

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50636 OF 2017

(Arising out of Order-in-Original No. JOD-EXCUS-000-COM-0057-16-17 dated 17.01.2017 passed by Commissioner of Central Excise, Jodhpur)

Mody Education Foundation

Laxmangarh-332311,
Sikar, Rajasthan

...Appellant

versus

Commissioner of Central Excise,

Jodhpur

...Respondent

APPEARANCE:

Shri B.L. Narasimhan and Ms. Poorvi Asati, Advocates for the Appellant
Shri Harsh Vardhan, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 03.05.2023

Date of Decision: 15.05.2023

FINAL ORDER NO. 50657/2023

Justice Dilip Gupta:

M/s. Mody Education Foundation¹ (earlier Known as M/s. Mody Institute of Education & Research) has filed this appeal to assail the order dated 17.01.2017 passed by the Commissioner of Central Excise, Jodhpur².

2. The appellant is a society registered under the Societies Registration Act, 1860. It runs a boarding school called 'Mody School', located at Laxmangarh in Sikar, Rajasthan, for girls from third to twelfth standard. The school is affiliated to the Central Board of

1. the appellant

2. the Commissioner

Secondary Education³. It has an accreditation from the National Accreditation Board for Education and Training. The school is also affiliated to the International Baccalaureate of Geneva, Switzerland for IB Diploma Programme for Classes XI and XII.

3. The appellant, with respect to the boarding school, receives hostel fees from the students, in addition to the tuition fee and other charges. A small portion of the students are day scholars who do not opt for the hostel facility and thus, no hostel fees is collected from such day scholars.

4. The appellant has also rented out a building to M/s. Mody University of Science and Technology⁴ and has received rent for the period 2014-15. The appellant has also provided transportation services to its students and staff. The appellant has also received goods transport agency services⁵.

5. An investigation was initiated against the appellant whereafter it was observed that the appellant had failed to pay service tax in respect of various services provided/received by it.

6. A show cause notice dated 20.09.2016 was, therefore, issued to the appellant proposing a demand of service tax of Rs. 02,02,01,879/- with interest and penalties. The allegations made against the appellant in the show cause notice are as follows:

- (i) The hostel services provided by the appellant to the students, being an auxiliary education services, was not exempted under Serial No. 9 of the Notification dated 20.06.2012 during the period 01.04.2013 to 10.07.2014 and thus, taxable;

3. **CBSE**
4. **Mody University**
5. **GTA Services**

- (ii) The hostel services are not naturally bundled with education services;
- (iii) The hostel services are not in the nature of renting of residential dwelling for use as residence covered under section 66D(m) of the Finance Act, 1994⁶;
- (iv) The appellant is liable to pay service tax on the rent received from Mody University from July 2014 to March 2015;
- (v) The transportation services provided by the appellant to the students, faculty and staff, being an auxiliary education services is leviable to service tax during the period 01.04.2013 to 10.07.2014;
- (vi) The appellant is liable to pay service tax on the GTA services received by it during the period April 2014 to March 2015; and
- (vii) The appellant had intentionally and wilfully suppressed the fact of provision and receipt of taxable services by it from the Department and so the extended period was invokable.

7. The appellant filed a detailed reply to the above show cause notice on 10.11.2016.

8. The Commissioner by order dated 17.01.2017 confirmed the demand of Rs. 01,98,20,476/- along with interest and penalties.

9. The details of demand proposed, dropped and confirmed, have been tabulated below:

6. **the Finance Act**

Sl. No.	Nature of Service	Taxable value (in Rs.)	Service Tax Demand Proposed (in Rs.)	Service Tax Paid (in Rs.)	Service Tax Demand Confirmed (in Rs.)	Service Tax Demand Dropped (in Rs.)
1.	Hostel fees received from students	15,34,92,200	1,89,71,637	-	1,88,48,037	1,23,600
2.	Rent received from Mody University	57,60,000	7,11,936	8,25,648	9,49,248	0
3.	Transportation services to student, staff and faculty	40,05,783	4,95,115	-	0	4,95,115
4.	GTA services received by the appellant	7,50,528	23,191	23,191	23,191	0
Total		16,40,08,511	2,02,01,879	8,48,839	1,98,20,476	6,18,715

10. Shri B.L. Narasimhan, learned counsel for the appellant, assisted by Ms. Poorvi Asati, made the following submissions:

- (i) Service tax is not leviable on the hostel fees received by the appellant from the students;
- (ii) Hostel services are naturally bundled with education services, which is covered under section 66D(I) of the Finance Act. As the two services i.e. hostel services and education services are naturally bundled in the ordinary course of business, in accordance with the provisions of section 66F(3)(a) of the Finance Act, the essential character of this bundle is education services, which is covered under section 66D(1) of the Finance Act;
- (iii) Explanation to section 66F of the Finance Act which defines bundled services, provides that for a service to be a bundled service, an element of provision of one service needs to be combined with an element of provision of another service and there should be a nexus between the two services;

- (iv)** In the present case, the hostel services and education services provided by a boarding school are naturally bundled in the ordinary course of business, and it is the education service that gives the essential character to such a bundle. This apart, as hostel services cannot be provided on a stand alone basis without the provision of education services by a boarding school, there is a clear nexus between the two services;
- (v)** Even otherwise, the hostel services rendered by the appellant are covered under section 66D(m) of the Finance Act and hostel services rendered by the appellant are exempted under serial no. 18 of notification dated 20.06.2012;
- (vi)** In any case, the exemption given at serial no. 9 of the notification dated 20.06.2012 was available even during the period 01.04.2013 to 10.07.2014;
- (vii)** Demand of service tax on the rent received from Mody University is required to be recomputed after extending the threshold exemption; and
- (viii)** The extended period of limitation is not invocable.

11. Shri Harshvardhan, learned authorized representative appearing for the Department has, however, supported the impugned order and made the following submissions:

- (i)** The hostel services is a distinct service provided by the appellant and is not bundled together with education service;
- (ii)** The appellant is not covered under section 66D(m) of the Finance Act;

- (iii) The hostel services rendered by the appellant are not exempted under serial no. 18 of the notification dated 20.06.2012;
- (iv) The exemption at serial no. 9 of the notification dated 20.06.2012 was not available to the appellant during the period 01.04.2013 to 10.07.2014; and
- (v) The extended period of limitation was correctly invoked in the facts and circumstances of the case.

12. The submissions advanced by the learned counsel for the appellant and the learned authorized representative for the department have been considered.

13. The impugned order has confirmed the demand of service tax of Rs. 01,88,48,037/- on the hostel fees received by the appellant from the students during the period 01.04.2013 to 10.07.2014 on the ground that the same was not exempted under Serial No. 9 of the Notification dated 20.06.2012 during the said period.

14. It would, therefore, be necessary to examine the amendments made to Serial No. 9 of the Notification dated 20.06.2012. Serial No. 9 of the said Notification during different periods, is reproduced below in tabular form:

Sl. No.	Period	Serial No. 9 of the Notification dated 20.06.2012
1.	From 01.07.2012 to 31.03.2013	<p>9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of, -</p> <p>(a) auxiliary educational services; or</p> <p>(b) renting of immovable property;</p> <p>2. Definitions. - For the purpose of this notification, unless the context otherwise requires, -</p> <p>(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other</p>

		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;
2.	Between 01.04.2013 to 10.07.2014	<p>9. Services provided to an educational institution in respect of education exempted from service tax, by way of, -</p> <p>(a) auxiliary educational services; or (b) renting of immovable property;</p> <p>2. Definitions. – For the purpose of this notification, unless the context otherwise requires, -</p> <p>(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;</p>
3.	From 11.07.2014 to 31.03.2017	<p>9. Services provides, -</p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(b) to an educational institution, by way of, -</p> <p>(i) transportation of students, faculty and staff;</p> <p>(ii) catering, including any mid-day meals scheme sponsored by the Government;</p> <p>(iii) security or cleaning or house-keeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution;</p>
4.	From 01.04.2017 to 30.06.2017	<p>9. Services provided, -</p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(b) to an educational institution, by way of, -</p> <p>(i) transportation of students, faculty and staff;</p> <p>(ii) catering, including any mid-day meals scheme sponsored by the Government;</p> <p>(iii) security or cleaning or house-keeping services</p>

		<p>performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution;</p> <p>"Provided that nothing contained in clause (b) of this entry 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;</p>
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15. The Commissioner, in the impugned order, has noted that a demand of service tax amounting to Rs. 1,89,71,637/- had been made from the appellant from 01.04.2013 to 10.07.2014 on the hostel services provided by the appellant to the students and after noticing that w.e.f. 01.04.2013 serial no. 9 of the notification dated 20.06.2012 had been amended by substituting 'services provided to or by an education institution' with 'services provided to an education institution' went on to observe that because of the amendment the auxiliary education services by the appellant would be subjected to levy of service tax for the period from 01.04.2013 to 10.07.2014. The relevant portions of the order passed by the Commissioner are reproduced below:

"4.4 Hostel Services provided to students

4.4.1 A demand of Service Tax amounting to Rs. 1,89,71,637/- has been made for the period stretching from 01.04.2013 to 10.07.2014 on the Hostel Services provided by the noticee to the students of Mody School. The demand has been issued on the ground that during the said period, Service Tax was leviable by virtue of an amendment made in Notification No. 25/2012- ST dated 20.06.2012. **This amendment was made vide Notification No. 3/2013 - ST dated 01.03.2013 (effective from 01.04.2013) in which the Auxiliary Education Services provided by an educational institution became taxable.** The noticee during the said period had collected Rs. 15,34,92,200/- [Rs. 10,17,60,700/- in FY 2013-14 + Rs. 5,17,31,500/- in

01.04.2014 to 10.07.2014] as hostel fees (boarding & lodging charges).

4.4.2 The noticee has mainly contended that the Show Cause Notice has not discussed the Para 4.12.4 of the CBEC's Education Guide properly as in the said Para, hostel fees has been clarified as being part of Negative List - clause (m) as service of providing residential dwelling covered as a separate entry in this clause. Hence, no Service Tax is payable on hostel fees charged by them from the students of Mody School.

4.4.3 **I observe that by virtue of Notification No. 3/2013 - ST dated 01.03.2013, an amendment was made in entry no. 9 of the Notification No. 25/2012-ST dated 20.06.2012 w.e.f. 01.04.2013 and for the words "provided to or by", the words "provided to" were substituted. After the said amendment, the entry no. 9 of the Notification No. 25/2012- ST dated 20.06.2012 read 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;

4.4.4 **Hence, it is clear that from 01.04.2013, the auxiliary educational services provided by an educational institution ceased to be exempted and came within the purview of Service Tax.** However, the entry no. 9 of the Notification No. 25/2012-ST dated 20.06.2012 was substituted vide Notification No. 6/2014 -ST dated 11-07-2014 and exemption was granted to the services provided by an educational institution to its students, faculty and staff. As such, the auxiliary educational services were subject to levy of Service Tax for the intervening period of 01.04.2013 to 10.07.2014 which is the period of dispute in this case also"

16. The Commissioner further observed that the hostel services rendered by the appellant are not bundled services so as to attract

the provisions of section 65F of the Finance Act and the relevant portion is reproduced below:

"4.4.8 I observe that Para 4.12.4 of CBEC Education Guide discusses a situation where taxability is to be determined in terms of the principles laid down in Section 66F of the Finance Act, 1994. This type of situation arise in case of "bundled services" where an element of provision of one service is combined with an element or elements of provision of any other service or services. The situation in the instant case is altogether different. The Hostel Services being provided by the noticee is towards boarding & lodging charges collected from the students. **I find that in the fee receipts, these charges have been shown separately by the noticee. These charges have been given a separate treatment in books of account as "boarding & lodging charges". This service has been rendered purely as hostel service against boarding / lodging and is independently identifiable at the end of service provider as well as service recipient. Hence, I am of the view that in this case, the hostel services rendered by the noticee are not a subject of bundled services so as to attract the provisions of Section 66F of the Finance Act, 1994.** I therefore, find that Para 4.12.4 of CBEC Education Guide has explained a situation which is totally different from the facts and circumstance of the present case and the boarding / lodging or hostel service provided by the noticee cannot be bundled with education service provided by them."

17. The first issue that arises for consideration in this appeal is whether the two services, namely hostel services and education services, are naturally bundled in the ordinary course of business and for this it would be necessary to reproduce the relevant provisions of section 66F of the Finance Act and they are as follows:

"66F. Principles of interpretation of specified descriptions of services or bundled services.

66F. (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not included

reference to a service which is used for providing main service.

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(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:-

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation.- For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services."

18. A perusal of the aforesaid provisions of section 66F of the Finance Act would indicate that if there are various elements of service which are naturally bundled in the ordinary course of business, the taxability of such bundled services shall be based on the service which gives the essential character to such bundle. Explanation to section 66F of the Finance Act defines what a 'bundled service' would be. It provides that for a service to be a 'bundled service', an element of provision of one service needs to be combined with an element of provision of any other service or services. In other words, there should be a nexus between the two services.

19. The appellant has a boarding school and it receives hostel fees from students in addition to the tuition fee and other charges. However, students who are day scholars and who do not opt to pay the hostel facility are not required to pay the hostel fees. The hostel facility cannot be provided without the provision of education services by a boarding school as it is not the case of the department and it cannot be that students who are not receiving education services can also avail hostel services. On the other hand, the students who are receiving education services, may or may not opt for hostel services. There is, therefore, a nexus between the two services. It cannot, therefore, be doubted that the hostel services and education services provided by a boarding school are naturally bundled in the ordinary course of business, and the education service is the service which gives the essential character to such bundle.

20. In this connection reference can also be made to paragraph 4.12.4 of the CBIC Education Guide dated 20.06.2012 and the relevant paragraph is reproduced below:

"4.12.4 Are services provided by boarding schools covered in this entry?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 66F of the Act. **Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education other dominant service of providing residential dwelling is also covered in a**

separate entry of the negative list, the entire bundle would be treated as a negative list service.”

(emphasis supplied)

21. Section 66D of the Finance Act provides for the negative list of services and it includes service by way of pre-school education and education up to higher secondary school or equivalent. Thus, education service would be covered within the purview of negative list contained in section 66D of the Finance Act. It would, therefore, not be taxable.

22. Even in the Goods and Service Tax regime, the views expressed earlier by the CBIC continue to operate as in the pre-Goods and Service Tax regime. This would be clear from the CBEC Press Release dated 13.07.2017 and the relevant portion is reproduced below:

“2. It may be mentioned that services provided by an educational institution to students, faculty and staff are fully exempt. Educational institution has been defined as an institution imparting

(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.

3. Thus, services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall not attract GST.”

23. What, therefore, follows from the aforesaid discussion is that the hostel service and education services are naturally bundled in the ordinary course of business and it is the education service that gives the essential character to such bundle. Education services by way of pre-school education and education up to higher secondary school or equivalent are enumerated in the negative list of services enumerated in section 66D of the Finance Act. Thus, it cannot be subjected to levy of service tax.

24. In this view of the matter, it may not be necessary to examine the remaining contentions advanced by the learned counsel for the appellant regarding the exemption granted under serial no. 18 of the notification dated 20.06.2012.

25. Thus, for all the reasons stated above, the impugned order dated 17.01.2017 passed by the Commissioner cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **15.05.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
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PRINCIPAL BENCH

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HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

Date of Hearing: 03.05.2023

ORDER

Order Pronounced on **15.05.2023**.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P. ANJANI KUMAR)
MEMBER (TECHNICAL)**