

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

PRINCIPAL BENCH- COURT NO.III

Service Tax Appeal No.52205 of 2019

(Arising out of Order-in-Original No.38/COMMR/ST/BPL-II/2018 dated 31/12/2018 passed by Principal Commissioner of Central Excise & CGST, Bhopal)

M/s Professional Examination Board,Appellant
(Chayan Bhawan, Main Road No.1,
Chinar Park (East), Bhopal)

VERSUS

**Commissioner of Customs, Central Excise &
Service Tax, BhopalRespondent**
(48, Administrative Area, Area Hills,
Hoshangabad Road, Bhopal)

APPEARANCE:

Ms Monisha Handa, Advocate for the Appellant
Shri Anand Narayan, Authorised Representative for the Respondent

**CORAM: HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.51310/2025

DATE OF HEARING : 21 July, 2025
DATE OF PRONOUNCEMENT: 18th September, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-In Original No. 38/COMMR/ST/BPL-II/2018 dated 31.12.2018 of Principal Commissioner, CGST & Central Excise, Bhopal. By the impugned order following has been held:-

"ORDER

- (i) *The impugned services rendered by M/s. Madhya Pradesh Professional Examination Board, Bhopal is considered as taxable service as defined under Section 65B of the Finance Act, 1994 and the amount collected*

by the noticee under the heads "Revenue Proceeds from Examination", "Misc. Receipts/Recovery" and "Rent from Resi. Qrts Post Office & Bank" during the period from 14.03.2016 to 30.06.2017 amounting to Rs. 12992.13 Lacs is considered as taxable value.

- (ii) Service Tax amounting to Rs. 19,46,95,810/- (Rs. Nineteen Crore, Forty Six Lacs, Ninety Five Thousand, Eight Hundred and Ten only) (Service Tax Rs. 18,18,89,820/-+ Swachh Bharat Cess Rs. 64,96,065/- + Krishi Kalyan Cess Rs. 63,09.925/-), leviable on taxable services so rendered for the period 14.03.2016 to 30.06.2017 is confirmed and is ordered to be recovered from the Noticee under proviso to section 73(1) of the Finance Act, 1994. The Noticee is directed to pay the same forthwith*
- (iii) Interest on the amount of Service Tax Rs. 19,46,95.810/- (Rs Nineteen Crore, Forty Six Lacs, Ninety Five Thousand, Eight Hundred and Ten only) so confirmed at Sr. No. (ii) above is ordered to be recovered from them under Section 75 of the Finance Act, 1994. The Noticee is directed to pay the same forthwith.*
- (iv) Penalty equal to amount of service tax short/not paid amounting to Rs. 19,46,95,810/- (Rs. Nineteen Crore, Forty Six Lacs, Ninety Five Thousand, Eight Hundred and Ten only) is imposed under Section 78 of the Finance Act. 1944 and ordered to be recovered from the Noticee. The Noticee is directed to pay the same forthwith.*
- (v) I give an option to the Noticee to avail opportunity of reduced penalty as provisioned under the relevant section. The penalty imposed under Section 78 of the Finance Act, 1994 will be reduced to 25% of the said amount provided the service tax and interest are paid within 30 days from the date of communication of this order and the said reduced penalty is also paid within*

the said time i.e. 30 days from the date of communication of this order

- (vi) *Penalty for failure to pay service tax is imposed upon the noticee under Section 76 of the Act@10 % of the amount of service tax short/not paid amounting to Rs. 19,46,95,810/- (Rs. Nineteen Crore, Forty Six Lacs, Ninety Five Thousand, Eight Hundred and Ten only) is imposed and ordered to be recovered from the Noticee. The Noticee is directed to pay the same forthwith.*
- (vii) *Penalty of Rs. 10,000/- under section 77(1) (a) of the Act, is imposed upon the noticee for not obtaining service tax registration. (vii) Penalty of Rs. 10,000/- under section 77(2) of the Act, is imposed upon the noticee for non-filing of ST-3 returns.*

The proceedings initiated against the Noticee vide the below mentioned Show Cause Notice

<i>Sr. No</i>	<i>SCN NO./F.NO./Date</i>	<i>Period</i>	<i>Amount involved in Rs.</i>
<i>1</i>	<i>12/COMMR/ST/BPL-II/2018 dt. 24.05.2018</i>	<i>14.03.2016 to 30.06.2017</i>	<i>Rs. 19,46,95,810/-</i>

are concluded in the above terms."

2.1 Appellant has been established by the Government of Madhya Pradesh under section 3(1) of the Madhya Pradesh Vyavasayik Pariksha Mandal Adhiniyam, 2007.

2.2 It was gathered that the Noticee are engaged in conducting examinations for recruitment of personnel for various departments and undertakings of the Madhya Pradesh Government for which they are charging amount from these organizations as well as from the candidates as examination fees. It is also fathered that from the date when they legally came into existence only after issue of a formal notification on 14.03.2016 under Section 3(1) of the Adhiniyam, 2007. They have charged an amount for the period from 14.03.2016 to 30.06.2017 from these organizations as well as from the candidates as examination fees against the service so provided by them. During the period from 14.03.2016 to 30,06.2017,

they have collected the taxable amount of Rs. 12848.04 Lacs as examination fee as against "Manpower recruitment or supply agency" services which appears to be covered under the category "service" as defined under Section 65B (44) [erstwhile Section 65(105)k] of the Finance Act, 1994. The said services are also not specified in the negative list under section 66D of the Finance Act, 1994a and thus, appear to be taxable in terms of section 66B of the Finance Act 1994

2.3 They have collected an amount of Rs. 138.93 Lacs as ""Misc. Receipts/ Recovery", in relation to which, they have not provided any particulars as to under which service such amount has been collected. By not providing certain information/bifurcation of the amount collected under the head "Misc. Receipts/Recovery".

2.4. They have also received income of Rs. 5.16 Lacs from 'renting of immovable property' under the head "Rent from Resi. Orts Post Office & Bank. The 'renting of immovable property services' provided by the appellant appeared to be taxable.

2.5 Thus, during the said period, under the heads Revenue Proceeds from Examination", "Misc. Receipts/ Recovery" and "Rent from Resi. Orts Post Office & Bank", the Noticee has received taxable amount of Rs. 12992.13 Lacs, on which they appear to be liable to pay service tax under Section 66B of the Act.

2.6 Thus, from the documents/records recovered/submitted by the appellant during the investigations undertaken, during the period 14.03.2016 to 30.06.2017, they received gross total amount of Rs. 129,92,13,000/- towards the taxable services provided by them on which service tax amounting to Rs. 19,46.95,810/- (Service Tax Rs. 18,18,89.820/- + Swachh Bharat Cess Rs. 64,96, 065/-+ Krishi Kalyan Cess Rs. 63,09,925/-) is liable to be demanded and recovered from them under section 73(1) of the Finance Act, 1994. They were also liable to pay interest on the said amount under section 75 of the Act. As they had suppressed the facts from the department

extended period for making the demand was invokable and appellant were liable for their acts of omission and commission to penalties under Section 77 and 78 of the Finance Act, 1994.

2.7 A notice to show-cause dated 24.05.2018 was issued to the appellant asking them to show cause as to why-

- (i) *Total Service Tax amounting to Rs. 19,46,95,810/- (Rs. Nineteen Crores Forty Six Lacs, Ninety Five Thousands Eight Hundred and Ten only) (Service Tax Rs. 18,18.89.820/- + Swachch Bharat Cess Rs. 64,96,065/- + Krishi Kalyan Cess Rs. 63,09,925/-), for the period 14.03.2016 to 30.06.2017, not-paid by them should not be demanded & recovered from them under the proviso to section 73(1) of the Act. (i, Interest at appropriate rate should not be charged and recovered from them on the delayed payment of service tax under Section 75 of the Act.*
- (ii) *Penalty for failure to pay service tax should not be imposed upon them under Section 76 of the Act.*
- (iii) *Penalty for not obtaining service tax registration should not be imposed upon them under section 77(1) (a) of the Act.*
- (iv) *Penalty for non-filing of ST-3 returns should not be imposed upon them under section 77(2) of the Act.*
- (v) *Penalty for willful evasion of service tax by way of suppressor of facts and contravention of various provisions of service tax law should not be imposed on them under section 78 of the Act.*

2.8 The show cause notice has been adjudicated as per the impugned order referred in para 1 above.

2.9 Aggrieved appellant has filed this appeal.

3.1 We have heard Ms Monisha Handa, Advocate for the Appellant and Shri Anand Narayan, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:-

- Appellant is deemed as the state Government – decision rendered by the Hon'ble Madhya Pradesh High Court in Writ Petition No 3867 of 2016;
- Board is not "Manpower Recruitment or Supply Agency as defined under Section 65 (68) of the Finance Act, 1994.
- Neither Service Provider nor the service recipient are person under Section 65 (105) (k) of the Finance Act, 1994.
- There is no flow of consideration from the service recipient to the service provider.
- The services were rendered by the appellant to the State Government and hence are exempt under S No 39 of the Exemption Notification No 25/2012-ST dated 20.06.2012.

3.3 Authorized Representative reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

14. Before proceeding to adjudge the impugned issue on merits, it will be appropriate to examine the veracity of the submissions made by the Noticee and charges proposed in the show cause notice on the basis of observations made during the course of investigation in the subject matter vis-à-vis the provisions of the Act and various statutory guidelines and policies having a bearing on the core issue raised in the show cause notices.

15. On a quick recapitulation of the case records. I find that the genesis of the issue raised on the basis of the outcome of the investigation detailed in the show cause notice no. 12/COMMR/ST/BPL-II/2018 dated 24.05.2018 is as narrated under-

On the basis of an intelligence that the Noticee are engaged in conducting examinations for recruitment of personnel for various departments and undertakings of the

Madhya Pradesh Government for which they are charging amount from these organizations as well as from the candidates as examination fees. It is also gathered that from the date when they legally came into existence only after issue of a formal notification on 14.03.2016 under Section 3(1) of the Adhiniyam, 2007, they have charged an amount for the period from 14.03.2016 to 30.06.2017 from these organizations as well as from the candidates as examination fees against the service so provided by them.

The activity undertaken by the Noticee for selection of personnel for the various organizations comprises of

- (i) advertising the vacancies in the news papers.*
- (ii) preparing question-papers,*
- (iii) organizing examinations at various centres,*
- (iv) conducting personal interview and*
- (v) submitting the post and category wise selection list and waiting list to the concerned organization. The investigations in the case resulted in detection of non-payment of service tax as under:-*

Service tax on the amount collected by the notice under the heads "Revenue Proceeds from Examination", "Misc. Receipts/ Recovery" and "Rent from Resi. Qrts Post Office & Bank" during the period from 14.03.2016 to 30.06.2017 amounting to Rs. 19,46,95,810/- (inclusive of cess) as tabulated as under:

TABLE

(Rs. In lacs)

<i>Period of transaction/ receipts</i>	<i>14.03.2016 to 31.03.2016</i>	<i>01.04.2016 to 31.03.2017</i>	<i>01.04.2017 to 30.06.2017</i>	<i>Total Receipt of col. (2+3+4)</i>
<i>Receipts-Revenue proceeds from Examination (Fee & Reimbursement)</i>	<i>372.12</i>	<i>8141.47</i>	<i>4334.45</i>	<i>12848.04</i>
<i>Receipts-Misc Receipts/ Recoveries</i>	<i>0.01</i>	<i>2.74</i>	<i>136.18</i>	<i>138.93</i>

<i>Receipts-Misc Receipts/ Recoveries – (rent from Resi Qrts Post Office & Bank</i>	<i>0.15</i>	<i>4.53</i>	<i>0.48</i>	<i>5.16</i>
<i>Total Receipts</i>	<i>372.28</i>	<i>8148.74</i>	<i>4471.11</i>	<i>12992.13</i>

The computation of Service tax is tabulated as under:

<i>Period wise and total receipts wise calculation of service tax</i>	<i>14.03.2016 to 31.03.2016</i>	<i>01.04.2016 to 31.03.2017</i>	<i>01.04.2017 to 30.06.2017</i>	<i>Total Service Tax Payable</i>
<i>Service Tax Payable @ 14%</i>	<i>52.12</i>	<i>1140.83</i>	<i>625.95</i>	<i>1818.9</i>
<i>Swachchh Bharat Cess @0.5%</i>	<i>1.86</i>	<i>40.74</i>	<i>22.36</i>	<i>64.96</i>
<i>Krishikalyan Cess @0.5%</i>	<i>0.00</i>	<i>40.74</i>	<i>22.36</i>	<i>63.1</i>
<i>Total Service Tax</i>	<i>53.98</i>	<i>1222.31</i>	<i>670.67</i>	<i>1946.96</i>

*16. The above issues wrapped up into the issuance of a show cause notice bearing no. 12/COMMR/ST/BPL-I1/2018 dated 24.05.2018 proposing recovery and demand of Service tax to the tune of Rs. 19,46,95,810/- in terms of the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Act, *ibid*. It was also proposed to impose penalty under Section 76, 77(1)(a), 77(2) & 78 for failure to pay service tax by the notice, by reason of suppressor of the facts, concealing the taxable value of the aforesaid services with a predetermined intent to evade payment of the Service Tax liable to be paid by them.*

17. The Noticee submitted their reply at the time of personal hearing vide letter dated 17.12.2018. as given below:

Professional Examination Board

*"Chayan Bhawan", Main Road No. 1, Chinar Park (East),
Bhopal-462011*

*Phone: -91-755-2578801-02, E-mail: yvapam@nic.in,
Website: peb.mp.gov.in*

*No./PEB/Accounts/2018
Bhopal, Date.....*

To.

The Commissioner,
CGST & Central Excise, Arera Hills,
Bhopal (M.P.)

Subject:- Service Tax Enquiry C-regarding.

Ref- Your letter No. C.No. V (ST) 15-36/Adj-1/BPL-
11/2017-18/2743 Date 29.11.18.

I would like to take a look at your referenced letter.

1. Just as the State Public Service Commission and the Union Public Service Commission do not pay any service tax, similarly the Board functions under the Technical Education Department of the State Government. The Board has been constituted by the 50th Legislative Assembly.
2. Professional Examination Board conducts examinations for the departments under the M.P. Government. Fee is charged from the candidates for his. Departments do not make any separate payment. No bills are issued by the Board for this. Fee is collected by M.P. Online as it deducts 4% service tax on the fee.
3. The Board is considered as a manpower supply agency even when salaries are paid by the Board. The Board only conducts examinations and makes available the results like Public Service Commission or Union Public Service Commission. No service tax is collected from those institutions. Hence, service tax provisions are not applicable to the Board also.

Please be aware of the above facts and kindly cancel the proposed action.

SDI-

Finance Controller

Professional Examination Board, Bhopal

18. From the above submission, it can be construed that the arguments advanced by the notice narrate that they have not charged the service tax separately from the organizations viz. govt. deptts. for whom, they are

*organizing the examinations. The fee for such arrangement is being collected from the appearing candidates and for that no separate bills are being raised in respect of such activities. It is further understood that the notice did provide no rebuttal in respect of their alleged liability against the Receipts under head Misc. Receipts Recoveries- (Rent from Resi. Orts, Post Office & Bank). In such a case, it is amply clear that the noticee does not have any counter argument against the categorical allegations aised in the show cause notice in respect of receipts on the account of rent received from Post office and bank. Remaining silent about the issue can be appropriately construed as self-admittance of the offence. I, therefore, do not find any requirement to further discuss the particular issue as, the same on merits goes affirmative towards the charges so alleged in the show cause notice. So, I conclude that the notice have rendered themselves liable to pay Service tax on such receipts against *renting of immovable property service collected by them during the period from 14.03.2016 to 30.06.2017. Held accordingly.*

19. Further, on the issue of receipts against conduct of examination etc. with reference activity of recruitment of the appearing candidates. after hearing both sides of arguments, I opine that in order to decide the case entirely on merits, it would be useful and appropriate at this juncture, to discuss the relevant provisions of the impugned services in question, which existed in force, during the period under dispute i.e. 14.03.2016 to 30.062017.

20. During the period covered under the show cause notice. the relevant legal provisions were as under:-

Section 65B (44) of the Finance Act, 1994 (herein after referred to as 'the Act') defines the term 'service' 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 (294) of Article 366 of the Constitution; or*
 - (iii) a transfer of 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.*

Section 65B (51) of the Act states that 'taxable service means any service on which service tax is leviable under section 66B. Section 66B of the Act states that There shall be levied a tax (here-in- after referred to as the service tax) at the specified rate on the value of all services, other than those 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".*

21. Prior to 01.07.2012 also, under section 65 (68) of the Finance Act, 1994, "Manpower recruitment or supply agency" was defined as "any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person". As the Noticee is engaged in providing services for recruitment of manpower, they also appear to be "manpower recruitment or supply agency" under the said definition.

- *It is observed that, in view of the above provisions, this activity is covered within the meaning of taxable service as defined under Section 65B (51) of the Act.*
- *Section 3(42) of the General Clauses Act, 1897 provides that 'person' shall include any company or association or body of individuals, whether incorporated or not.*
- *Section 3(2) of the Madhya Pradesh Vyavasayik Pariksha Mandal Adhiniyam, 2007 provides that "the Board shall be a body corporate by the name of Madhya Pradesh Professional Examination Board and shall have perpetual succession and a common seal with power to acquire and hold property, both movable and immovable and shall have power to transfer any property held by it and may sue or be sued in its corporate name."*

22. Thus, under the Vyapam Act, the Board has been established as a body corporate and not as a department of the State Government. Therefore, the Noticee is a legal person/entity different from the state government. A body corporate is an artificial person having perpetual existence, different from the members constituting it, who may change or be replaced by others from time to time. Therefore, only because the Chairperson of the Board is appointed by the government and the ex- officio and nominated members of the Board are government officers from different departments/ universities, the Board cannot be said to be a department of the State Government.

23. Section 12 of the Madhya Pradesh Vyavasayik Pariksha Mandal Adhiniyam, 2007 provides that "the Board Fund shall be constituted for the Board and all money received by or on behalf of the Board under this Act or otherwise, shall be deposited in it."

24. Whereas Section 13 of the Madhya Pradesh Vyavasayik Pariksha Mandal Adhiniyam, 2007 also provides that "(1) All money credited to the Board fund shall be deposited in

such bank as may be determined by the Chairperson: provided that it shall not be deemed to preclude the Board from investing such money as are not required for immediate expenditure in any of the Government securities. (2) The Board fund may be utilized by the Chairperson to meet out any of the obligation imposed upon the Board under this Act.

25. Where Section 4 of the Madhya Pradesh Vyavasayik Pariksha Mandal Adhiniyam, 2007 provides that the Board shall be a body corporate consisting of the Universities representatives also i.e. "g) Vice-Chancellor, Rajiv Gandhi Proudhyogiki Vishwavidyala, Bhopal: (h) Vice-Chancellor, Jawaharlal Nehru Agriculture University, Jabalpur. (i) Director, Indian Institute of Management, Indore" who are not officers of the MP Govt.

26. Whereas the status of Madhya Pradesh Professional Examination Board' has been decided by the Hon`ble High Court at Jabalpur disposing off the writ filed by them under W.P. No. 3867/2016 and No. 3966/2016, wherein the Hon'ble Court stated that "the Board was enacted by the state government under the statute of the Madhya Pradesh Vyavshayik Pariksha Mandal Adhiniyam, 2007 and legally came into existence only after issue of formal notification on 14.03.2016 under Section 3(1) of the Adhiniyam, 2007." Thus, the Noticee is a body corporate which may sue or be sued in its corporate name, having perpetual succession and power to acquire and hold property. Therefore, the Noticee is a legal person different from the state government.

*27. As described above, in terms of Section 65B(51) of the Act, *ibid.* "taxable service", means any service on which service tax is leviable under Section 66B. Further, as per Section 66B of the Act, *ibid*, there shall be levied service tax at specified rate 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. Thus, all services except those specified in the negative list were taxable under Section 66B of the Act, w.e.f. 01.07.2012.

28. The arguments advanced by the notice are that they have not charged the service tax separately from the organizations viz. govt. deptts. for whom, they are organizing the examinations. The fee for such arrangement is being collected from the appearing candidates and for that no separate bills are being raised in respect of such activities.

Here, I observe that such arguments even by them in support of their claim are not of any help to them in view of the following:

The activity undertaken by the Noticee for selection of personnel for the various organizations undisputedly comprises of (i) advertising the vacancies in the news papers, (ii) preparing question-papers, (iii) organizing examinations at various centers (iv) conducting personal interviews and (v) submitting the post and category wise selection list and waiting list to the concerned organization.

As per the legal provisions Section 65B (44) of the Finance Act, 1994 defines the term 'service' 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) a transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (294) of Article 366 of the Constitution; or*

(iii) a transaction of 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.

29. Further, on the basis of the investigation so carried out, it was arrived that M/s. Madhya Pradesh Professional Examination Board, Bhopal was engaged in conducting examinations for recruitment of personnel for various departments and undertakings of the Madhya Pradesh Government for which they charged amount from these organizations as well as from the candidates as examination fees. The noticee charged an amount for the period from 14.03.2016 to 30.06.2017 from these organizations as well as from the candidates as examination fees against the service so provided by them.

30. Here, It is amply clear that in view of the afore-said provisions, the Noticee is the person liable to pay service tax on the services provided by them as discussed above. Also, in view of the discussed provisions of the Finance Act, 1994 (as amended) and the status of the notice as defined and explained above, there is no option left for the noticee not to discharge their liability to pay Service tax on the impugned receipts as charged by them for the period from 14.03.2016 to 30.06.2017 from these organizations as well as from the candidates as examination fee against the service so provided by them.

31. Section 67 of the Act stipulates that where service tax is chargeable on any taxable service with reference to its value, then such value shall, in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service, provided or to be provided by him. For providing the

taxable services of 'manpower recruitment' and declared service, the Noticee has received amounts in the form of examination fees and miscellaneous receipts/ recoveries from the candidates and has also charged amounts from the service recipient organizations. Accordingly, Service Tax is to be charged on the gross amounts received by the Noticee for providing the "manpower recruitment service" and "renting of immovable property services".

32. Thus, from the above, it is clear that the Noticee is engaged in providing the service of 'Manpower recruitment or supply agency' as defined under erstwhile Section 65(105) of the Finance Act, 1994. which is taxable service during the relevant period under Section 65B(44) of Finance Act, 1994 w.e.f. 01.07.2012 and 'renting of immovable property service which is declared service. Consequently, the consideration received by them w.e.f. 14.03.2016 against the above services, being provided by them as person or body corporate/corporation board enacted under Madhya Pradesh Vyavshayik Pariksha Mandal Adhiniyam, 2007, is taxable under the provisions of the Finance Act, 1994. It is also noticed that as per Section 3(42) of the Central Clauses Act, 1897, Person shall include any company or association or body of individuals, whether incorporated or not.

33. Section 68 of the Act, prescribes that every person providing taxable service to any person shall pay service tax at the specified rate and within such period as may be prescribed. Rule 6 of the Service Tax Rules, 1994 lays down the procedure in this regard.

- It is observed that the Noticee has failed to comply with the above said provisions to discharge their tax liability in respect of service provided under the category of Manpower recruitment and supply" and "renting of immovable property" services.*

34. As per the provisions of Section 69 of the Finance Act, 1994 read with rule 6 of the Service Tax Rules, 1994 :-

[(1) Every person liable to pay the service tax under this chapter on the rules made there under shall, within such time and in such manner and in such form as may be prescribed make an application for registration to the [Superintendent of Central Excise.]

[(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.]

- *The Noticee has failed to comply with the above said provisions - as they have failed to obtain service tax registration within prescribed time regarding taxable service provided by them under the category of "Manpower recruitment and supply" and 'renting of immovable property` services.*

35. Section 70 of the Finance Act, 1994 prescribes that every person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. Rule 7 of the Service Tax Rules, 1994 lays down the procedure in this regard. In view of the said provisions, having failed to self-assess the tax liability and file ST-3 returns which was in fact due upon them, the Noticee have contravened the above said provisions.

36. As mentioned above, the Noticee have received gross total amount of Rs. 129,92,13,000/- towards the taxable services on account of examination fee and miscellaneous receipts/recovery, provided by them on which service tax amounting %o RS. 19.46.95.810/- (Service Tax Rs. 18,18.89.820/ + Swachh Bharat Cess Rs. 64,96,065/- + KrishiKalyan Cess Rs. 63,09,925/-) (as detailed in table)

during the period from 14.03.2016 to 30.06.2017 is liable to be deemed and recovered from them under section 73(1) of the Finance Act, 1994 and thus, the same is taxable in terms of section 66B of the Finance Act, 1994.

37. It is clear from the above table that the noticee has collected an amounts of Rs. 12848.04 Lacs as examination fee against " Manpower recruitment or supply agency' services during the period from 14.032016 to 30.06.2017, which is covered under the category of 'service? as defined under Section 65B (44) [erstwhile Section 65(105)k] of the Finance Act, 1994. The said services are also not specified in the negative list under section 66D of the Finance Act, 1994 and thus, the same is taxable in terms of section 66B of the Finance Act, 1994.

38. The Noticee have also collected an amount of Rs. 138.93 Lacs as "Misc. Receipts/ Recovery", in relation to which, they have not provided any particulars as to under which service such amount has been collected. By not providing certain information/bifurcation of the amount collected under the head "Misc. Receipts/Recovery", the Noticee has left no option except to calculate their service tax liability on the whole amount collected under the said heading. Hence, the said receipts are treated to be related to their main activity that is against "Manpower recruitment or supply service"". Thus, on their total receipts of Rs. 12848.04 Lacs + Rs. 138.93 Lacs = Rs. 12986.97 lacs from Manpower recruitment or supply service, the Noticee is liable to pay service tax amounting to Rs. 1946.19/-lacs (including Cesses)

39. Further, the Noticee have received income of Rs.5.16 Lacs from 'renting of immovable property' under the head "Rent from Resi. Qrts Post Office & Bank". The Noticee has not given any particulars bifurcation of the said receipts. From 01.07.2012 onwards. "'Renting of immovable Property" service is a Declared Service under the provisions of Section 66E (a) read with Section 65B (44) and Section

65B(51) of the Finance Act, 1994. As per Section 65B (41) of the Act "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property." Thus, during the period 14.03.2016 to 30.06.2017, the 'renting of immovable property services' provided by the Noticee is taxable. As the Noticee has not provided any bifurcation of the rent received by them, the service tax has been calculated on the gross amount collected under the head "Rent from Resi. Qrts Post Office & Bank".

40. Thus, it is observed that, under the heads "Revenue Proceeds from Examination", "Misc. Receipts/ Recovery" and "Rent from Resi. Orts Post Office & Bank", the Noticee has received taxable amount of Rs. 12992.13 Lacs during the said period on which they are liable to pay service tax amounting to Rs. 19,46,95,810/- (Service Tax Rs. 18,18,89,820/- + Swachh Bharat Cess Rs. 64,96,065/- + Krishi Kalyan Cess Rs. 63,09,925/- under Section 66B of the Finance Act, 1994. Held accordingly.

41. In view of the above, it emerges that the service provider failed to get registered themselves with the department within specified period, self-assess their service tax liability, file requisite periodical ST- 3 returns and pay the service tax at appropriate rate in respect of services provided under the category of "Manpower recruitment and supply" and renting of immovable property' services. The fact came to the Deptt's knowledge only when investigation proceeding was initiated against them and at no point of time, they disclosed to the Department, in any manner, that they were providing/receiving the above discussed taxable services and was liable to pay service tax on the same. This material fact was unearthed only after the department initiated on inquiry against hem and had the deptt. not

conducted rigorous investigation against them, this evasion would have remained undetected. They have not discharged their tax liability even after initiation of Investigation by the deptt. against them. From these facts, it is clear that the Noticee has deliberately suppressed the material facts from the department and contravened the various provisions of service tax as detailed above with an intent to evade the payment of service tax. Hence, the above amount of service tax not-paid by the Noticee amounting to Rs. 19,46,95,810/- (Service Tax Rs. 18,18,89.820/-) + Swachh Bharat Cess Rs: 64,96.065/- + KrishKalvan Cess Rs. 63.09.925/-) is recoverable from them, along with interest under section 75 of the Act, invoking the provisions of extended period under the proviso to the Section 73(1) of the Finance Act, 1994.

42. The government has from the very beginning, placed full trust on the tax payers So far as service tax is concerned and accordingly. measures like self-assessments etc., based on mutual trust and confidence are in place. From the evidences, it is clear that the Noticee has not disclosed the taxable incomes received by them for rendering taxable services for the purpose of payment of service tax and thereby they have kept themselves away from their tax liability. The deliberate efforts to suppress the value of taxable service and not paying the amount of service tax in utter disregard to the requirements of law and breach of trust deposited on them such outright act in defiance of law have rendered them liable for penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression, concealment of taxable income/value of taxable service with intent to evade payment of service tax and contravention of various provisions of service tax law. For their failure to pay due service tax, as discussed above, they are also rendered themselves liable for penal action under section 76 of the Finance Act, 1994. For their failure

to obtain service tax registration and file ST-3 returns. they are liable for imposition of penalty under section 77(1) and 77(2) respectively.

43. In the light of such facts and circumstances arrived on the basis of critical and judicial analysis of the outcome of the investigation, it is amply clear that the activities of conducting examinations for recruitment of personnel for various departments and undertakings of the Madhya Pradesh Government for which the Noticee are charging amount from these organizations as well as from the candidates as examination fees for a consideration, was duly covered in the ambit of taxable service with effect from 01.07.2012 in terms of Section 65B (51) read with Section 65B (44) of the Act and continued to be taxable upto June, 2017 i.e. during the relevant period under dispute.

*44. By the observation of above facts and circumstances, I am of the firm view that there is no dispute left regarding the issue of taxability of the services so rendered by the notice as a service which is correctly categorized under *taxable Services during the period from 14.03.2016 to 30.06.2017. In the month of June, 2012, Service tax law, which was earlier based on a definitive listing wherein only specified services were taxed, was revamped and got replaced by a "negative list" concept as a result of which all "activities" undertaken for some consideration were made subject to service tax except those service activities which are either specified in the negative list or are specifically excluded from the definition of term "service". Under the amended provisions of FA, 1994, the impugned service continued to be taxable during the relevant period. In the given facts and circumstances, I am inclined to hold to affirm the allegations levelled in the impugned Show Cause Notice and do not stumble on any requirement to further discuss the other provisions of FA, 1994 relevant to determine the other liabilities of taxable persons in relation*

to the services so rendered and the valuation part thereof. The same is already narrated in the notice itself and is not rebutted by the notice. Held accordingly

45. I also notice the fact that notice were well aware of all the laws, procedures and their tax liability and that there was deliberate withholding of essential information from the department about the service so provided and value realized by them in order to evade the payment of Service tax. In the instant case, the Noticee failed to obtain the registration from the service tax department for payment of service tax against the services provided by them and they also failed to pay their Service Tax liability against the affiliation fees and against the rental income. They willfully suppressed the facts from the department with an intention to evade payment of service tax. It is also observed that had the Preventive Branch of CGST & Central Excise, Hqrs., Bhopal not gathered the intelligence in the matter of non-payment of Service tax by the notice, it would have remained undetected. Thus, it is clear that the notice has deliberately suppressed the services provided by them and receipt of amounts against these services, by not obtaining the registration and not declaring the same in their periodical ST-3 returns filed / required to be filed with the department. Here, it is also established that the noticee never declared to the department the amounts received by them during the above period for providing the taxable services and the amount of service tax charged thereon. The details of the amounts received by the notice against the services S provided by them could only be unearthed during the course of investigation conducted by the officers of the Preventive Branch of h CGST & Central Excise, Hqrs., Bhopal. All these material information had been concealed from the department willfully, deliberately, consciously and purposefully with intent to evade payment of service tax. It is established that the Noticee had not taken into account

all the income received by them against rendition of taxable service for payment of Service Tax and thereby sought to evade their tax liability. The assessee has made deliberate efforts to evade the value of taxable service by not filing the prescribed returns and thereby not pay the correct amount of Service Tax in utter disregard to the requirements of law and breach of trust deposited on them in the self assessment regime. Section 70 of the Act provides that every person liable to pay Service Tax is required to himself assess the tax due on the services provided by him and thereafter furnish return to the jurisdictional Superintendent of Service Tax by disclosing wholly and truly all materials facts in ST-3 returns. The Assessee have not disclosed full true and correct information about the value of the service provided by them and have thereby deliberately suppressed essential and material information from the department about the services being provided and the value of taxable services realized by them by not furnishing periodical ST-3 returns with an intent to evade Service Tax. Therefore in this case, all the essential ingredients exist to rightly invoke the extended period in terms of proviso to Section 73(1) of the Finance Act, 1994 to demand the service tax so evaded. I, therefore. hold that the noticee have evaded the service tax amounting to the tune of RS. 19,46,95,810/- by resorting to willful suppression of facts and have contravened various provisions of the Finance Act. 1994 and Rules made there under (as discussed in the preceding & succeeding paras) with intent to evade payment of the same as discussed hereinabove. Hence Service tax amounting to Rs. 19,46,95,810/- is determined to be recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994 to demand the service tax so evaded. I, therefore. hold that the notice have evaded the service tax amounting to the tune of Rs. 19,46,95,810/- by resorting to willful suppression of facts and have

contravened various provisions of the Finance Act, 1994 and Rules made there under (as discussed in the proceeding & succeeding paras) with intent to evade payment of the same as discussed hereinabove. Hence Service tax amounting to Rs. 19,46,95,810/- is determined to be recoverable from them under the proviso to Section 73(1) of the Finance Act, 1994. Held accordingly.

4.3 From the impugned order and the facts as presented before us including the decision of Hon'ble High Court of Madhya Pradesh, we find that the appellant has been constituted as body corporate and is liable to pay the service tax as per the provisions of Finance Act, 1994 in respect of the service provided by them. In the present case the period of dispute is 14.03.2016 to 30.06.2017. The demand has been made on the basis of the details of revenue receipts provided by the appellant during the course of investigation. The demand has been made in in respect of the following revenue receipts:-

- Receipts-Revenue proceeds from Examination (Fee & Reimbursement);
- Receipts-Misc Receipts/ Recoveries;
- Receipts-Misc Receipts/ Recoveries – (rent from Resi Qrts Post Office & Bank.

Appellant do not dispute the demand of service tax (including cesses) made in respect of "Receipts-Misc Receipts/ Recoveries – (rent from Resi Qrts Post Office & Bank." They are disputing the levy of service tax under other two categories, by treating them to be towards the "Manpower Recruitment and Supply Services".

4.4 We find that law in respect of the levy of the service tax is well settled. There are certain essential ingredient that need to be examined and fulfilled before the service tax could have been levied on these activities. Undisputedly appellant has taken the stand before the original authority as evident from the letter of "Financial Controller" reproduced in the impugned order that they have not received any amounts from the state government

departments top wards any services provided by them towards the recruitment of the manpower. Hon'ble Madras High Court has in the case of Wunderbar Films Private Limited [Order dated 04.01.2024 in W.A.Nos. 2638 of 2019] observed as follows:

"12.....The question as to whether a particular transaction would attract the levy of Service Tax as constituting a taxable service within the meaning of 65(105)(zzzzt) prior to 01.07.2012 or Section 66B read with Section 65B(44) and Section 66E(c) w.e.f. 01.07.2012 ought to be determined on the basis of the contracts entered into between the service provider and the recipient. One cannot generalize the transactions nor determine the liability without examining the contracts individually for the rights/ obligations flowing therefrom may vary from contract to contract."

4.5 In case of Indian Machine Tools Manufacturers Association [Final Order No. 60403/2023, dated 18.09.2023 in Service Tax Appeal No.4174 Of 2012 - Chandigarh]

"11. Coming to third and final issue as to whether any demand can be sustained on the basis of difference between the figures of ST-3 Returns and the balance sheets, we find that it is a settled principle of law that service tax can be levied only when there is a clear identification of service provider, service recipient and consideration paid for the same. In the absence of any such evidence of the service recipient and the service provided, service tax cannot be demanded and confirmed. For this reason, we are of the considered opinion that it is not open for the Department to raise demands on the basis of other statutory returns like Income Tax Returns or balance sheets without proving that such service has been rendered by the assessee and consideration thereof has been received....."

4.6 In case of Mercer Consulting India Pvt. Ltd. [Final Order No. 60162/2024, dated 05.04.2024 in Service Tax Appeal No.55217 Of 2013- Chandigarh] following has been observed:

"8. Coming to the Second demand, on the basis of the advances received by the appellants for rendering the services, we find that the demand is raised and confirmed on the basis of figures reflected in balance sheet without causing any enquiry as to whether the services in question were rendered or otherwise. We find that it is not correct to confirm the demand just on the basis of balance sheet without identifying the service provider, service receiver and the consideration received thereof."

4.7 Thus for the purpose of levy of service tax on any activity undertaken by the appellant, following is necessary:

- A contract for the provision of service for against a consideration.
- Clear identification of the service provider and service recipient.
- The quantum of consideration received.

In absence of any identification of the contract for the provision of service for a consideration between the appellant and the service recipient, departments of the state government against a consideration we are unable to understand how can it be said that the ingredients as spelt out by Section 65 B (44) of the Finance Act, 1994 can be satisfied. Appellant have claimed that the Examination Fees have been collected from the students/ persons who intended to the take the examination conducted by them for recruitment towards various vacancies to be filed by those departments of the state government.

4.8 We also note that appellant used to collect certain fees from the candidates who intended to undertake the examination conducted by the them. In exercise of the powers conferred by Section 24 (1) of Madhya Pradesh Professional Examination

Board Act-2007, the State Government made certain regulations in relation to the subjects reported in Section 24 (2) (a) of Madhya Pradesh Professional Examination Board Act 2007. Regulation 2, named as Madhya Pradesh Vyavsayik Pariksha Mandal-Fees for Admission to the Examination of the Board Regulations, 2020, provides for manner of fixation of fees to be collected. These parameters are reproduced below:

5. Parameters for Fee Fixation:-

The examination Fee Fixation Committee shall take into consideration of various parameters including the following parameters for making recommendations to the Chairperson on the fixation of fee for various examination:

- (a) Cost of advertisement and mode of submission of Application Form;*
- (b) Cost of question paper preparing and deployment/printing.*
- (c) Cost of exam related material, website and data handling and Cost of expenditure incurred in exam centre preparation.*
- (d) Cost of inspection and fixation of examination venues.*
- (e) Cost of Implementation Agency.*
- (f) Expenditure on setting and printing or online deployment of Question Booklets.*
- (g) Expenditure for conducting of examination like remuneration to Observers, Supervisors, Flying Squad, Co-ordinators, Centre Superintendents, Assistant Co-ordinators, Assistant Centre Superintendents, Examiners, Invigilators, Laboratory Assistants, Volunteers, Contingency expenses, law and order arrangements etc;*
- (h) Expenditure on dispatch of question booklets to examination cities through Observers/Post/Courier and bringing it back along with marked OMR Answer Sheets and other relevant material;*
- (i) Expenditure on scanning of OMR Answer Sheets, checking and corrections of error report, remuneration to the Supervisors and Class III/IV Volunteers,*

printing of score cards and its dispatch, uploading result data on website, printing of relevant reports;

- (j) Expenditure on stationery and consumables;*
- (k) Expenditure on software development and processing data/result;*
- (l) Subsidy or grant provided by the appointing agency/department;*
- (m) Expenditure for conducting group discussion, Interview and practical examination (as and when required);*
- (n) Expected number of applicants in the examination;*
- (o) Expenditure on establishment, salary, allowances and maintenance including any contingency expenditure;*
- (p) The comparative study of fees being charged for similar examination in other states;*
- (q) Liabilities of the Board with respect to various taxes etc. as applicable;*
- (r) Future liabilities of Board with respect to pension, gratuity etc. of the employees;*
- (s) Managing assets and up-gradation;*
- (t) Any other items which has a direct/ indirect bearing on the cost of conduct of examination.*

4.9 From the perusal of the above it is evident that the appellant had not collected any amounts from the state government departments for provision of any service to but have only collected the fees from candidates which in no terms can be considered as 'consideration' for providing the service. All the expenses incurred by the appellant for conduct of examination and listed in the impugned order are recovered by the appellant while fixing the examination fees recovered from the candidates. Hence we do not find that any consideration has been recovered by the appellant from the state government departments for rendering these services.

4.10 In case of Larsen and Toubro Ltd. [2016 (44) S.T.R. 391 (Guj.)], Hon'ble Gujarat High Court has held as follows:

"18. *The question of charging service tax however, needs to be looked from a slightly different angle. Section 66 of the Finance Act, 1994, as noted, provides for levy of taxes at the rate of prescribed percentage of the value of taxable services referred to in various sub-clauses of clause (105) of Section 65. For applicability of this charging section, therefore, what is needed is to ascertain the value of taxable service. In other words, service tax can be levied only if the service is provided, even if it is otherwise, a taxable service, carries a certain value. If the value of service provided is nil, there would be no occasion for charging the service tax. In essence, thus, Section 66 aims at collecting service tax when a certain service is provided for a value. To put it conversely, when the service is provided but no value thereof is charged, there would be no question of collecting service tax. No provision has been brought to our notice in the Finance Act, 1994 under which though the service provider has not charged any value for service, service tax thereon still can be levied on its deemed value, be it market value or fair value. It is a different matter altogether if the departmental authority disbelieves that though service was provided but no charge was collected and in such a case, the authority would have ample power to inquire into the matter and come to appropriate conclusion on the basis of available materials on record. However, if the department proceeds on the premise that a certain service though otherwise a taxable service, the service provider did not collect any charge for the same from the service recipient, in our opinion, it would simply not be possible for the authority to collect any service tax on such service.*

19. *We may notice that explanation to Section 65 states as under :*

"For the purposes of this section, taxable service includes any taxable service provided or to be provided by any

unincorporated association or body of persons, to a member thereof, for cash, deferred payment or any other valuable consideration.”

20. *Thus, the term taxable service has a direct relation to the consideration either paid in cash or by way of deferred payment or by mentioning of any other valuable consideration. This would reinforce our belief that when no charge was collected for providing the service, there would be no question of applying a rate of tax on the value of such service.”*

4.11 Impugned order records that services provided by the appellant are in nature of manpower recruitment services to the state government departments. Even if we hold that the findings recorded in the impugned order are too accepted, then also the service tax could not have been demanded from the appellant as the consideration received against the provision of these services from the service recipient is nil. The examination fees collected from the candidates appearing for the examination being conducted by the appellant cannot be considered as consideration for supply of manpower recruitment and supply services to the state government departments.

4.12 In view of the discussions as above, we do not find any merits in the demand made on this account under this category and set aside the same.

4.13 In respect of the demands made against the receipts in other two categories, the appellant have not contested the demand, either before the adjudicating authority or in the submissions made before us. Impugned order records the findings in this respect and also the reasons for invoking the extended period of limitation for making the demand. Thus we uphold the demand of service tax (inclusive of cess) along with the interest and penalties (Section 78) imposed in respect of these categories of receipt.

4.14 Since impugned order itself concludes in the favour of invocation of extended period of limitation for making the demand the penalties under Section 76 cannot be justified.

4.15 The penalties have been imposed under Section 77 (1) and 77 (2) for not obtaining the registration and for not filing the ST-3 returns. We find enough justification in the penalties imposed under these two sections in view of decision of Hon'ble Supreme Court in case of Gujarat Travancore Agency [1989 (42) E.L.T. 350 (S.C.)] wherein following has been held:-

4. Learned Counsel for the assessee has addressed an exhaustive argument before us on the question whether a penalty imposed under Section 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in order to demonstrate that the proceedings by way of penalty under Section 271(1)(a) of the Act are quasi criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed under Section 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case

what it intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum Volume 85, page 580, Paragraph 1023:

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture

provided as punishment for the violation of criminal or penal laws.”

5.1 Appeal is partially allowed to the extent indicated in para 4.12 and 4.14.

(Order pronounced in open court on 18th September, 2025)

(BINU TAMTA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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