

Let us educate and not litigate, please
(G. Natarajan, Advocate, Swamy Associates)

1.0 There are many institutions which are engaged by various schools and colleges to impart education to their students on outsourcing basis. These are specialised institutions in given subjects and offer their expertise to the students, through the schools / colleges. The training / coaching imparted by such institutions are part of the regular curriculum of the schools / colleges, leading to obtaining recognised educational qualifications. Similarly, there will be guest lecturers, who would provide regular coaching / teaching in schools and colleges. The status of their service tax liability, in the context of the recent amendments in Notification 25/2012, has been the most talked about subject in the relevant corridors. To understand the issue better, it is necessary to refer to the legislative history in this regard.

01.07.2003 to 30.06.2012

2.0 Service tax was imposed on “commercial coaching or training services” with effect from 01.07.2003.

2.1 The relevant statutory definitions under the Finance Act, 1994 (hereinafter referred to as the Act) are as below.

Section 65 (26) – “commercial training or coaching” means any training or coaching provided by a commercial training or coaching centre;

*Section 65 (27) – “commercial training or coaching centre” means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but **does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force;***

Section 65 (105) (zzc) Taxable service means any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching.

The following Explanation has been inserted in the definition of taxable service, vide Finance Act, 2010 with retrospective effect from 01.07.2003.

For the removal of doubts, it is hereby declared that the expression “commercial training or coaching centre” occurring in this sub-clause and in clauses (26), (27) and (90a) shall include any centre or institute, by whatever name called, where training or coaching is

imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly.

2.2 The following exemption was available under Notification 10/2003 ST Dt. 20.06.2003.

In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification recognised by law for the time being in force, to any person, from the whole of the service tax leviable thereon under sub-section (2) of section 66 of the said Act :

Provided that this exemption shall not be applicable if the charges for such services are paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre.

This notification shall come into force on the 1st day of July, 2003.

2.3 During the period from 01.07.2003 to 31.06.2012, the above exemption was available to such institutions / guest lecturers as the services provided by them is an essential part of the course or curriculum of the schools / colleges, which leads to issuance of certificate/diploma /degree / educational qualification.

01.07.2012 to 10.07.2014

3.0 With effect from 01.07.2012, the whole service tax law has underwent substantial changes and instead of individual taxable services being defined, the term "service" has been defined in 65 B (44) of the Act and all services, except those mentioned in the negative list under Section 66 D of the Act and those exempted vide Notification 25/2012 are liable

to service tax. The activities undertaken by such institutions / guest lecturers would amount to "service" as defined in Section 65 B (44) *ibid*.

3.1 The following entry under the negative list, i.e. Section 66 D is relevant.

- (l) *services by way of—*
- (i) *pre-school education and education up to higher secondary school or equivalent;*
- (ii) *education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) *education as a part of an approved vocational education course.*

3.2 The following extract from the Education Guide published by the CBEC at the time of introduction of negative list based service tax levy may also be noted.

4.12 Specified services relating to education

The following services relating to education are specified in the negative list -

- *pre-school education and education up to higher secondary school or equivalent*
- *education as a part of a prescribed curriculum for obtaining a qualification recognized by law for the time being in force;*
- *education as a part of an approved vocational education course*

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

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

4.12.5 Are services provided to educational institutions also covered in this entry?

No. Such services are not covered under the negative list entry. However certain services provided to or by educational institutions are separately exempted under the mega- notification. These are services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

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

3.3 The following exemption was available under Notification 25/2012 ST Dt.20.06.2012.

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) *auxiliary educational services; or*

(b) *renting of immovable property;*

(with effect from 01.03.2013, the phrase "provided to or by" as above has been amended as "provided to" vide Notification 3/2013 ST Dt. 01.03.2013, which is not relevant for the present purpose)

3.4 The term "auxiliary educational services" is also defined in the notification as below.

"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.

3.5 The scope of the term "auxiliary educational services" has been further explained in CBEC's circular No. 172/7/2013 Dt. 19.09.2013.

3.6 It should now be seen as to whether the coaching / training by such institutions / guest lecturers are exempted during this period by virtue of the above exemption under S.No. 9 of Notification 25/2012 or by virtue of the entry in negative list.

3.7 It may be noted that the definition of the term "auxiliary education services" covers a wide spectrum of services, which inter alia includes ***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.

3.8 It appears from the highlighted portion of the above, that the coaching provided by such institutions / guest lecturers to the students of Schools / colleges, which is a knowledge enhancement activity for the students, or an activity which the schools ordinarily carry out themselves but outsourced to ILM are covered under the definition of "auxiliary education services". A perusal of the CBEC Circular datd 19.09.2013, also tends to suggest that while the negative list covered the services provided by the schools and colleges to the students, the term "auxiliary education services" refer to the services received by such schools / colleges, which also supports the view that the services provided by such institutions / guest lecturers are sought to be exempted vide S.No. 9 of Notification 25/2012, as "auxiliary education services".

3.9 But a reading of the relevant negative list entry under section 66 D of the Act reveals, that the same is not restricted only to the services provided by the schools / colleges to the students. Neither the service provider nor the service provider is identified in the said entry. The reference is only to the "services by way of" and "by whom" and "to whom" are not at all specified. For ready reference, the relevant entry is reproduced below once again.

- (l) *services by way of—*
- (i) *pre-school education and education up to higher secondary school or equivalent;*
- (ii) *education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) *education as a part of an approved vocational education course.*

3.10 When such institutions / guest lecturers provide the coaching to the students in a college / school, as part of the course curriculum of the students, the same is "services by way of education upto higher

secondary or services by way of education as part of a curriculum for obtaining a qualification recognised by any law for the time being in force". This view is also supported by the language of erstwhile Notification 10/2003, under which the activities of such institutions / guest lecturers were entitled for exemption earlier, which also referred to the services as *"taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification recognised by law for the time being in force"*. Hence, it can be said that such institutions / guest lecturers were exempted vide the negative list entry and not under S.No. 9 of Notification 25/2012.

3.11 Before concluding the above, let us also refer to the recent developments.

11.07.2014 ONWARDS :

4.0 Vide Notification 6/2014 ST Dt. 11.07.2014, S.No. 9 of Notification 25/2012 has been substituted and the new entry reads as below.

9. Services provided,-

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;"

The term "Educational institution" is also defined in the notification as

"educational institution" means an institution providing services specified in clause (I) of section 66D of the Finance Act, 1994 (32 of 1994).

4.1 The above amendments were also explained vide D.O. letter F.No. 334/15/2014 TRU Dt. 11.07.2014 as below.

Rationalisation of Exemption.

(i) *Education:*

At present, all services provided by educational institutions [providing educational services specified in the negative list] to their students, faculty and staff are exempted [section 66 D (I) of the Finance Act, 1994]; this will continue. However, in respect of services received by such educational institutions, presently, exemption is being operated through the concept of „auxiliary educational services“ [Sl.No.9]. Doubts have been raised and clarifications have been sought regarding the scope and meaning of "auxiliary educational services". To bring clarity, it is proposed to omit the concept of "auxiliary educational services" and specify in the notification, the services which will be exempt when received by the eligible educational institutions. Accordingly, the following services received by eligible educational institutions are exempted from service tax: (i) transportation of students, faculty and staff of the eligible educational institution; (ii) catering service including any mid-day meals scheme sponsored by the Government; (iii) security or cleaning or house-keeping services in such educational institution; (iv) services relating to admission to such institution or conduct of examination. Further, for the purposes of this exemption, "educational institution" is being defined in the exemption notification 25/2012-ST as institutions providing educational services specified in the negative list.

It may be noted that the scope of exemption remains the same as earlier in the case of services provided by eligible educational institutions; in the case of services received by the eligible educational institutions, exemption will be available only in respect of the services specified as above. Further as a rationalization measure, the exemption hitherto available to services provided by way of renting of immovable property to educational institutions stands withdrawn, with immediate effect.

4.2 It may be noted that on the one hand services provided by an educational institution to its students is exempted vide clause (a) of S.No.

9 ibid. The regular coaching in curriculum is already covered in the negative list and hence this entry would cover any other services provided to the students, even if they are not part of the curriculum. Clause (b) lists out certain specific services provided to educational institution, which are exempted. It may be noted that the nature of services provided by such institutions / guest lecturers are not at all covered in clause (b), but it covers only services such as transportation, catering, security, cleaning, house keeping and services relating to admission / conduct of examination.

4.3 If a view is taken that the services provided by such institutions / guest lecturers are earlier exempted as "auxiliary education services" as per S.No. 9 of Notification 25/2012, as it then stood, it may be noted no such similar exemption is now available under S.No. 9, as amended from 11.07.2014. Does it mean that such institutions / guest lecturers, who are providing services in the form of coaching of students, as part of the curriculum of their regular studies, are liable to pay service tax from 11.07.2014?

5.0 The legislative history dealt with above would reveal that it has always been the intention of the Government to exempt the core education services, which forms part of the regular curriculum. Private tutorial / tuition centres, though gives coaching on the same subjects were not entitled for any exemption, as they are optional for a student, but the coaching provided in the school, by the schools' own teachers, or by engaging outside faculties, are always sought to be exempted. Even the CBEC's letter dated 11.07.2014 does not reveal any contrary intention on the part of the Government to tax such services. It is specifically made clear that the services of renting of immovable property to educational institutions is no more exempted. But nothing has been said about the intention to withdraw exemption for the coaching provided by outside faculties, who provide coaching as part of the curriculum.

5.1 Further, it may also be noted that it defies any logical reasoning, when services like catering, transportation, cleaning and housekeeping, provided to Schools / Colleges can be exempted, why not the core coaching provided by outside faculties, which is the essence and purpose of the schools / colleges. Had it been the intention of the Government to withdraw such exemption which was hitherto available, the same could have been explicitly stated.

6.0 Based on the above analysis, if we refer once again to the entry under negative list, it may be noted that the same is capable of covering the services provided by such institutions / guest lecturers to the students of schools and colleges, "by way of educating them as part of their curriculum". Though some of the circulars of the CBEC referred to above, gives an impression that the negative list entry covers only the services provided by the educational institutions to the students and the services provided to such institutions are sought to be exempted only by S.No. 9 of Notification 25/2012, such view is without any statutory basis. The plain language of the negative list entry under Section 66 D (I) does not restrict it only to the coaching provided by the educational institutions to the students.

7.0 Based on the above discussion, it can be safely concluded that the services provided by such institutions / guest lecturers are exempted from service tax levy as per Section 66 D (I) of the Act (negative list) and are continued to be exempted, unaffected by the amendment to S.No. 9 of Notification 25/2012. Anyway, hair splitting litigation is not ruled out and such institutions / guest lecturers may have to spend more time in Courts than they spend in classrooms.

