



**आयुक्त(अपील) का कार्यालय,**  
**Office of the Commissioner (Appeal),**  
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
**Central GST, Appeal Commissionerate, Ahmedabad**  
 जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
 ☎ 07926305065- टेलीफैक्स 07926305136



**DIN : 20211264SW000000ACE9**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/STP/167/2021 / 4952 704956

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-71/2021-22**  
 दिनांक Date : **08-12-2021** जारी करने की तारीख Date of Issue 10.12.2021

आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **AHM-CEX-003-ADC-PMR-004-20-21** दिनांक: **13.11.2020**  
 issued by Additional Commissioner, CGST & Central Excise, HQ, Gandhinagar  
 Commissionerate

ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**  
  
 M/s Hemchandracharya North Gujarat University  
 Rajmahal Road, Patan,  
 Gujarat-384265

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 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, 4<sup>th</sup> 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 हानिकार खाने 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.

(क) 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।

(A) 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.

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

(B) 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 हों।

(c) 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 ईए-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 इका मुख्य शीर्ष 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 होतो 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.

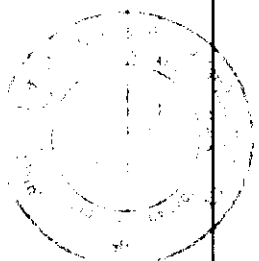
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 पढ़ी 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 Appellant 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- (48) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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)

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

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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:

- (cxxvii) amount determined under Section 11 D;
- (cxxviii) amount of erroneous Cenvat Credit taken;
- (cxxix) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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."

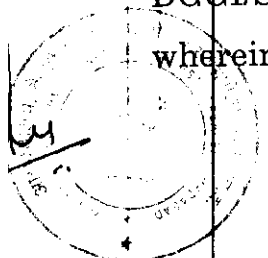
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Hemchandracharya North Gujarat University, Rajmahal Road, Patan, Gujarat - 384 265 (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-PMR-004-20-21 dated 13-11-2020 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST, Commissionerate: Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant is a Body Corporate formed by the Hemchandracharya North Gujarat University Act, 1986 passed by the legislature of the State of Gujarat. They are engaged in providing services mainly in relation to Teaching and Training. They are not registered with the department under Service Tax.

2.1 Intelligence gathered by the officers of Directorate General of Goods & Service Tax Intelligence, Vapi Regional Unit, (hereinafter referred to as '*DGGI*') indicated that the appellant is engaged in granting affiliation to various colleges/ education institutions in lieu of payments like Affiliation Fee on which they were not paying service tax. It was also revealed that the appellant had also generated income from renting on which service tax was not paid. Accordingly, investigation was carried out and it was found that the appellant had during the period from 01.10.2013 to 30.06.2017 received affiliation fees totally amounting to Rs.9,21,16,743/- and rental income totally amounting to Rs.13,50,899/-.

2.2 It appeared to the officers of DGGI that the amount received by the appellant, towards the activity carried out by them, falls under the purview of service tax and they were liable to pay service tax on the amount 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 bearing F.No. DGGI/SZU/36-34/2018-19 dated 29.03.2019 was issued to the appellant wherein it was proposed to consider the activity carried out by the appellant

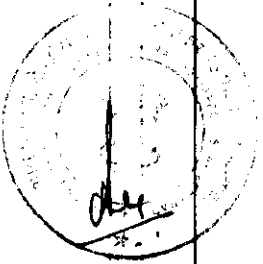


to be a Service under Section 65B(44) of the Finance Act, 1994 and accordingly proposed to demand and recover service tax amounting to Rs.1,24,83,554/- in respect of Affiliation fees and Rs. 1,83,538/- in respect of rental income from immovable property, under the proviso to Section 73(1) alongwith interest under Section 75 of the erstwhile Finance Act, 1994. Penalties were also proposed to be imposed upon the appellant under Section 76, 77(1) (a), 77(2) and 78(1) of the erstwhile Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order and the demand for service tax amounting to Rs.1,24,83,554/- in respect of Affiliation fees and Rs. 1,83,538/- was confirmed along with interest. Penalties of Rs. 1,26,67,902/-, Rs.10,000/- and Rs.10,000/- were imposed under Section 78(1), 77(1) (a) and 77(2) of the Finance Act, 1994.

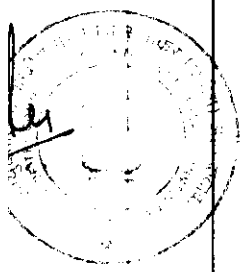
4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds:

- i) From a bare reading of the Hemchandracharya North Gujarat University Act, 1986, it is evident that in various sections the controlling powers have been delegated to State Government only, which includes approval of any application received from any college seeking affiliation with them and also appointment of First Vice-Chancellor, Pro Vice-Chancellor and Registrar of the University.
- ii) Thus, as per the definition of governmental authority given under Notification No. 25/2012 dated 20.06.2012, they are a governmental authority. They are legitimately eligible to claim exemption under Sr.No.39 of the said notification.
- iii) They deny the calculation prepared in respect of the service tax payable on renting of immovable property. Basic exemption limit of aggregate turnover of Rs.10 lakhs for every year is available to all assessee under Notification No. 33/2012-ST dated 20.6.2012. As per point 3 (B) of the said notification, while calculating the aggregate turnover, the turnover of exempted services is not to be included.
- iv) For the period covered by the SCN their taxable turnover is below the exemption limit and thus they are not required to pay service tax on this renting of immovable property income.



4.1 The appellant filed additional written submission vide letter dated 16.11.2021, interalia submitting that :

- The impugned order has been passed with complete revenue biased approach and is also a non speaking order in nature.
- From para 55,56,57 & 63 of the impugned order, it transpires that the adjudicating authority has accepted their submissions that the said University is a Governmental Authority as per clause 2 (S) of Notification No. 25/2012-ST dated 20.6.2012.
- No circular, notification or case law has been quoted to support the narrative that earning of affiliation fees is an income and is commercial activity not related to providing education. If any activity becomes income for the service provider and is commercial in nature, it does not jeopardize it's exemption available from levy of service tax.
- State universities run by the state government of each of the states and territories of India are usually established by a local legislative assembly act. They were established by the Gujarat Government under an Act.
- Affiliations are the basic and minimal quality of educational institute. They ensure that the institute under consideration for affiliation, follows the basic prevalent norms issued by the affiliation bodies and ensure following the rule of standardization.
- Through providing affiliation to colleges, the universities also gives educational services to students indirectly. It is necessary for the colleges to get the affiliation from any university to provide standardized education.
- Thus, it transpires that, affiliation services provided by them is directly related to promotion of education aspects as mentioned in Sr.No. 13 of Article 243 W of the Constitution of India.
- The Hon'ble High Court of Madras has recently passed a judgment dated 16.08.2021 in the case of Madurai Kamaraj University Vs. Joint Commissioner, Madurai - (2021 ) 130 taxmann.com 165 (Madras) wherein it was held that "A university cannot be assessed for demanding any service tax for the services of education provided by



them, which includes affiliation to other institute or other services provided for students, faculty as well as staff of university”.

- The Hon'ble High Court set aside the order against the petitioner university and concluded that they cannot be assessed demanding any service tax for the services of education provided by them, which includes affiliation or other services provided for the students, faculty as well as the staff of the university.
- The present appeal is getting squarely covered by the said judgement and thus it applies to them in the appeal filed.
- The judgments of Tribunal, High Court and Supreme Court are the rule of law and are binding on lower courts under the doctrine of judicial discipline.

5. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Shri Pratik Shah, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum as well as in additional written submissions dated 16.11.2021.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and material available on records. I find that the issue to be decided is whether the appellant is providing services by way of grant of affiliation to educational institutions and by way of renting of it's premises, which is categorized as 'taxable services' as defined under Section 65B (44) read with Section 65B (51) of the Finance Act, 1994 as well as under Section 66E of the Finance Act, respectively and whether they are liable to pay service tax on affiliation fee and rental income received by them or not. The demand pertains to the period 01.10.2013 to 30.06.2017.

6.1 I find that in the notice, issued to the appellant, 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. Similarly, service of renting of immovable

property provided by the University to commercial entities is not covered by the negative list and also not eligible for exemption under Entry No.9 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.

6.2 I find that clause (l) of Section 66D of the Finance Act, 1994, prior to its omission w.e.f. 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 recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;”

6.3 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, w.e.f 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,-

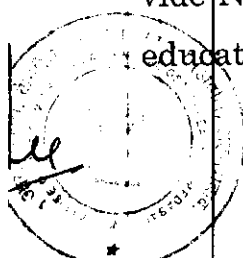
- (a) auxiliary educational services; or
- (b) renting of immovable property;”

6.4 The said Entry No.9 of the above said notification was substituted vide Notification No.06/2014-ST dated 11.07.2014, w.e.f 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.”

6.5 Clause (oa) was inserted in Notification 25/2012-St dated 20.6.2012 vide Notification No.06/2014-ST dated 11.07.2014, w.e.f 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).”;

This clause was amended vide Notification No.9/2016-ST dated 01.03.2016 w.e.f. 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 recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;”;

6.6 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.

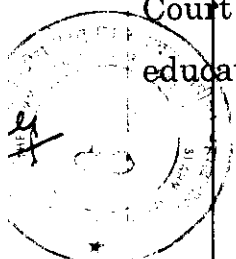
7. It is in light of the above provisions under the Finance Act, 1994 as well as under Notification No.25/2012-ST dated 20.06.2012, the issue is required to be examined. It is not a matter of dispute that the appellant is a educational institution. Therefore, what is required to be determined is whether 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 affirmed by the Hon 'ble Supreme Court - 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 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.”

7.1 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 recognised by any law for the time being in force*". It is evident that qualification obtained as part of the education is that which is recognised 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 recognised 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.

8. I further find that the appellant 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. 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, no doubt, such services are being exempted and in this context, there can be no quarrel from the revenue side also.

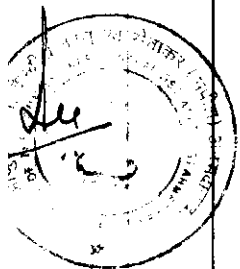
16. However, whether such kind of service of imparting education as part of curriculum for obtaining a qualification whether is rendered by the petitioner university is a question where, it is the stand of the revenue that, the university is not directly imparting any education except providing affiliation 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 ie., 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.

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 fold, 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 ie., 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 "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, ie., 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 'I' 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 'I' of Section 66-D has been inserted.

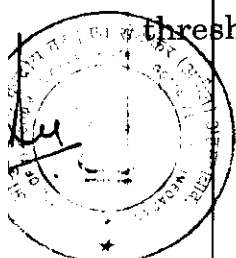
Therefore, throughout the regime between 2012 and 2017, the educational institution had been provided with the exemption as has been stated in various provisions of the Act as well as the mega notification, followed by the amended notification and during all these periods, these institutions including 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."

8.1 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 appellant are not chargeable to service tax.

9. As regards the other issue i.e. income from renting of immovable property, I find that the Hon'ble High Court of Madras had in their above judgment held that :

"24. Insofar as the second part of the claim made by the respondent university against levying the service tax on the services such as renting of immovable property for the purpose of bank, post office, canteen etc., as we stated above, these are all allied services of education which are also included in the purview of educational services, in view of clause 9, which has given an expanded meaning of educational services which includes the services to be provided not only to the students, but also faculty and staff. In this category, the faculty and staff of the university are getting whatsoever services by way of transportation, boarding and lodging etc., are also to be included in the meaning educational services being provided by the educational institutions i.e., the petitioner herein which can also be exempted from the purview of service tax. Therefore, that aspect of assessment and demand made for levying service tax on the services provided by the petitioner institution under the heading renting of immovable property also, in the considered view of this Court, cannot be sustained. Therefore, on both aspects, the assessment and demand made by the respondent, in the considered view of this Court, is untenable and therefore, it is liable to be interfered with."

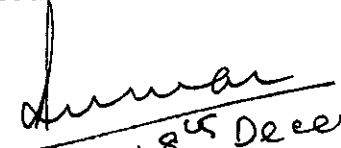
9.1 In view of the above judgment of the Hon'ble High Court, the rental income received by the appellant too are not chargeable to service tax. Be that as it may, I also find that the appellant have throughout the period under dispute been receiving rental income which is well below the threshold limit of Rs. 10 lakhs in a year. Since I have already held that the affiliation charges are not chargeable to Service Tax, the rental income, being below the threshold limit of Rs. 10 lakhs, would also not be chargeable to Service Tax.



10. In view of the above discussions, I am of the considered view that the demand confirmed vide the impugned order is not legally sustainable. Consequently, the demand for interest and imposition of penalties are also not sustainable. I, therefore, allow the appeal filed by the appellant and set aside the impugned order.


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

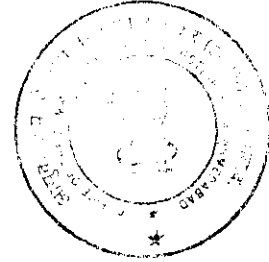
The appeal filed by the appellant stands disposed off in above terms.

  
 8<sup>th</sup> December, 2021  
 ( Akhilesh Kumar )  
 Commissioner (Appeals)

Date: .12.2021.

Attested:

  
 (N. Suryanarayanan. Iyer)  
 Superintendent(Appeals),  
 CGST, Ahmedabad.



**BY RPAD / SPEED POST**

To

M/s. Hemchandracharya North Gujarat University,  
 Rajmahal Road, Patan,  
 Gujarat – 384 265

Appellant

The Additional Commissioner,  
 CGST & Central Excise,  
 Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.  
 (for uploading the OIA)

4. Guard File.
5. P.A. File.