

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Civil Revision Nos. 41 to 44 of 2015

Reserved on: 19.05.2025

Date of decision: 22.05.2025

Civil Revision No. 41 of 2015

M/s Jaypee University of Information Technology ...Petitioner

Versus

State of H. P. & Ors.

...Respondents

Civil Revision No. 42 of 2015

M/s Jaypee University of Information Technology ...Petitioner

Versus

State of H. P. & Ors.

...Respondents

Civil Revision No. 43 of 2015

M/s Jaypee University of Information Technology ...Petitioner

Versus

State of H. P. & Ors.

...Respondents

Civil Revision No. 44 of 2015

M/s Jaypee University of Information Technology ...Petitioner

Versus

State of H. P. & Ors.

...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting? yes

For the Petitioner(s): Mr. Rakesh Kumar, Advocate.

For the Respondents: Mr. Anup Rattan, A.G. with Mr. Ramakant Sharma, Mr. Navlesh Verma,

Ms. Sharmila Patial, Mr. Sushant Kaprate, Addl. A.Gs. and Mr. Raj Negi, Dy. A.G.,Ita, Dy. A.G.

Tarlok Singh Chauhan, Judge

Since common question of law and facts arise for consideration in these revision petitions, therefore, they were taken up together for hearing and are being disposed of by way of a common judgment.

2. The instant is a classical example where Dr. Sunil Kumar AETC, Shimla took law into his own hands and played as a **Prosecutor, Judge and Executor** at the same time as would be evident from the further narration of facts.

3. The revisions petitions were admitted on 23.10.2024 on the following substantial questions of law:-

“i) Whether on the facts and in the circumstances of the case, the Ld. H.P. Tax Tribunal was justified in holding that the petitioner is liable for payment of tax on the supply of foodstuff and other items to the students within its premises even though it has been held that petitioner is predominately existing for education?

ii) Whether the Ld. Tribunal was justified in artificially bifurcating the turnover into exempted and non-exempted goods even though it has been categorically found that the petitioner is not a dealer in view of the law laid down by various courts?

(iii) Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in remanding the case back

even though the entire proceedings were void ab-initio and the order should have been set aside in toto?

(iv) Whether on the facts and circumstances of the case, the Ld. VAT Tribunal is justified in holding that petitioner would be liable to pay the tax on supply of goods to the students in the course of academic activities even though the same is not in the course of business?

v.) Whether on the facts and in the circumstances of the case the petitioner is entitled to Input Tax Credit for the tax paid on the purchase of goods which have been allegedly sold and held to be taxable by the tribunal?"

4. The facts are not in dispute.

5. The petitioner(s) - University was established in the year 2002 as a State Government University by virtue of passing of the Jaypee University of Information Technology Act No. 14 of 2002 by the Government of Himachal Pradesh. The University was setup under Jaiprakash Sewa Sansthan (JSS) a registered Public Trust (not for profit basis) and thus falls under the category of "Private University" within Regulation 2.1 of the University Grants Commission (Establishment and Maintenance of Standards in Private Universities) Regulations, 2003 framed under Clauses (f) 81 (g) of Section 26(1) of the University Grants Commission Act, 1956.

6. The object of the University, as defined in section 4 of the aforesaid Act, is as under:

"The object of the University shall be to disseminate, create and advance knowledge, wisdom and understanding and to offer technical education of high standards by Teaching, Research, Training and extension activities."

7. Thus, the only object of the University is to impart technical education to the students. The University is to run on *"Not for Profit basis"* resulting in reinvestment of the surplus in the development of educational facilities for the University.

8. In view of above objectives, the Petitioner university is also exempted from the payment of Income Tax under section 10(23C) (vi) of Income Tax Act, 1961 as ordered by the Chief Commissioner of Income Tax, Shimla vide order No. DEE GCIT/HP/10(23C)03/2008-09 dated 18.09.2009.

9. The University is at Wagnaghat, District Solan, Himachal Pradesh. It is located in the hilly terrain of underdeveloped village Rachhiana, P.O. Dumehar in District Solan, where basic infrastructural facilities for the population are still in the process of development. The nearest little developed local market is Shoghi which is about 15 Kilometres from the campus of the University. Even, this local market is unapproachable by the students owing to lack of public transport.

10. Due to non-availability of market for the regular consumers in the vicinity of the University, it was considered

essential to establish facility in the University to cater to the need of the students community. Thus, University has established a mess, named as "Annapoorna", which is spread over three premises called as "Annapoorna-A", "Annapoorna-B" & "Annapoorna-C". The nature of facilities being provided by each of the wing of Annapoorna is depicted below:-

Annapoorna

Annapoorna-A (Food) (A)	Annapoorna-B (Cafeteria) (B)	Annapoorna-C (Tuck Shop) (C)
Breakfast Lunch Dinner	Patties, Burger, Chips, Kurkure, Biscuits, Coffee, Tea and Cold Drinks, Samosa, Chinese viz. Momos, Fry rice, Noodles, Sambhar Dosa etc.	Patties, Burger, Chips, Kurkure, Biscuits, Coffee, Tea and Cold Drinks, Soaps, Shampoo, Stationery, Items etc.

11. A sheet enlisting items sold in the three wings of mess is enclosed as Annexure P-3. All these Wings are operated for fixed hours for the benefit of students as per details given below:

S. No.	Name of Wings	Timings
1.	Annapoorna-A (Food)	Breakfast - 7 AM to 9 AM Lunch - 12.30 PM to 2 PM Dinner 7 PM to 9 PM
2.	Annapoorna-B (Cafeteria)	9 AM to 5 PM
3.	Annapoorna-C Tuck ShopFood)	3 PM to 11 PM

12. No access is allowed to the outsiders to these premises. Mess facilities are meant for the students of the University only and not to the outsiders for business purposes.

13. The details of turnover of mess facility were clearly reflected in the books of account of the Petitioner(s)-University and clue accounting was made for each amount expended and amount collected from the students.

14. On 06.03.2013 a team of officers from respondents-department visited the University premises of the Petitioner. The Petitioner was required to produce the information regarding the Mess facility. The Petitioner accordingly submitted the entire records including purchases, daily receipt and expenses account etc. The respondents' officer without affording any opportunity of being heard, instantly proceeded in a very hasty manner to impose VAT under Section 21(7) of Himachal Pradesh Value Added Tax Act 2005 (hereinafter referred to as HPVAT Act) to the tune of 38,17,348/-.

15. According to the petitioner, the Respondent officers demanded instant payment of the said amount and threatened to seal the entire premises in case of non- payment by the Petitioner. The Respondent authority further demanded blank papers duly signed, stating the same as part of procedure. The entire exercise including search of each and every cabins,

counters, chambers etc. carried out in such a manner, as if, the petitioner was carrying some serious illegal activities. The Petitioner, keeping in mind the reputation of the University, succumbed to the pressure of the department and acted as directed and on 06.03.2013 itself handed over the cheque for a sum of Rs.38,17,348/- and blank signed paper. The amount of Rs. 38,17,348/- includes amount of Rs. 8,36,451/- for the year 2009-10.

16. It may be noted here that the department on 06.03.2013, only served with a receipt in Form T-1-A acknowledging receipt of cheque of Rs. 38,17,348/-towards VAT charged u/s 21(7) of the HPVAT Act vide AETC Solan order dated 06.03.2013. No assessment order, as mentioned in the aforesaid receipt, was served on the Petitioner on such date.

17. It is the further case of the Petitioner that its officials visited the office of the department on 11.03.2013 and requested for the supply of copy of assessment order whereby demand of Rs. 38,17,348/- was computed. The Petitioner also requested for the return of the blank signed papers, which Assessing Authority has taken during their visit to the University. The Department did not supply the copy of the order creating demand of Rs.38,17,348/- and informed that the same shall be given after expiry of 60 days i.e. after the expiry of limitation

period prescribed for filing the appeal. The respondent authority outrightly refused to return signed blank papers. The respondent authority further advised the petitioner not to resort legal or appellate recourse to avoid harsh actions in future.

We have heard learned counsel for the parties and have gone through the material placed on record.

18. A perusal of the Assessment Order would go to show that the same has been passed by the Assessing Authority without even caring or bothering to issue mandatory notice in the prescribed format VAT 29 as required under Rules 67 and 78 of the Act.

19. We have no hesitation to conclude that Dr. Sunil Kumar, the then AETC acted not only in a unprofessional but in a total illegal manner by fixing the liability to pay the tax on the day of the visit as is evident from the Assessment Order dated 06.03.2013, which reads as under:-

“Vat Liability of Jaypee University of Information Technology Wahnaghat

U/s 21 of the HP. VAT Act-2005

The Jaypee University Campus at Wahnaghat is inspected today on 06.03.2013 by the officials of Excise and Taxation Department and two outlets selling eatables (Tea, Coffee, Cold drinks., Chips, Ice-cream and other fast food items) and gift items (Birthday Cards, Toys etc.) were found being run by its managements. Brigadier Balbir Singh, Director of University, pleaded that these outlets were benign run for the benefits of students and no big

profit was been made out by doing so. It was further pleaded that the University was not aware about its liability to pay VAT and should be exempted from any penalty. He, however, offered to pay VAT and requested for settlement of the issue on the spot itself.

The plea of the dealer that only 50% of its GTO is liable to be taxed @13.75% while the remaining 50% falls under 5% rate is being conceded despite the fact that more than 70% of its purchases for the year 2011-2012 pertaining to one outlet are apparently taxable at 13.75%. On the basis of the figure supplied by the and entries made in Balance Sheets, VAT Liability for the year 2008-2009 to 2011-2012 is determined as follow :-

Year	Sales 4% /5% slab	VAT	Sales 12.5%/13.7 5%	VAT	Total Tax
2008-09	41,46,529	1,65,861	41,46,529	5,18,316	6,84,177
2009-10	50,69,400	2,02,776	50,69,400	6,33,675	8,36,451
2010-11	58,16,806	2,90,540	58,16,806	8,16,068	11,06,908
2011-12	63,45,667	3,17,283	63,45,667	8,72,529	11,89,812
				Total	38,17,348

No Interest is being calculated at this stage. Penalty proceedings will be initiated at a later date.

*Announced at Wagnaghat
06.03.2013*

*Sd/-
(Dr. Sunil Kumar)
AETC, Shimla"*

20. The Assessing Officer took the law into his own hand and played as a **Prosecutor, Judge and Executor** at the same time.

21. It needs to be noticed that in the present case, there is no material to establish that the ancillary activities of providing canteen facilities to the children is being conducted by the petitioner(s) with an independent intention to conduct business with such activities. Therefore, in the present case, the ancillary activities of providing canteen facilities to the inmates of the University would not amount to business as defined by the Act. Once that be so, obviously, the petitioner was not liable to pay any tax on the said activities. After all, before imposing any tax, the authorities, at the first place, are required to see whether the Act is applicable or not and in such like cases there cannot be a deemed sale so as to attract the levy of tax. The burden to prove such intention rests upon the Department. It is otherwise more than settled that in the absence of *profit making*, the activity is not trade, commerce or business within the meaning of Section 2(15) of the Income Tax Act, 1961.

22. When the main dominant activity of the University is to impart education, it cannot be termed as business activity. In coming to such conclusion, we are duly supported by the Judgment of the Hon'ble Supreme Court in ***Commissioner of Sales Tax vs. Sai Publication Fund 2002(4) SCC 57***, wherein the Hon'ble Supreme Court categorically held that where the main activity is not business, then any incidental or

ancillary transactions would normally amount business out if an independent intention to carry on the business in the incidental or ancillary transaction is established. It was further held that the burden to prove such intention rests on the department. In the facts of the case it was held that the main and dominant activity of the assessee trust was to spread the message of 'Sai Baba', bringing out Publication and sales thereof by the assessee trust to its devotees at costs price did not amount to business and did not make the assessee trust a dealer. (**Ref.:- Khoday Distilleries Ltd. vs. State of Karnataka 1995 (1) SCC574, State of Tamil Nadu vs. Port of Madras 1999 (4) SCC 630, State of Gujarat vs. Shreya Papers Pvt. Ltd. 2006 (1) SCC 615, Ashoka Smokeless Coal India Pvt. Ltd. vs. Union of India 2007 (2) SCC 640, NDMC vs. State of Punjab 1997 (7) SCC 339, Physical Research Laboratory vs. K. G. Sharma 1997 (4) SCC 257, CIT vs. Surat Art Silk Cloth Manufacturers' Assn. 1980 (2) SCC 31, Yograj Charity Trust vs. CIT 1976 (3) SCC 378, CIT vs. APSRTC 1986 (2) SCC 391, Queen's Educational Society vs. CIT 2015 (8) SCC 47).**

23. The petitioner(s)-University has reported in the Income and Expenditure Account, Schedule and Sub-Schedule

have been listed and the instant demand has been made without establishing that how these incomes would be liable to VAT.

24. What is still worse is that even the goods for which VAT is being demanded have not been spelt out in the impugned demand extracted (supra). Be that as it may, the petitioner(s)-University has already given the details of the income, which are listed for tax and also provided the reasons why such income cannot be subjected to tax.

25. Learned counsel for the petitioner(s)-University is fully justified in contending that once the canteen is not main activity of the University, then any incidental or ancillary transaction held, would normally amount to business only if an independent intention to carry on the business in the incidental and ancillary transaction is established.

26. The questions of law are accordingly answered as under:-

(i) The learned Tribunal erred in holding that the petitioner is liable to payment of taxes on supply of food stuff and other items to the students within its premises even though it has been held that petitioner is predominately existing for education. .

(ii) The learned Tribunal erred in artificially bifurcating the turnover into exempted and non-

exempted goods even though it has been categorically found that the petitioner is not a dealer in view of the law laid down by various courts.

(iii) There was no occasion for the learned Tribunal to have remanded the case back particularly, when the entire proceedings were *void ab initio* and all the orders ought to have been set aside.

(iv) The learned Tribunal not at all justified in holding that the petitioner would be liable to pay the tax on supply of goods to the students in the course of academic activities even though the same is not in the course of business.

(v) In view of the answer to substantial questions of law No. (i) to (iv), substantial question of law No. (v), does not arise for consideration.

27. In view of the aforesaid discussion and for the reasons stated above, all the petitions are allowed and pending application(s), if any also stands disposed of.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

22nd May, 2025
(sanjeev)