

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 53450 of 2018

[Arising out of Order-in-Appeal No. 143-144 (SJ) ST/JPR/2018 dated 29.06.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods, Service Tax, Jaipur]

**Mahatma Gandhi University of
Medical Sciences And Technology** : **Assessee**
RIICO Ind. Area, Tonk Road, Jaipur (Rajasthan)

Vs

**Commissioner of Central Goods,
Service Tax, Central Excise, Jaipur-I** : **Revenue**
NCRB Building, C-Scheme, Statue Circle,
Jaipur-302005 (Raj.)

with
Service Tax Appeal No. 50137 of 2019

[Arising out of Order-in-Appeal No. 143-144 (SJ) ST/JPR/2018 dated 29.06.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods, Service Tax, Jaipur]

**Commissioner of Central Goods,
Service Tax, Central Excise, Jaipur-I** : **Revenue**
NCRB Building, C-Scheme, Statue Circle,
Jaipur-302005 (Raj.)

Vs

**Mahatma Gandhi University of
Medical Sciences And Technology** : **Assessee**
RIICO Ind. Area, Tonk Road, Jaipur (Rajasthan)

APPEARANCE:

Ms. Priyanka Goel, Advocate for the Assessee
Shri S. K. Meena, Authorized Representative for the Revenue

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. A. K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. 51634-51635/2025

Date of Hearing:14.07.2025

Date of Decision: 30.10.2025

DR. RACHNA GUPTA

The present order disposes of two appeals arising out of the common Order-in-Appeal bearing No. 143-144 /2018 dated 29.06.2018 dated 29.06.2018 pertaining to the same assessee i.e. Mahatama Gandhi University of Medical Sciences and Technology (hereinafter referred as the university).

2. The facts which culminated into the said order are that the university filed the refund claim on 26.04.2016 for an amount of Rs. 1,47,62,737/- under Section 11B of the Central Excise Act, 1944 in respect of service tax amount (along with interest) as was deposited by the appellant/university during the period May 2015 to October 2015. It was filed on the ground that the university was not required to pay service tax on 'Legal Services, Security Services, Manpower Services and Works Contract Services' under reverse charge mechanism in terms of Notification No. 30/2012-ST dated 20.06.2012. The said claim was proposed to be rejected vide show cause notice No. 18/2016 dated 17.08.2016 observing that the refund of service tax claimed by the appellant with respect to Legal Service and Works Contract Service received by them are not covered under the Mega Exemption Notification No. 25/2012-St dated 20.06.2012. Also, the university had not provided complete set of supporting documents. The said show cause notice has been adjudicated vide Order-in-Original No. 12/2016 dated 06.10.2016. The university was held

entitled to get the refund of amount of Rs. 70,04,231/- out of the total amount of Rs. 1,47,62,737/-/-. Appeal against the said order has been allowed upholding the sanctioning of refund by the original adjudicating authority and sanctioning the rejected amount of refund. However, the sanctioned amount has been credited to Consumer Welfare Fund in terms of Section 11B of the Central Excise Act. An order in Review No. 03/2017 dated 09.01.2017 was passed in terms of Section 84 (1) of the Finance Act, 1994 requiring Department to file an appeal against the said order. Appellant also being aggrieved had filed the appeal.

3. We have heard Ms. Priyanka Goel, learned counsel for the University and Shri S. K. Meena, learned Authorized Representative for the Department.

4. Learned counsel for the university has submitted that the Commissioner (Appeals) has rightly denied university to be a body corporate and thus being eligible to the exemption benefit. It is submitted that the university is the autonomous education institute established for charitable purpose and sponsored by the India Education Trust, Jaipur having a Registration No. 20/2451999 and as such does not fall within the scope of definition of body corporate as provided in Rule 2 (bc) of Service Tax Rules, 1994, hence, there is no infirmity when the refund claim has been sanctioned in toto, in favour of the university.

5. It is further submitted that sanctioned refund claim is wrongly credited to the Consumer Welfare Fund as the tax admittedly was paid by the university under reverse charge mechanism and the question of

unjust enrichment of recipient of service does not arise. Learned counsel has relied upon the decision of This Tribunal in the case of **P. K. Prestressed (P) Ltd. vs. Commissioner of Central Excise, Luchnow-2018 (19) GSTL 656 (Tri.-All.)**.

6. It is further submitted that the new fact of showing the debit of service tax as expenses in the financial accounts does not leads to a conclusion that burden of service tax was passed on to the other persons. Otherwise also, the appellants have reversed the entry in the financial accounts by crediting the expense side and showing it as receivables in the current assets in the balance sheets of the university. Learned counsel has relied upon the decision of Hon'ble Supreme Court in the case of **Chandrapur Magnet Wires Private Limited vs. Collector of Central Excise, Nagpur 1996 (81) ELT 3 (S.C.)**. With these submissions, the appeal filed by the university is prayed to be allowed and the appeal is filed by the Department is prayed to be dismissed.

7. While rebutting the submissions, learned DR has impressed upon Section 3 of Mahatma Gandhi University of Medical Science and Technology, Jaipur Act, 2011, the following clauses:-

"The first Chairperson and the first President of the University and the first members of the Board of Management of the Academic Council and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the Mahatma Gandhi University of Medical Sciences and Technology, Jaipur."

This particular perusal of University's own document is sufficient to hold that the Commissioner (Appeals) has wrongly denied university to be a body corporate. The university has wrongly denied the liability of service tax under reverse charge mechanism. Such findings are liable

to be set-aside. While referring to the university appeal vis-a-vis disbursement of the sanctioned amount to the consumer welfare fund, it is submitted that the burden was of the assessee-university to prove that the incidence of tax paid, the refund whereof has been claimed, has not been passed on by the university but no such evidence has been produced by the appellant. Resultantly, there is no infirmity in the order to that extent. With these submissions, the appeal filed by the Department is prayed to be allowed and the appeal of university is prayed to be dismissed.

8. Having heard both the parties. Following two issues are framed to be adjudicated for adjudicating both the appeals:-

- (i) Whether the appellant-university is a body corporate.
- (ii) Whether the university had passed the incidence of service tax paid.

Issue No. 1- Foremost we have looked into the definition of body corporate in Rule 2(bc) of the Service Tax Rules, 1994. The provision reads as follows:-

“(bc) Body Corporate” has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956: 'body corporate' include a company registered outside India but does not include any other body corporate (not being a company as defined in the Companies Act, 1956) which the Central Government may, by notification, specify in this behalf. ”

The term "body corporate" is defined in Section 2(11) of the Companies Act, 2013 to includes a private company, public company, one personal company, small Company, Limited Liability Partnerships, foreign company etc. "body corporate" or "corporation" also includes a company incorporated outside India.

The Section further provides that however body corporate does not include

- (i) A Cooperative Society registered under any law relating to cooperative societies.
- (ii) Any other authority (not being the company) as defined in the Companies Act, 2013 which the Central Government may, by Notification, specified in this behalf.

9. From the above definitions, it is clear that first test for an organization to be termed as body corporate is to know whether it fulfils the criteria of Companies Act. Apparently and admittedly, the appellant-university falls under none of those categories as mentioned in Section 2(11) of Companies Act, 2013. The case of department is that since Government has not notified the university to be out of scope of definition of Rule 2(bc) of Service Tax Rules it is to be held as a body corporate purely on the basis of universities of Section 3 thereof. However, the perusal of said section, as quoted above, makes it clear that as per the said section, it is board of trustees who are considered to be the body corporate and not the institute per se i.e. the university.

10. Admittedly, the university is running as non-profit trust as a charitable institute. Such a trust otherwise cannot be held to be the body corporate. We draw our support from the decision of Hon'ble Apex Court in the case of **Ashoka Marketing Limited vs. Punjab National Bank 1999 (4) SCC 406** wherein it has been held that the expression of body corporate is to be used in legal parlance to mean a

public or a private corporation. The meaning of corporation has been elaborated by the Hon'ble Apex Court in its another decision in the case of **Board of Trustees, Ayurvedic and Unani Tibbia College vs. State of Delhi reported as AIR 1962 S.C 458** wherein it has been held that a Corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in case of a corporation sole) which is recognized by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office, in question. Hon'ble Supreme Court of India again in **S. P. Mittal v. Union of India, AIR 1983 SC 1**, summed up the essential elements in the legal concept of a corporation, which are:

- (1) a continuous identity, i.e., the original member or members or his or their successors are one;
- (2) the persons to be incorporated,
- (3) the name by which the persons are incorporated,
- (4) a place, and
- (5) words sufficient in law to show incorporation. A corporation aggregate can express its will by deed under a common seal."

The appellant do not qualify to be called as business entity defined under Clause 17 of Section 65B of the Finance Act, 1994 for not carrying out any activity for profit.

11. In the light of entire above discussion, we hold that the Commissioner (Appeals) has rightly held that the university is not a body corporate. Further, the appellant being eligible for exemption in terms of Mega Exemption Notification No. 25/2012 dated 20.06.2012,

it was not liable to pay service tax under reverse charge mechanism in terms of Notification No. 30/2012 dated 20.06.2012. Hence, this issue stands decided in favour of the university.

12. Issue No. 2- It is an admitted fact that the university was paying service tax under reverse charge mechanism. The said admitted fact itself is sufficient to hold that question of passing the burden of service tax by the university/the service recipient to anybody else does not at all arise. We draw our support from the decision of Hon'ble Supreme Court in the case of **Solar Pesticides Private Limited reported as 2000 (116) ELT 401 (S.C.)** wherein it was held as follows:-

"5. Considered arguments on both sides. In the case of tax paid on reverse charge mechanism, it is very obvious that incidence has been borne by the person (appellant) who is receiving the services. The case of Solar Pesticides (supra) is with reference to raw material captively used in the manufacture of excisable goods which were sold for home consumption and is in no way comparable to the facts of this case."

The another point raised by the Commissioner (Appeals) for diverting the sanctioned refund to consumer welfare fund is that the service tax was deducted in the expense side. But it has also been settled position of law that mere book entry is insufficient to conclude that the burden of tax has been passed on to some other persons. Otherwise also the entries have already been reversed by the appellant. The decision of Hon'ble Supreme Court in **Chandrapur Magnet Wires Private Limited (supra)** covers this situation. Resultantly, we hold that there is no scope of university, the service recipient being unjustly enriched while paying service tax under reverse charge mechanism. This issue stands also decided in favour of the university.

13. As a result of discussion arrived at of both issues above, we hold that the impugned order under challenge is sustainable to the extent

that university is not a body corporate and is thus eligible for getting refund claim. However, the order under challenge (OIA) is set-aside to the extent of diverting the amount of sanctioned refund to Consumer Welfare Fund as the University is denied to be unjustly enriched.

14. Consequent to the decision arrived with respect to both the issues, the appeal filed by the university is allowed with consequential relief and the appeal filed by the Department is dismissed.

(Order pronounced in the open Court on 30.10.2025)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(A. K. JYOTISHI)
MEMBER (TECHNICAL)

G.Y.