

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

PRINCIPAL BENCH – COURT NO.3

**E-hearing**  
**Service Tax Appeal No.508740f 2020**

[Arising out of Order-in-Appeal No. 150(CRM)/ST/JDR/2020 dated 17.03.2020 passed by the Commissioner (Appeals) of Central Goods, Service Tax, Central Excise Jodhpur]

**Registrar M/s University of Kota**

Near Kabir Circle, MBS Marg,  
Kota (Rajasthan)

**: Appellant**

Vs

**Commissioner, Central Goods Service  
Tax & Central Excise, Jodhpur**

G-105, New Industrial Area, Opposite Diesel  
Shed, Basni, Jodhpur (Rajasthan)

**: Respondent**

**APPEARANCE:**

Shri Sanjiv Agarwal, Chartered Accountant for the appellant

Shri Shashank Yadav, Authorised Representative for the respondent

**CORAM :**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER No. 51103/2025**

Date of Hearing: 24.07.2025

Date of Decision: 01.08.2025

**SANJIV SRIVASTAVA**

This appeal is directed against the Order-in-Appeal No. 150(CRM)/ST/JDR/2020 dated 17.03.2020. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original No. 16/ST/UDR/2019-20 dated 05.10.2019 holding as follows:-

"ORDER

(a) I confirm the demand of Service Tax amounting to Rs. 1,18,35,056/- (Rupees One Crores Eighteen Lakhs Thirty Five Thousand and Fifty Six only) including cesses and ordered to be recovered from M/s. University of Kota, Near Kabir Circle, MBS Marg, Kota (Rajasthan), in terms of the proviso to Section 73(1) of the Finance Act, 1944 read with Section 174 & 142(8)(a) of the Central Goods and Service Tax Act' 2017.

(b)I also order for the recovery of Interest at applicable rate(s) on the amounts confirmed at (a) above, under Section 75 of the Finance Act, 1944 read with Section 174 & 142(8)(a) of the Central Goods and Service Tax Act' 2017.

(c)I impose equal Penalty Rs. 1,18,35,056/ (Rupees One Crores Eighteen Lakhs Thirty Five Thousand and Fifty Six only) upon them under Section 78 of the Finance Act, 1944 read with Section 174 & 142(8)(a) of the Central Goods and Service Tax Act' 2017, for failure to pay service tax by reason of suppression 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. However benefit of reduced penalty of 25% of penalty as per proviso to Section 78 ibid, is available to them subject to the condition that Service Tax demand of Rs. 1,18,35,056/ and the interest payable thereon under Section 75, is paid within thirty days from the date of communication of this order along with amount of penalty so determined.

(d) I impose a penalty of Rs 10,000/-, upon them under the provisions of Section 77 of the Finance Act, 1994 read with Section 174 & 142(8)(a) of the Central Goods and Service Tax Act 2017 for not taking registration in accordance with the provisions of Section 69 of the Finance Act, 1994, and for not filing of Service Tax Returns (ST-3) reflecting the actual value of the taxable services provided by them, in accordance with the provisions of Section 70 of the Finance Act, 1994."

2.1 The appellant is a University enacted under special Act of State Legislative Assembly and not registered under Service Tax. It is engaged in providing services of education including affiliation to various self-financing/non-Government colleges under its jurisdiction as per the education policy of the State Government. Appellant got registered with GST vide GSTIN No. 08AAAJU0362K1ZX.

2.2 Acting on intelligence, an enquiry was initiated against the appellant and it was observed that the appellant was collecting

Affiliation Fee/Recognition Fees on which they had not discharged service tax.

2.3 A show cause notice dated 23.04.2019 was issued to the appellant asking them to show cause as to why:-

“(i) Service Tax amounting Rs.1,18,35,056/-(Rupees One Crore Eighteen lakh Thirty Five Thousand and Fifty Six only/-) (including Education Cess, Secondary & Higher Education Cess, Swach Bharat Cess and Krishi Kalyan Cess) as detailed above, should not be demanded and recovered from them under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 (as amended) read with Section 91 read with Section 95 of Finance Act (No. 2), 2004 and Section 136 read with Section 140 of the Finance Act, 2007 and Section 119 of Finance Act, 2015 and Section 161 of the Finance Act, 2016 by invoking extended period of five years read with Section 174(2) of CGST Act, 2017.

(ii) Interest at the applicable rates on the Service Tax demanded should not be recovered from them under Section 75 of the Finance Act, 1994 (as amended) read with Section 174(2) of CGST Act, 2017.

(iii) Penalty should not be imposed upon them under Section 77 & 78 of the Finance Act, 1994 (as amended) for & deliberately suppressing the facts with the intent to evade payment of Service Tax and failure to pay the Service Tax and Cess in accordance with the provisions of Section 68,69 & 70 of the said Act read with Rule 4, 6 & 7 of the Service Tax Rules, 1994 read with Section 174(2) of CGST Act, 2017.”

2.4 Show cause notice has been adjudicated as per Order-in-Original referred in Para-1 above.

2.5 Aggrieved, the appellant filed appeal before the Commissioner (Appeals) which has been dismissed as per the impugned order.

2.6 Hence, this appeal.

3.1 We have heard Shri Sanjiv Agarwal, Chartered Accountant for the appellant and Shri Shashank Yadav, Authorised Representative for the Department.

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

4.2 We find that the issue is no longer *res-integra* and has been decided by this Tribunal in following cases:-

- Goa University vs. Joint Commissioner of Central Goods and Service Tax in Writ Petition No. 723 of 2024
- M/s Jiwaji Vishwavidhyalaya vs. Commissioner of Central Goods and Service Tax & Central Excise, Bhopal 2025 (5) TMI 153-CESTAT NEW DELHI
- Visvesvaraya Technological University vs. Additional Director General, Directorate General of GST Intelligence, Belagavi 2024 (167) taxmann.com 201 (Karnataka)
- Devi Ahilya Vishwavidhyalaya (University) vs. Commissioner of CGST & Central Excise, Indore vide Final Order No. 50801/2025 dated 22.05.2025 [Tri.-Delhi]
- Principal Commissioner of CGST, Central Excise, Jabalpur vs. M/s Rani Durgawati Vishwavidyalaya vide Final Order No. 50698 of 2025 dated 16.05.2025 [Tri.-Del.]
- Rajiv Gandhi University of Health Sciences vs. Principal Additional Director General, Directorate General of GST Intelligence 2022 (141) taxmann.com 206 (Karnataka)

4.3 Further, we observed that in the case of **Rajiv Gandhi University of Health Sciences (supra)**, the Hon'ble Karnataka High Court has held as follows:-

"VIII. AS TO TAXABILITY OF INCOME FROM AFFILIATION AND ALLIED FUNCTIONS: (a) The University being a statutory body,

accords affiliation to the health science colleges on the recommendation of the State Government. This is done under Section 45 of the RGUHS Act. Affiliation results into certain benefits/privileges; at the same time, it also makes the affiliated colleges to undergo certain supervision at the hands of the Syndicate. Section 48 provides for withdrawal of affiliation. Similarly, Section 46 provides for grant of recognition by the Syndicate to any institution of health sciences, even if it is situated outside the University Area. Such recognition can be withdrawn also under sub-Section (2). Grant or renewal of affiliation/recognition is subject to payment of specified fees, late fees & penalties. Learned counsel for the Appellant–Revenue argued that granting affiliation/recognition is a service as defined under clause(44) of Section 66B of the 1994 Act and therefore, the income accruing therefrom is liable to service tax. Learned Sr. Advocate representing the University repels this submission contending that the statutory activities of an entity that lack commercial elements do not answer this definition. Substantive part of Clause 44 reads as under:

“Service” means any activity carried out by a person for another for consideration, and includes a declared service...”

It is apparently a “means, includes & excludes” definition. It is not the case of either party that the exclusion part of the definition is invokable, and therefore a long list of exclusion is not reproduced. (b) The substantive definition of ‘service’ has four building blocks namely: “activity”; “carried out”; “by one person for another” and, “for consideration”. The word ‘activity’ has not been defined in the Act. In common parlance, it would mean an act, a deed, a work, an operation or the like. An ‘activity carried on’ means an act executed, a deed done, a work accomplished or an operation carried out. This expression has a wider connotation and includes both active and passive act. The second component of the definition is consideration, which again is not well defined. However, as per Explanation (a) to section 67 of the Act, ‘consideration’ includes any amount that is payable for the taxable services provided or to be provided. This Explanation does not make the idea clear.

(c) Let us see the definition of consideration u/s 2(d) of the Indian Contract Act, 1872, which reads:

“When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such

act or abstinence or promise is called consideration for the promise".

The purpose of consideration is to put some legal limits on enforceability of agreements, in the sense that only those promises which are supported by consideration are enforceable, and others not binding, despite intent of the promisor to be bound by. Consideration is an index of the seriousness of the parties to be bound by the bargain. It also serves evidentiary and formal function. Lord Denning in COMBE vs. COMBE [1951] 1 ALL.ER.767 said: 'The doctrine of consideration is too firmly fixed to be thrown by a side wind... it still remains a cardinal necessity of the formation of a contract...' Consideration in the sense of law means something valuable vide CHIDAMBARA IYER vs. RENGIA IYER AIR 1966 SC 193. In simple terms, consideration means everything received or recoverable in return for a provision of service which may be monetary or non-monetary. To be taxable, an activity should be carried out by a person for consideration. Thus, an activity carried out without any consideration like donations, gifts or free charity ordinarily is outside the ambit of service. The concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing the activity does so at the desire of another in exchange for a consideration. There should be something like quid pro quo. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration' even though such an activity may lead to accrual of gains to the person carrying out the activity. Thus, an award received in consideration for contribution over a life time like Nobel Prize, Jnana Peeta, etc., will not be a consideration. There can be many activities without consideration. An artist performing on a street does an activity without consideration even though passersby may drop a coin in his bowl. They are, however, under no obligation to pay any amount for his performance since they have not engaged him for that. On the other hand if the same person is called to perform on payment of an amount of money, then the performance becomes an activity for a consideration.

(d) In the above backdrop, let us examine 'affiliation' which has yielded income to the respondent University. This word is not defined either in the RGUHS Act or in the Finance Act. The word 'affiliation' is derived from Latin word affiliare which means 'to adopt as a son.'

In Ramanath Iyer's 'The Law Lexicon' 2ND Edition Reprint 2010, LexisNexis, Page 73, it is described as under:

"Affiliation' of college. To university means such a connection between an existing university and a college as shall be entered into by their mutual consent, under the conditions approved by the University Commissioners or other proper authorities."

The Apex Court in BHARATIYA EDUCATION SOCIETY vs. STATE OF HIMACHAL PRADESH (2011) 4 SCC 527, para 19 observed:

"In the context of NCTE Act, 'affiliation' enables and permits an institution to send its students to participate in the public examinations conducted by the Examining Body and secure the qualification in the nature of degrees, diplomas, certificates..."

Affiliation creates a kind of umbilical chord between affiliating body and the affiliated entity. Section 2(a) of RGUHS Act, defines 'Affiliated College' to mean a college or institution... affiliated to the University in accordance with the Statutes. It also includes the institutions that are deemed to be affiliated to the University. Deeming part is not relevant for our discussion. Section 4 of this Act which enlists the powers & functions of the University, at clause

(vii) reads 'to affiliate or recognise colleges and institutions and to withdraw such affiliation or recognition'. Section 45 provides for affiliation and the procedure therefor. For grant of admission, affiliation is a pre-condition under subsection (10). Section 48 provides for withdrawal of affiliation on fault grounds. For the grant or renewal of affiliation, the University levies fees, late fees, fines & penalties in terms of extant statutes of the University. However, the act of granting, renewing or withdrawing is done in discharge of public duties enjoined by law. Therefore, such acts do not fit into the expression 'activities carried on for consideration', more particularly, when they do not have commercial elements, as rightly contended by Mr.Raghuraman. Added, the idea of 'activities carried on for consideration' as employed in the definition of service u/s 65B(44) of the Finance Act ordinarily obtains in the realm of freedom of contract and not in the field of public law. Of course, the concept of sovereign function being impertinent, does not factor in the discussion. The function related to affiliation cannot be treated as a 'bundled service' under clause (3) of section 66F of the Finance Act, 1994, either. The interests/fines/penalties leviable on account of default also have a thick connect with the fees regularly leviable and therefore, they would partake the character of fees only. In view of all this, the Revenue is not justified in levying Service Tax on the income accruing to the University on account of affiliation during the academic year

between 2012-13 and 2016-17. The periodicity of collection of affiliation related fees pales into insignificance.”

4.4 SLP filed by the Revenue against the above order of Hon’ble Karnataka High Court has been dismissed by the Hon’ble Supreme Court reported as 2025 (1) TMI 1550-SC Order.

4.5 In view of above, we do not find any merit in the impugned order.

5.1 Appeal is allowed.

*(Order Pronounced on 01.08.2025)*

**(BINU TAMTA)**  
MEMBER (JUDICIAL)

**(SANJIV SRIVASTAVA)**  
MEMBER (TECHNICAL)

G.Y.