APHC010148412025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3543]**
(Special Original Jurisdiction)

WEDNESDAY, THE 16th DAY OF SEPTEMBER 2026

PRESENT

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

THE HON'BLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION No: 8059 of 2025

Between:

1. THE ACHARYA NAGARJUNA UNIVERSITY, NAGARJUNANAGAR-522510, GUNTUR DISTRICT, REP.BY ITS REGISTER PROF.G. SIMHA CHALAM, S/o.G.VEERASWAMY, AGE 63 YEARS.

...PETITIONER

AND

1. THE COMMISSIONER, OFFICE OF THE COMMISSIONER OF CENTRAL TAX, G.S.T BHAVAN, CENTRAL REVENUE BUILDING, KANNAVARI THOTA, GUNTUR-522004.
2. THE CHIEF COMMISSIONER, CENTRAL TAX AND CUSTOMS, GST BHAVAN, VISAKHAPATNAM ZONE, VISAKHAPATNAM.
3. THE SUPERINTENDENT OF CENTRAL GST, OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE, AMARAVATI CAPITAL CITY RANGE,(AMARAVATI CENTRAL TAX DIVISION), MAHATMA GANDHI ROAD, CENTRAL REVENUE BUILDINGS, BEHIND SUB.COLLECTOR OFFICE, VIJAYAWADA. 520008.
4. THE BRANCH MANGER, N U CAMPUS BRANCH, STATE BANK OF INDIA, NAGAIJUNA NAGAR, GUNTURDISTRICT, ANDHRA PRADESH.

...RESPONDENT(S):

Counsel for the Petitioner:

Mr.M.CHALAPATHI SC For Nagarjuna University

Counsel for the Respondent(S):

Mr. Y N VIVEKANANDA

The Court made the following order: (per NJS, J)

Acharya Nagarjuna University / Petitioner herein was established on 11.09.1976 under Act 43 of 1976. It is providing quality of Education at affordable costs to the students' community at large.

2. It is the case of University that a Notice was issued to it and called upon to show cause as to why the Service Tax as arrived at in terms of Clause (i) of Second proviso to Section 78(1) of the Finance Act, 1994 with interest shall not be collected. The said Notice was issued basing on the intelligence gathered by the Officers of Directorate General of Central Excise Intelligence, Hyderabad Zonal Unit, which indicated that University is granting affiliation / recognition of self-financing engineering colleges and other institutes, collecting amounts towards various fees including affiliation fees, recognition fees, no objection fees etc., from the affiliated colleges, but not paying service tax on the amount so collected, which appears taxable w.e.f., 01.07.2012. University submitted its reply *inter alia* stating that it is not a profit making commercial organization or a body corporate and will not come under the Service Tax purview for fees collected in discharging its statutory functions.

3. Thereafter, an Order-in-Original dated 30.11.2023 came to be passed, wherein it was opined that services rendered by the University are rightly classified as taxable service falling within the ambit of Clause (51) r/w Clause (44) of Section 65B of the Finance Act, 1994 r/w Section 174 of the CGST Act, 2017. Service Tax was determined at Rs.11,96,164/-, 100% penalty i.e., Rs.11,96,164/- was also imposed. Subsequently, a Notice dated 27.02.2025

under Section 87 of the Finance Act was issued for recovery of the amount of Rs.24,02,328/-. Challenging the said Order dated 30.11.2023, present Writ Petition was filed.

4. Heard learned counsel for the petitioner. Also heard Mr.Y.N.Vivekananda, learned counsel representing respondents 1 to 3.

5. Perused the material on record.

6. At the outset, it may be appropriate to mention that so far as the contention raised in the writ petition that the impugned order is without jurisdiction, learned counsel submitted that the issue is covered by a decision of a Co-ordinate Bench of this Court dated 27.04.2026 in W.P.No.23535 of 2025 & batch. Whereas the learned counsel for the respondents fairly brought to the notice of this Court a decision of High Court of Karnataka in **Principal Additional Direction General, Directorate General of GST Intelligence, Bengaluru v. Rajiv Gandhi University of Health Sciences**[1] as also the order of the Hon'ble Supreme Court, against the said judgment in **Principal Additional Director General v. Rajiv Gandhi University of Health Sciences**[2].

7. In the light of the above said decisions, this Court is inclined to dispose of the writ petition with the consent of both sides.

8. In the said batch of cases, Public utilities established by State of Andhra Pradesh including the petitioner-University, aggrieved by the orders of assessment calling upon them to pay GST on affiliation fees and No Objection

[1] (2024) 22 Centax 526 (Kar.)
[2] (2025) 32 Centax 299 (S.C.)

Certificate fees received from their affiliated colleges approached this Court. It was *inter alia* contended on behalf of the petitioner-Universities therein that they are not private organizations, but entities established under a State Act and discharging functions stipulated under the Act and UGC Regulations, Guidelines etc., that the same would make the said Universities, Government entities / Government authorities for the purpose of GST Act.

9. On behalf of the Department, it was *inter alia* contended that any supply of service, by a Governmental authority is taxable in view of the provisions of Section 7 as well as Section 2 (17) defining the term 'business'. Further that in the light of the said provisions, any supply of service by a Government or any Governmental authority would be taxable, unless such activities have been enumerated under Schedule-III of the GST Act or where specific exemptions are granted by the Government under Section 7 (2) (b) of the GST Act. It was contended that since the activities in question of the universities, , do not fall under Schedule-III nor any exemption has been given under Section 7 (2) (b) of the said Act, the fee collected for grant of affiliation and issuance of No Objection Certificates are taxable. The learned Division Bench, after considering the relevant provisions of GST Act viz., Section 2 (17), Section 7 and 9 (1) of the GST Act, at Para Nos.17 and 18 held as follows:

> "17. The petitioner universities are all universities which are separate entities, created and established under the Acts of the State Legislature and they are not part of the State Government or Local Authority. They are not part of the Central Government either. In such circumstances, the provisions of Section 7 (2) or Section 2 (17)(i) would not be applicable to the petitioner universities.

> 18. The term 'business', as defined in Section 2 (17), clearly does not include statutory functions, which are cast upon the petitioner universities. The activities mentioned in Section 2 (17) are voluntary actions. However, the petitioner universities are duty bound and are mandated to consider and grant or refuse to grant affiliation or No Objection Certificates. In such a situation, the activity of the petitioner universities in granting affiliations is a statutory function and is not a business activity. Consequently, the activities of the petitioner universities do not constitute supply of service as provided in Section 7 of the GST Act. Consequently, these services would not be exigible to tax."

10. The learned Division Bench ultimately allowed the writ petitions and set aside the assessment orders impugned therein.

11. However, in the present case, the impugned demand was raised under the provisions of the Finance Act, 1994. The Division Bench of Karnataka High Court in the decision of **Rajiv Gandhi University of Health Sciences** referred to supra, examined the matter in similar fact situation as in the case on hand. The said University was established under a State Legislation. It has constituent colleges, several private colleges have been affiliated to it. Levies in respect of affiliation are borne by the affiliated colleges, in certain sums of money, in the form of fees, delayed fees, charges, fines, penalties etc. The University apart from imparting education *inter alia* at the Post Graduate level, normatively regulates the affiliated colleges. It owns properties, some of which rented out. The Revenue issued a show cause notice to it complaining that during period between July, 2012 and September, 2016, no Service Tax has been paid on the amount received by it by way of fees, charges and penalties, whilst granting affiliation / renewal and the rental income from its

business. A demand notice was also issued calling upon the University to remit a sum of Rs.7,40,28,684/-. Aggrieved by the same, University filed a writ petition and a learned Single Judge partly allowed the same. Against which, the matter was carried in appeal. In Para B of the Judgment, the relevant provisions of Finance Act were discussed and for ready reference, the same is extracted hereunder:

> "(B) A THUMBNAIL DESCRIPTION OF RELEVANT PROVISONS OF THE FINANCE ACT, 1994:
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> (a)……'Service' is defined in Clause 44 of Section 65 B , to mean any activity for consideration carried out by a person for another. To remove some ambiguities, certain activities have been specifically defined by description as 'Services' and are referred to as 'Declared Services' as defined under Section 65B(22) which in turn refers to those enlisted in Section 66 E. The definition of "service" is both inclusive in certain aspects and exclusive in other.
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> (b) Section 66D creates "Negative list of services" which are outside the levy of service tax. Clause (l) of this Section as it existed upto 14.05.2016 enlisted certain types / levels of education namely: education upto higher secondary level; education which was a part of curriculum for obtaining a qualification recognized by any law; education as a part of an approved vocational education course. The Negative List entry in this clause came to be omitted by 2016 Amendment w.e.f. 14.05.2016. With this omission, specified educational services became liable to service tax. However, for the period between 14.05.2016 & 31.03.2017, the educational institutions were granted exemption *vide* Entry 9 of Notification No.25/2012-ST

and Exemption Notification No.9/2016-ST dated 01.03.2016 issued by the Central Government under Section 93 of the Act. There is Exemption Notification No.25/2012-ST. Section 68 is the charging section; it says that Service Tax shall be levied on all services provided or agreed to be provided in a taxable territory other than those specified in the Negative List u/s.66D."

12. Division Bench in Para D discussed about the Nature and functions of the University. It rejected the contention of Revenue that the University is not an Education Institution and therefore it is very much within the precincts of Finance Act, 1994. It opined that services catered by the University are by way of Education as a part of curriculum for obtaining a qualification recognized by any law as stated in sub Clause (ii) of Clause (l) of Section 66 (D) of the Finance Act. It clarified that the services specified in the Negative List under Section 66 (D) are not within the tax net. However, that it was the position upto 14.05.2016 and thereafter, the Finance Act omitted the same, as a consequence, education no longer continues as an item in the Negative List.

13. In Para VIII, the Division Bench examined the issue "AS TO TAXABILITY OF THE INCOME FROM AFFILIATION AND ALLIED FUNCTIONS." After referring to the Judgment of the Hon'ble Apex Court in **Bharatiya Education Society v. State of Himachal Pradesh**[3], the Division Bench held that the Revenue is not justified in levying the Service Tax on the income accruing to the University on account of affiliation during the academic year between 2012-2013 and 2016-17. After detailed analysis of the matter,

[3] (2011) 4 SCC 527

the Division Bench allowed the appeal in part and modified the order of Single Judge by quashing the Show Cause Notice to the extent it seeks to levy service tax on the income accruing on account of or attributable to grant, renewal, withdrawal or denial of affiliation / recognition to the institution concerned and that such income / service would include fee, late fee, fine, penalty and the like.

14. Against the said Judgment as noted supra, Revenue carried the matter to the Hon'ble Supreme Court and the Special Leave Petition was dismissed on 24.01.2025.

15. In the light of the above stated legal position, the impugned assessment order holding that the activities of petitioner – University granting affiliation to colleges or recognition, conducting inspection of colleges by ANU for a consideration in the form of Affiliation Fee, Recognition fee, University Development fee, Processing fee for enhancement of intake, Research Journal fee, New College Registration fee, Hostel recognition fee, Research fee, Special fee-University College of Arts, Commerce & Law, Special fee-University College of Sciences, Examination related fee including matriculation & attendance condonation fee, Certificates fee including rank genuineness fee, Revaluation fee, etc., respectively are covered in the ambit of taxable service in terms of Section 65B(51) read with Section 65B(44) of the Finance Act, 1994. is not sustainable.

16. In the aforesaid view of the matter, Writ Petition is allowed. There shall be no order as to costs.

Consequently, all pending applications, if any, shall stand closed.

JUSTICE NINALA JAYASURYA

JUSTICE T.C.D.SEKHAR

Date: 16.09.2026
BLV

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

THE HON'BLE SRI JUSTICE T.C.D.SEKHAR

W.P.No.8059 of 2025

Dt: 16.09.2026

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