances of the case, the appellant is liable to pay service tax on affiliation fee, rental income and advertising income or not.

6. The relevant legal provisions pertaining to the issue are as under :

(A) Section 65B(44) of the Finance Act, 1994 reads as under :

“service” means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) *an activity which constitutes merely,—*

(i) *a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*

(ii) *such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*

(iii) *a transaction in money or actionable claim;*

(b) *a provision of service by an employee to the employer in the course of or in relation to his employment;*

(c) *fees taken in any Court or tribunal established under any law for the time being in force.*

(B) Section 66B describes the charge of service tax on and after Finance Act, 2012 and reads as under :

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

(C) Section 66D of the Finance Act, 1994 describes the negative list of services. Relevant part reads as under :

The negative list shall comprise of the following services, namely: -

(a) *services by Government or a local authority excluding the following services to the extent they are not covered elsewhere -*

(i) *services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;*

(ii) *services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;*

(iii) *transport of goods or passengers; or*

(iv) *support services, other than services covered under clauses (i) to (iii) above, provided to business entities;*

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) *selling of space or time slots for advertisements other than advertisements broadcast by radio or television;*

(h) ...

(i) ...

(j) ...

(k) ...

(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;*

(m) *services by way of renting of residential dwelling for use as residence;*

....



It is pertinent to mention that the Clause (l) shown above was omitted/removed from the Negative List w.e.f. 14.05.2016 by the Finance Act, 2016.

(D) Relevant part of Notification No.25/2012-ST dated 20.06.2012 is as under :

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :-

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;

2. Definitions. - For the purpose of this notification, unless the context otherwise requires, -

(f) "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;"

(E) Following changes were made in the Notification No. 25/2012-ST dated 20.06.2012, vide Notification No.6/2014-ST dated 11.07.2014 :

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20th June, 2012, namely :-

(iii) for entry 9, the following entry shall be substituted, namely :-

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;"

(2) In the said notification, in paragraph 2 relating to definitions,-

- (a) clause (f) shall be omitted;
(b) after clause (o), the following clause shall be inserted, namely :-

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



(F) Following changes were made in the Notification No. 25/2012-ST dated 20.06.2012, vide Notification No.9/2016-ST dated 01.03.2016 :

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467(E), dated the 20th June, 2012, namely :-

(b) in paragraph 2, -

(i) ...

(ii) for clause (oa), the following shall be substituted with effect from such date on which the Finance Bill, 2016, receives assent of the President of India, namely :-

(oa) "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 recognised by any law for the time being in force;

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

It is pertinent to mention that this Notification came into effect w.e.f. 14.05.2016.

7. Further, the relevant provisions contained under "The Gujarat Government Gazette" dated 07.07.2009 by which the Gujarat Act No.9 of 2009 received assent from the Governor are as under :

- (i) that Gujarat Act No.9, 2009 is an Act to establish and incorporate a teaching and affiliating University for the development of Veterinary and Animal Sciences and for furthering the advancement of learning, conducting of research and dissemination of findings of research and other technical information in Veterinary and Animal Sciences including Dairy Science, Fisheries and allied sciences in the State of Gujarat;
- (ii) that the said Act will be called the 'Kamdhenu University Act, 2009' [Section 1(1)];
- (iii) that there shall be established and constituted a University by the name of "Kamdhenu University" [Section 3(1)];
- (iv) that the university shall be a body corporate having perpetual succession and a common seal, and shall sue and be sued in the said name [Section 3(3)];
- (v) that all colleges, research and experimental stations and other institutions falling under the jurisdiction and authority of the University shall be the constituent units of the University under the management and control of the University [Section 5(3)];
- (vi) that the jurisdiction of the University shall also extend to the affiliated colleges and recognized institutes [Section 5(4)];
- (vii) that no educational institution imparting education or conducting and guiding research or conducting and guiding programmes of extension education in Veterinary and allied sciences and situated within the University jurisdiction shall, save with the approval of the University and the sanction of the State Government, be associated in any way with, or seek admission to any of the privileges of any other University established by law [Section 5(5)];



- (viii) that the objects of the University shall be as follows namely :-
- (a) making provision for imparting education in Veterinary and allied sciences [Section 6(a)];
 - (b) conferring such degrees, diplomas, certificates and other academic distinctions as the University may deem fit [Section 6(f)];
- (ix) that the University shall exercise the following powers and shall perform following functions, namely :-
- (1) to provide the education and instruction for undergraduate and post-graduate in veterinary and allied sciences and other branches of learning [Section 8(1)];
 - (2) to lay down courses of instruction for the various examinations [Section 8(4)];
 - (3) to confer honorary degrees, diplomas and other academic distinctions as may be prescribed [Section 8(6)];
 - (4) to establish and maintain colleges, schools, centres, Departments and Institutions relating to veterinary and allied sciences [Section 8(10)];
 - (5) to associate or admit educational institution with or to the privilege of the University by way of affiliation, recognition or approval [Section 8(20)];
 - (6) to inspect colleges, recognized institutions and approved institutions and to take measures to ensure that proper standards of instruction, teaching and training are maintained in them and that adequate library and laboratory provisions are made therein [Section 8(22)];
- (x) that subject to the provisions of this Act, the Board shall be the chief executive body of the University and shall manage and supervise the properties and activities of the University and shall be responsible for the conduct of all administrative affairs of the University not otherwise provided for in this Act [Section 22(1)];
- (xi) that without prejudice to the generality of the foregoing powers, the Board shall exercise and perform the powers and functions as follows, namely :-
- (a) to make provisions for instruction, teaching and training in such branches of learning and courses of study as may be determined by the Academic Council in Veterinary and allied sciences and for research and for the advancement and dissemination of knowledge [Section 22(2)(xiii)];
 - (b) to promote post-graduate teaching, research and extension education [Section 22(2)(xiv)];
 - (c) to establish, manage and maintain colleges, departments, institutes of research, hostels, libraries, laboratories, experimental farms, and provide for such other facilities necessary for carrying out the purposes of this Act [Section 22(2)(xv)];
 - (d) to control and co-ordinate the activities of affiliated colleges and recognized institutions and to regulate the fee to be paid by the students in affiliated colleges and recognized institutions [Section 22(2)(xix)(a) & (b)];
 - (e) to make provisions for instituting and conferring degree, diplomas and other academic distinctions [Section 22(2)(xxv)];

8(i). The facts mentioned in para-6 and para-7 reveal that the appellant is established as an University by an act passed by Government of Gujarat. They were given authority to impart education in the field of Veterinary and Animal Sciences including Dairy Science, Fisheries & allied sciences and to issue degree, diploma etc. in this respect in Gujarat State. For imparting such education in the said field, they were authorized to affiliate and to recognize the college/institutes also. Such affiliation and recognition make these colleges/institutions constituent units of the appellant under the management and control of the appellant. The students of such affiliated/recognized colleges/institutions can



have an education as a part of a curriculum for obtaining a qualification recognized by law. Thus, it can be said that the education and the degree/diploma provided by any private institution is not recognized by law unless they were authorized to do so by virtue of some Act in this respect. Such private institution providing education, are treated as 'Coaching Institution' which is distinct from such affiliated/recognized institution. In the present matter the appellant is established by an Act and were authorized to impart education to the students to obtain qualification in the field of Veterinary and Animal Sciences including Dairy Science, Fisheries & allied sciences. Therefore, the degree or diploma or other certificate issued by the appellant, in respect of the said education imparted by them and qualification obtained by the students, is recognized by law. The appellant is even empowered to regulate the fee to be paid by the students in affiliated colleges and recognized institutions.

8(ii). The facts discussed here-in-above reveal that before imparting the education or doing some activity in this respect as discussed in para-8(i) above, the appellant has to first involve into an activity of affiliation or recognition of the education institution, which is altogether different activity as discussed under para-8(i) and appellant is collecting charges in this respect. This is an activity, prior to the main activity of imparting education and granting qualification recognized by law. This main activity is being carried out by the appellant, only after the activity carried out by them in respect of affiliation or recognition of educational institution. The appellant appears to have mistakenly or incorrectly clubbed both the activities, which are separate in nature. Both the activities are different and the activity of affiliation or recognition is neither falling under the Negative List nor falling under the exemption Notification as discussed here-in-above. It has been well established that whenever benefit of some tax exemption is claimed, the burden of proof lies on the person, who claims it. The facts of the case prove contrary to the contentions raised by the appellant as the activity of granting affiliation or recognition is different from the activity carried out by them later on or after granting affiliation or recognition. Thus, the service tax is applicable to the amount charged by the appellant for the affiliation/recognition etc.

8(iii). My views in the present matter differs from the views of the Commissioner(Appeals) of Bhopal which the appellant has relied upon. Moreover, the facts of that case is also different from the facts of the case in the present matter as in the case before Commissioner(Appeals) of Bhopal, the appellant was working under University Grant Commission also and was having jurisdiction of Central & State. The said fact is absent in the present matter.

8(iv). In view of the above discussion, the demand of service tax to the extent of affiliation fee etc. sustain and the same is upheld.



8(v). However, it is noticed that vide Notification No.33/2012-ST dated 20.06.2012, the value of taxable service, upto Rupees Ten Lakh is exempted. The value of taxable service of the appellant, for the Finance Year 2014-15, was Rs.1,95,000/- only (as shown in table above); which is below the limit prescribed under the said Notification. Therefore, the Service Tax demand pertaining to the period 2014-15 does not stand and is set aside.

8(vi). The value of taxable service in respect of the appellant for the Financial Year 2015-16 crossed the limit of Rs.10,00,000/- and therefore, since the value of taxable service in the preceding year i.e. 2014-15 was Rs.1,95,000/- only, the exemption available to the appellant in Financial Year 2015-16 upto Rs.10,00,000/- continues and the taxable value over Rs.10,00,000/- would only become chargeable to service tax. Since after Financial Year 2015-16, taxable value in the Preceding Financial Year was over Rupees Ten Lakh for the availability of exemption in the Succeeding Year, the exemption is not available to the appellant after the Financial Year 2015-16 and the entire taxable value (even below the value of Rs.10,00,000/-) would be chargeable to service tax.

9. It is also observed that the income received towards the Advertisement and Rent are also liable to charging of service tax as these are neither falling under Negative List nor falling under Exemption Notification. Since the demand in respect of affiliation fee etc. is upheld to the extent shown under para-8 supra, the value of Rent and Advertisement, though less, would also become part of taxable value for consideration of the value of exemption limit. In other words for considering the value of taxable service for a particular year, the value of Rent and Advertisement would be required to be included in that particular year under which the same was received.

10. It is further observed that Cum-duty/cum-tax benefit would be available to the appellant in view of the case law of M/s. Advantage Media Consultant reported at 2008(10)STR 449(Tri-Kolkata) as also contended by the appellant. Since some part of demand of service tax is set aside and some part is upheld, there would also be a requirement of re-quantification of demand. I therefore remand the matter back to the adjudicating authority to pass the order afresh in view of the directions contained in this order and in consideration of the Order of Hon'ble Tribunal-Kolkata supra.

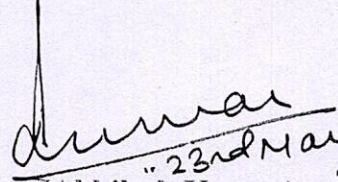
11. It is pertinent to mention that the Order for Hon'ble Gujarat High Court in case of M/s. Gujarat Technological University in SCA No.489 of 2021 submitted by the appellant can not be considered for the reason being that in the said writ application, the Hon'ble High



Court was of the opinion that the applicant has an alternative remedy of filing a statutory appeal against the impugned order-in-original under Section 86 of the Finance Act, 1994. The said writ application was disposed of by the Hon'ble High Court without expressing any opinion on merits of the case.

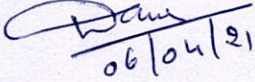
12. In this era of self-assessment, it is incumbent upon the person to calculate the liability of tax/duty by itself and pay it accordingly. Since the appellant failed to do so, the imposition of penalty and charging of interest on the demand so raised would be applicable in the present matter. However, since the matter is remanded back to the adjudicating authority for re-quantification of demand of service tax, in view of the directions contained in this order and in consideration of the benefit of Notification discussed here-in-above and in consideration of the Cum-tax benefit, the interest over such demand, and imposition of penalties would also change. In short, charging of interest and imposition of penalty would be in accordance with the new demand only.

13. Accordingly, the matter is remanded back to the adjudicating authority with the directions already given here-in-above.


"23rd March, 2021"
(Akhilesh Kumar)
Commissioner (Appeals)

Date : .03.2021.

Attested


06/04/21

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.

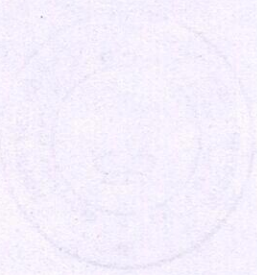
BY R.P.A.D. / SPEED POST TO :

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2. The Principal Commissioner/Commissioner, CGST & Central Excise, Gandhinagar Comm'rate.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Gandhinagar Comm'rate.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Gandhinagar Divn, Gandhinagar Comm'rate.
5. Guard File.
6. P.A. File.





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