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## **Taxation (GST) on Educational Institutions - Part I**



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The Hon'ble Mr. Justice H.R. Khanna in its judgments in the matter of ***Lok Shikshana Trust v. CIT***<sup>1</sup> has inter alia explained the meaning of education wherein it was stated as hereunder:-

*"...What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."*

The Constitutional (Eighty-sixth Amendment) Act inserted that education upto the age of 14 years is fundamental right of every citizen of this country. In regard to this, the government has provided exemption and relief from Goods & Services Tax (hereinafter referred as **GST**) to such class of persons who are involved in education sector.

The Notification No. 11/2017-Central Tax (Rate) and Notification No. 12/2017-Central Tax (Rate), both dated 28.06.2017 provides that under the heading 9992 the education service can comprise of pre-primary, primary, secondary, higher, specialized and other educational and

support services.

## **DEFINITION OF "EDUCATIONAL INSTITUTION"**

The Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, under para 2(y) defines the term "educational institution" as:-

*"(y) an "educational institution" means an institute 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;"*

The learned Authority for Advance Ruling under GST, Gujarat in the matter of ***In re: Nirma University***<sup>2</sup> has relied upon an E flyer published by the Central Board of Indirect Taxes & Customs (CBIC), titled as GST on Education Service<sup>3</sup> wherein explanation given in the Education Guide of 2012 was referred to understand the meaning of clause (ii) of para 2(y). The learned AAR stated that:-

*"What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'?"*

*It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification."*

Further, the E-Flyer states that the course should be recognized by an Indian law.

In regard to clause (iii) of para 2(y), the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, defines "approved vocational education course" under para 2(h) as:-

- (i) *A course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or*
- (ii) *A Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.*

The aforesaid discussion, abundantly clarifies that an educational institution shall comprise of either an institution upto the level of higher education or Universities/Colleges who are awarding degrees recognized by law on completion of curriculum or institutes indulged in approved vocational education courses. The definition includes all the type of bodies irrespective of nature of ownership of such institution i.e. government, private, aided or charitable. The definition does not include private coaching institutes and unrecognized institutes.

## **CHARITABLE EDUCATIONAL INSTITUTIONS**

The educational institutes of charitable trusts, which aim for no profit from its services to the society, are eligible for the general exemption of educational institutions. Additionally, if a charitable body is indulged in an activity listed under para 2(r)(iii) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which are *ultra vires* to the definition of "educational institution" shall be eligible for whole exemption from GST. The para 2(r)(iii) of aforesaid Notification is:-

*"(iii) advancement of educational programmes or skill development relating to,-*

*(A) abandoned, orphaned or homeless children;*

*(B) physically or mentally abused and traumatized persons;*

*(C) prisoners; or*

*(D) persons over the age of 65 years residing in a rural area;"*

Thus, a charitable trust running an educational institution which is educating and developing skills of category of persons listed under para 2(r)(iii) shall be eligible for complete exemption from the GST.

## **GST & EDUCATION INSTITUTION**

The serial no. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 provides exemption to the educational institutes on the following activity listed under the heading number 9992, which reads as:

*"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 Central Government, State Government or Union territory;*
  - (iii) security or cleaning or housekeeping services performed in such educational institution;*
  - (iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary;*

*Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent."*

The aforesaid entry provides an exemption to the educational institutes from GST for providing necessary output services to its students, faculty and staff. However, if the services are input in nature, provided by a third party such as canteen services shall be subject for GST as per the applicable rate.

◆ **GST on boarding schools & Universities/Colleges**

The Central GST Act 2017 lay down the principle in Section 2(30) read with Section 8 of the Act, with regard to bundled services. The principle states that the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle. It is important to note that such bundled services are inseparable and organic in nature, such as facilities provided by a boarding education institution, thereby, the providing ancillary services which are generally taxable, shall be exempted.

- ◆ GST on classes of extra-curricular activities or other auxiliary services

The exemption provided shall only include to the education services and activities which are naturally included in the ordinary course of business. However, incidents like extra billing for the activity (such as non-educational or recreational picnics or hobby classes) which creates an artificial bundle of service, it shall be treated as mixed supply as per provisions contained under Section 2(74) read with Section 8 of the Central GST Act are liable to GST as per the applicable rate.

Recently, the learned CESTAT, Principal Bench, New Delhi, in the matter of ***Commissioner, Service Tax Commissionerate, Delhi - III v. Jaiprakash Associates Ltd.***<sup>4</sup>, whilst placing reliance upon its earlier judgment in the matter of ***Commissioner v. Jaiprakash Associates Ltd.***<sup>5</sup> wherein the relief was granted to the assessee by dismissing the appeal of the revenue. The learned Tribunal held that as the assessee has build the building for an educational institution thereby, the activity of the assessee will not fall under the scope of "Commercial or Industrial Construction Service (CICS) defined under Section 65(25b) of the Finance Act 1994 and hence not liable for service tax.

## **CONCLUSION**

The government in its duty prescribed under the directive principles of state policy under the Constitution provides exemption to the educational institutions from GST in order to not saddle such institutions in serving the noble cause of education of the society. The notifications published by the CBIC provides the negative list of items exempted from taxation on such educational institution comprising of institutes upto higher education and degree in Universities/Colleges, however, the taxes are levied on a private coaching or an unrecognized institute.

◆ **TEAM MAJESTY LEGAL** <sup>6</sup>



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1. AIR 1970 SC 10
  2. 2022 (59) GSTL 437 (AAR-GST-Guj.)
  3. [https://www.cbic.gov.in/htdocs-cbec/gst/GST%20on%20Education%20Services\\_Web.pdf](https://www.cbic.gov.in/htdocs-cbec/gst/GST%20on%20Education%20Services_Web.pdf)  
(Last accessed on 29.06.2022)
  4. 2022 (61) GSTL 370 (Tri.-Del.)
  5. Appeal Nos. ST/59685 & 59687/2013, decided on 12.09.2018
  6. Majesty legal is law firm, established by Mahi Yadav and aim of the present article is to provide insights on the recent legal development as on 29.06.2022. The opinions presented in the article are personal in nature and not to be deemed as legal advice.