RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 9556/2024

Rajasthan Technical University, Kota, Rawat Bhata Rod, Akhelgarh, Kota, 324009 Through Its Assistant Registrar (F And A), Shri Manoj Kumar Jangid, S/o Shri Ratan Lal Jangid, Aged About 45 Years, R/o A-608, Shubh Atlantis Apartment, Opposite Kota University, Vivekanand Nagar, Kota - 324005

----Petitioner

Rajasthan High Court
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Versus

1. Union Of India, Through The Revenue Secretary, Ministry Of Finance, North Block, New Delhi - 110001
2. Commissioner, Office Of The Commissioner, Central Excise And Central Goods And Services Tax Commissionerate , 142-B, Sector 11, Hiran Magri, Udaipur, Rajasthan.
3. Deputy Commissioner, Office Of The Commissioner, Central Excise And Central Goods And Services Tax Commissionerate (Anti - Evasion Branch), 142-B, Sector 11, Hiran Magri, Udaipur, Rajasthan.
4. Superintendent, Central Excise And Central Goods And Services Tax Commissionerate (Anti - Evasion Branch), 142-B, Sector 11, Hiran Magri, Udaipur, Rajasthan.
5. Assistant Commissioner, Office Of The Assistant Commissioner, Central Excise And Central Goods And Services Tax, (Anti - Evasion Branch, Kota), Central Rajasva Bhawan, Near C.a.d. Circle, Kota (Rajasthan) 324009.
6. State Of Rajasthan, Through The Finance Secretary (Revenue), Finance Department, Government Of Rajasthan, 1St Floor, Main Building, Government Secretariat, Janpath, Jaipur, Rajasthan - 302005.
7. The Commissioner, Rajasthan Goods And Services Tax, Ward-Ac/cto, Circle-B, Zone-Iii, Room No. 421, Zonal Kar Bhawan, Jhalana, Jaipur, Rajasthan - 302004

----Respondents

Connected with bunch of petitions as per Appendix "A"

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RAJASTHAN HIGH COURT

For Petitioner(s) : Mr. Sharad Kothari
Mr. Kalpit Shishodia
Mr. Dinesh Kumar Bishnoi
Mr. Chirag Soni
Mr. Abhimanyu Yadhuvanshi
Mr. Bhuwaneshwar Singh Sisodia
Mr. C.S. Kotwani with
Mr. Avdesh Parashar
Mr. Ankur Mathur
Mr. Divik Mathur
Mr. Rahul Lakhwani
Ms. Adwaita Sharma
Mr. Chayan Bothra
Mr. Vinay Kothari with
Mr. Bhavyadeep Singh

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For Respondent(s) : Mr. Mahaveer Bishnoi, AAG with
Mr. Harshwardhan Singh
Mr. Mrigraj Singh Rathore
Mr. Rajvendra Saraswat with
Mr. Jitesh Kumar Suthar
Mr. Rajeev Purohit
Ms. Akshiti Singhvi

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order

Reportable

Judgment Reserved on :- 15/01/2026
Pronounced on :- 23/02/2026

By the Court (Per, Arun Monga, J):-

1. Rajasthan Technical University, a State university set up by Government of Rajasthan, is before this court, aggrieved against the impugned Show Cause Notice dated 26.12.2023 and; consequential proceedings vide which the act of affiliation granted by it to the affiliate colleges has been included in the statutory term "service" and; thus tax has been imposed on the University under the provisions of CGST, 2017 and directed to pay service tax with interest and penalty.

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2. Case of the Petitioner University is that the impugned Show Cause Notice has been issued in contravention of the provisions of the Central Goods and Services Tax, 2017 (CGST Act). and Rules framed there under. It is also arbitrary and violative of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India. More of it later.

2.1. The controversy that warrants adjudication by court is whether or not the affiliation fee charged by a University, for grant of affiliation to its constituent college, is subject to levy of service Tax under CGST Act.

2.2 Bunch of petitions have been filed as per Appendix 'A' wherein similar controversy is involved and vide this common order and judgment all of those are being decided together.

FACTS (For convenience and brevity facts are taken from D.B. Civil Writ Petition No.9556/2024).

3. The Petitioner University has been set up by way of State legislative enactment i.e. the Rajasthan Technical University Act, 2006 (RTU Act). Under Section 5(xix) of the RTU Act and the Affiliation Regulations, 2016, it is empowered to fix and recover affiliation and related fees.

3.1. It is an affiliating university offering undergraduate (B.Tech., B.Arch., BHMCT) and postgraduate (M.Tech., MBA, MCA) educational programs being imparted in its more than 140 colleges and catering to more than 40,000 students. University is statutorily mandated to perform academic and regulatory functions qua its affiliated colleges which include curriculum

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design, inspections, maintenance of academic standards, degree conferment, scholarship facilitation, and grievance redressal.

3.2. Under the erstwhile Chapter V of the Finance Act, 1994 ("FA 1994"), service tax was levied by the Central Government on various services provided within the territory of India. That Section 66B of the FA 1994 (i.e., the charging section) provided that the services enumerated in the negative list under Section 66D were not chargeable to service tax. Further, Clause (1) of Section 66D of the FA 1994 provided that services by way of "pre-school education and education up to higher secondary school or equivalent"; "education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force"; "education as a part of an approved vocational education course" were not chargeable to service tax.

3.3. Further, Central Government also issued Notification No. 25/2012-Service Tax dated 20.06.2012 whereby several services were made exempt from payment of service tax. Serial no. 9 of the said notification pertained to educational services wherein also services provided by educational institutions were made exempt from payment of service tax.

3.4. However, there was a regime change of in direct taxation on the enactment of CGST Act, 2017.

3.5 The Central Government vide Notification No. 02/2018- CT (Rate) dated 25.01.2018 amended serial no. 66 of the Notification dated 28.06.2017. Vide the amended entry it was made clear that Services provided by an educational institution to its students, faculty and staff and by an educational institution by way of

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conduct of entrance examination against consideration in the form of entrance fee are exempted from levy of tax.

3.6 Therefore, even in the current service tax regime, the petitioner-University was/is of the understanding that since their services were related to education, therefore the same were exempt from payment of service tax. In fact, none of the other universities charged any service tax on the affiliation fees amount. Accordingly, the Petitioner also did not collect any service tax on the affiliation fees and even the service tax department never raised any demand.

3.7. Until year 2022 and even prior thereto, there was no demand ever raised on the petitioner University for payment of service tax. The Petitioner, therefore, did not collect the GST amount on the affiliation fees deposited by the affiliated colleges for the academic sessions 2017-18 to 2022-23 during the FY 2016-17 to 2021-22.

3.8. In January–March 2022, GST authorities sought extensive details regarding affiliation and related fees collected from AY 2017–18 onwards. The Petitioner furnished the information and, upon summons, appeared before the authorities. The Petitioner consistently maintained that affiliation services were exempt under Entry 66 of Notification No. 12/2017-CT (Rate) dated 28.06.2017, and that it bona fide believed GST was not applicable, similar to the erstwhile Service Tax regime.

3.9. Despite representations and correspondence with State authorities, the Governor's Office, and GST officials seeking exemption or clarification, the Department relied upon an Advance Ruling dated 19.11.2020 in the case of Bharatyar University, Tamil

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Nadu, holding affiliation services taxable @18%, and demanded GST with interest and penalty for AY 2017–18 to 2022–23.

3.10. Without admitting liability, the Petitioner deposited ₹4,25,86,142/- towards GST (31.01.2023) and subsequently ₹3,02,68,940/- towards interest (03.06.2023), prior to issuance of any show cause notice.

3.11. Vide letters dated 24.11.2020, 12.11.2021 and 26.11.2022 (Annexure-4) sent by the Petitioner to the affiliated colleges for deposit of affiliation fees for the academic years 2021-22 to 2023-24 (FYs 2020-21 to 2022-23), the /affiliated colleges were duly informed by the Petitioner University that GST @ 18% shall be applicable on affiliation fee/variation fee/inspection fee/NOC fee and other fee as and when demanded by the Government.

3.12. The relevant portions of the letters dated 24.11.2020, 12.11.2021 and 26.11.2022 are reproduced below for ease of reference-

Letter dated 26.11.2022.

"*5. 18% G.S.T. shall be applicable on affiliation fee/variation fee/inspection fee/NOC fee and other fee to be deposited alongwith regular fee.*"

Letter dated 12.11.2021

"*12. GST shall be charged, on the direction of the government, if applicable.*"

Letter dated 24.11.2020.

"*12. GST shall be charged, on the direction of the government, if applicable.*"

3.13. Meanwhile, petitioner instead received a letter dated 27.06.2023 issued by Respondent No. 3, whereby a demand was raised with respect to the payment of penalty under section 74(5) of the CGST/RGST Act, even after petitioner having duly paid the GST amount along with the applicable interest rate.

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3.14. In response to the letter dated 27.06.2023, the Petitioner University, vide its letter dated 20.09.2023, submitted that the Petitioner University was not aware that GST was applicable on affiliation fees and other related charges collected by it from its affiliated colleges and was under the bonafide belief that like the erstwhile Indirect Tax regime, affiliation services, being an integral part of educational services, were exempted under the GST regime as well.

3.15 Notwithstanding, the respondents issued the impugned show cause notice dated 26.12.2023 under section 74 of the CGST, Act alleging suppression of returns, non issuance of invoices and willful evasion of tax even though petitioner had made full payment of tax with interest.

3.16. Petitioner University requested vide its letter dated 25.01.2024 that its case should be considered under the provisions of Section 73(5) of the CGST/RGST Act and accordingly the penalty must be waived off as the tax liability along with the applicable interest was paid even before the issuance of a show cause notice. But to no avail.

3.17 Hence the writ petition before this court.

4. Before adumbrating further, for ready reference, we may first note the applicable law which is as under :-

STATUTORY AND NOTIFICATION FRAMEWORK

4.1 It may be noted here that Under the CGST/RGST Acts, GST is leviable only on "supply" of goods or services made for consideration in the course or furtherance of business. Whereas, Education services fall under Heading 9992 and are generally

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taxable at 18%, subject to exemptions under Notification No. 12/2017-CT dated 28.06.2017.

4.2. Entry 66 of Notification No. 12/2017 exempts services provided by an educational institution to its students, faculty, and staff; and services provided to an educational institution relating to admission to, or conduct of examinations. By Notification No. 02/2018, the restriction "up to higher secondary" was removed, extending the exemption to all levels of education. Notification No. 14/2018 further clarified that Central and State Educational Boards are treated as educational institutions for the limited purpose of conducting examinations.

4.3. With the aforesaid scheme in mind let us have a look at the applicable provisions. Section 7 & 9 of the Central Goods and Services Act, 2017, provides supply of goods and services specified therein is subject to levy of service tax and levy of collection taxes respectively. Sub section (1), (1-A), and (2) of section 7 and sub section 3 and 4 of section 9, relevant to the case, are reproduced below in extenso:

> "***7. Scope of supply***.—*(1) For the purposes of this Act, the expression "supply" includes-*
> *(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
> *(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, for deferred payment or other valuable consideration.*
> *Explanation- for the purpose of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, separate person and the supply of activities or transactions inter se shall be deemed to take place from such one person to another;*
> *(b) import of services for a consideration whether or not in the course or furtherance of business;*

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(c) the activities specified in Schedule I, made or agreed to be made without a consideration. [****]
[*****]
(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.
(2) Notwithstanding anything contained in sub-section (1),
(a) activities or transactions specified in Schedule III; or
(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
xxxx xxxxx xxxx

Schedule I, II, and III referred to in the aforesaid provisions are not being referred or reproduced for sake of brevity as they are not relevant for the adjudication of the controversy in hand. It would be seen that, for invoking sub-clause (a) of sub-section (1) ibid, the supply of goods and services has to be in the course or furtherance of business.

4.4. Relevant of the Section 9, ibid is as under :-

9. Levy and collection.—
xxxx xxxxx xxxx
(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both."

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4.5. The word 'business' is defined in section 2 (17) of the Act as under:

> "*Section 2: In this Act, unless the context otherwise requires*. ----
> xxxx xxxx xxxx
> (*17) —business includes-*
> *(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
> *(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
> *(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction; (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
> *(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
> *(f) admission, for a consideration, of persons to any premises;*
> *(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
> *(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and*
> *(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities*."

4.6. The word 'service' is defined in section 2 (102) of the Act as under:

> *"Section 2: In this Act, unless the context otherwise requires. ----*
> *xxxx xxxx xxxx*
> *(102) —"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;*
> *Explanation.— For the removal of doubts, it is hereby clarified that the expression —services‖ includes facilitating or arranging transactions in securities;"*

4.7. The relevant of the statutory Notification No. 12/2017, dated 28.06.2017, issued by the Central Government, exempting from Central the supply of certain services is as under:

> "*In exercise of the powers conferred by a sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5)*

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of section 15 and section 148 of the Central Goods and Services Tax Act, 1017(12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do , on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table Below from so much of the central tax leviable thereon under sub-section 91) of section 9 of the said act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl. No.	*Chapter, Section, Heading, Group or Service Code(Tariff)*	*Description of Services*	*Rate (percent)*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
XXXX	*XXXX*	*XXXX*	*XXXX*	*XXXX*
66	*Heading 9992 of Heading 9963*	*Service Provided* *(a) by an educational institution to its students, faculty and staff;* *(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;* *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 Central Governments, State Government or Union Territory* *(iii)security or cleaning or house-keeping services performed in such educational institutions;* *(iv) services relating to admission to, or conduct of examination by, such institution;* *(v) supply of online educational journals or periodicals:* ***Provided** that nothing contained in sub-items (I), (ii) and (iii) of item (b) shall apply to an educational institutions other than an institution providing services by way of pre-school education and education upto higher secondary school or equivalent:* ***Provided further** that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-* *(i) pre-school education and education*		

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		up to higher secondary school or equivalent; or *(ii) education as a part of an approved vocational education course.*		

SUBMISSIONS ON BEHALF OF THE PETITIONER/UNIVERSITY.

5. <u>The activity of the Petitioner University does not fall under the scope of supply under section 7 of the CGST/SGST Act.</u>

5.1 The petitioner, being a university established under a State Act, does not qualify as "Government" or a "local authority"; therefore, Section 2(17)(i) of the CGST Act, 2017 is inapplicable. Further, its activities do not fall within the definition of "business" under Section 2(17)(a)–(c). The petitioner's educational activities are non-commercial and do not constitute a "supply of services" under GST. Imparting education cannot be regarded as "business" under Section 2(17), as it does not involve trade, commerce, manufacture, profession, vocation, or any similar commercial pursuit.

5.2 The phrase "any other similar activity" is grammatically linked only to "wager," as indicated by the punctuation, and not to the preceding terms. Section 2(17) defines "business" to include trade, commerce, manufacture, profession, vocation, adventure, wager, or similar activities, irrespective of pecuniary gain. Education, by its nature, does not fall within these categories.

6. <u>Affiliation fees are statutory fees and in the nature of statutory/regulatory functions.</u>

6.1 Fees, cess, or other amounts received by the petitioner, a statutory university constituted under the Rajasthan Technical

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University Act, in the course of discharging its educational functions, do not constitute "consideration" within the meaning of Section 2(31) and therefore fall outside the scope of Section 7 of the CGST Act.

6.2 Affiliation fees are statutory levies mandated under the university's governing statute, collected solely to regulate academic standards, conduct examinations, and confer degrees, functions performed in discharge of public duties without profit motive or contractual character. Such collections do not satisfy the "business" test under Section 2(17) of the CGST Act, as educational regulation lacks commerciality, and the fees are regulatory imposts rather than "consideration", consistent with the principle in ***Asst. CIT v. Ahmedabad Urban Development Authority***.[1]

6.3 Income received from students, affiliated colleges, or other sources incidental to the university's core statutory functions likewise cannot be subjected to GST on this basis.

6.4 The activities of the university are undertaken pursuant to statutory obligations and are regulatory in nature, not commercial. Consequently, as the activities do not constitute "business" and the fees do not qualify as "consideration," the charging provisions under Section 9 read with Section 7 of the CGST/RGST Acts, 2017 are not attracted.

7. <u>Notification No. 12/2017-CT(R) (as amended) dated 28.06.2017 Exempts Educational Services.</u>

7.1 Without prejudice, even if affiliation were to be regarded as a "service," it is integrally connected with Entry 66 of Notification

1 (2023) 4 SCC 561.

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No. 12/2017-CT(R) (as amended) dated 28.06.2017, which exempts services provided by an educational institution to its students, faculty, and staff. Entry 66 of the Notification provides that the services of the nature provided therein; shall be exempt from the levy of GST. The entry is reproduced hereunder for ready reference:

> *"Services provided—*
> *(a) by an educational institution to its students, faculty and staff;*
> *(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;*
> *(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 Central Government, State Government or Union territory;*
> *(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;*
> *(v) supply of online educational journals or periodicals:*
> ***Provided** that nothing contained in sub-items (i), (ii) and (iii) of item (b)] shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent:*
> ***Provided further that** nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,—*
> *(i) pre-school education and education up to higher secondary school or equivalent; or*
> *(ii) education as a part of an approved vocational education course."*

7.2 **Clause (a) of Entry 66.**

Entry 66 exempts (i) services provided by an educational institution to its students, faculty, and staff, and (ii) specified services provided to an educational institution by third parties. The University granting affiliation is itself an educational institution and falls within the scope of the entry.

(i) "Educational institution" includes both universities and affiliated colleges. Entry 66(a) identifies the recipients—students, faculty, and staff—without restricting the nature of services; thus,

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its scope extends beyond pure teaching to include functions such as affiliation.

(ii) The Petitioner University regulates admissions, conducts examinations, prescribes curriculum and academic calendars, maintains academic standards, and awards degrees. Students of affiliated colleges are effectively university students; therefore, affiliation is a service provided to students and is exempt from GST.

7.3 **Clause (aa) of Entry 66.**

(i) The insertion of Entry 66(aa) exempting entrance examinations reflects the legislative intent to include universities within the exemption framework.

7.4 **Clause (b)(iv) of Entry 66.**

(i) The entry must be interpreted broadly, particularly because it uses the expression "relating to," which indicates a wide ambit rather than a narrow construction, contrary to the approach adopted in the impugned proceedings.

(ii) Judicial precedents have consistently held that phrases like "relating to" or "in relation to" are words of wide amplitude and not restrictive in scope (e.g., ***State Wakf Board, Madras Vs Abdul Azee Sahib and Ors.***[2]).

(iii) Accordingly, services connected with admission or conduct of examinations must be given an expansive interpretation under Entry 66.

(iv) University functions such as admission processes, examinations, curriculum prescription, maintenance of standards,

2 AIR 1968 Mad 79

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and award of degrees are covered by Entry 66, with colleges acting merely as facilitators; affiliation services are therefore exempt.

(v) Since student admissions and eligibility depend on affiliation granted by the University, affiliation is integral to the educational process and qualifies as an exempt educational service.

(vi) As no institution can admit students or conduct examinations without valid university affiliation, activities and fees relating to affiliation fall within Entry 66 and are not liable to GST.

7.5 The Supreme Court and various High Courts, as held in the ***Goa University vs. Joint Commissioner of Central Goods and Services Tax.***[3]and ***Bengaluru North University vs. Joint Commissioner of Central Tax, GST Commissionerate.***[4], have consistently adopted a broad interpretation of "education," drawing ratio inter alia from ***Sole Trustee, Lok Shikshana Trust v. CIT.***[5]and ***T.M.A. Pai Foundation v. State of Karnataka.***[6] It has been held that "education" encompasses activities relating to imparting, regulating, and controlling education, including affiliation, which is a prerequisite for admissions and examinations under the university framework and operates for the benefit of students of affiliated colleges as university students. Relevant authorities are compiled at serial nos. 24 to 30 of the case/provision compilation.

8. CBIC Circulars Ultra Vires

3 2025 SCC OnLine Bom 1262

4 WP No.5205/2024 Karnataka High Court

5 (1976) 1 SCC 254

6 (2002) 8 SCC 481

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8.1 CBIC - Tax Research Unit (TRU) has no statutory authority to issue directions that effectively modify the CGST Act or confer binding force on GST Council recommendations, which by themselves do not have statutory effect; any such attempt is impermissible in law.

8.2 Being a research and advisory wing, CBIC-TRU cannot exercise quasi-legislative powers or issue instructions with tax consequences. The impugned circular, by elevating GST Council recommendations to binding norms, is therefore without jurisdiction and arbitrary.

8.3 Subsequent CBIC Circulars, and the Press Note incorrectly treat affiliation as a taxable "accreditation" service and seek to curtail the exemption under Entry 66, and thus contrary to Sections 7 and 9 of the CGST Act.

8.4 Attempt to impose tax obligations herein without any legislative sanction, thus violating Article 265 (no tax without authority of law) and Article 300A (no deprivation of property without legal authority) of the Constitution, and are therefore ultra vires.

8.5 It is settled law that circulars cannot override statutes, impose a levy, or restrict exemptions, as held in ***CCE v. Ratan Melting & Wire Industries.***[7] and ***Sandur Micro Circuits Ltd. v. CCE.***[8]

9. <u>Invocation of jurisdiction and imposition of penalty under section 74 is erroneous and unfounded</u>

7 (2008) 13 SCC 1
8 (2008) 14 SCC 336

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9.1 Section 74 of the RGST Act, 2017 can be invoked only where tax has not been paid, short paid, erroneously refunded, or ITC wrongly availed or utilized by reason of fraud, willful misstatement, or suppression of facts with intent to evade tax.

9.2 The jurisdictional prerequisites for invoking Section 74 are:

(a) non-payment/short payment/erroneous refund or wrongful ITC;

(b) presence of fraud, willful misstatement, or suppression; and

(c) intent to evade tax.

The proceedings under Section 74 are unsustainable unless these ingredients are specifically alleged and established.

9.3 In the present case, no element of fraud, willful misstatement, suppression, or intent to evade exists, as evident from:

(a) The Petitioner's bona fide belief that affiliation services were exempt—consistent with the erstwhile service tax regime and Entry 66 of Notification dated 28.06.2017—and the issue remains contentious before constitutional courts.

(b) Full cooperation with departmental inquiries and timely submission of all information sought.

(c) Voluntary payment of ₹4,25,86,142/- towards GST and ₹3,02,68,940/- towards interest prior to issuance of the impugned SCN.

(d) No GST was collected from affiliated colleges; tax and interest were discharged from the Petitioner's own funds.

9.4 These facts demonstrate bona fide conduct and negate any intent to evade tax. Accordingly, invocation of Section 74 is

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without jurisdiction, and the impugned SCN and demand are liable to be set aside for failure to establish the statutory conditions.

9.5 The Petitioner, a statutory university established under the Rajasthan Technical University Act, 2006 to advance technical education and public objectives, functions as an instrumentality of the State. It is inherently implausible that such a body would deliberately evade tax, particularly where doing so would undermine public revenue—reinforcing the absence of mens rea.

10. <u>Even arguendo if GST is leviable the affiliated/constituent colleges are liable to pay the GST along with interest and penalty.</u>

10.1 The University has deposited the GST and applicable interest pursuant to demands raised by the GST Department; any recovery from constituent colleges is consequential and not arbitrary. As a State-run institution, the University acts in discharge of public functions and in compliance with governmental directions.

10.2 By letters dated 24.11.2020, 12.11.2021, and 26.11.2022, issued while calling for affiliation/renewal fees, the University expressly notified affiliated colleges that GST at applicable rates (including 18%) would be charged on affiliation, variation, inspection, NOC, and related fees as per government directions, thereby placing them on notice.

10.3 Accordingly, affiliated colleges were fully aware that GST could become payable upon renewal of affiliation and cannot now claim surprise or arbitrariness. GST, being an indirect tax, is economically borne by the recipient of the supply; therefore, if

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held leviable, the incidence properly falls on the constituent colleges.

11. CASE LAW RELIED BY THE PETITIONER -

a. Goa University vs. Joint Commissioner of Central Goods and Services Tax.[9]

b. Bengaluru North University vs. Joint Commissioner of Central Tax, GST Commissionerate.[10]

c. Principal Additional Director General, DGGSTI vs. Rajiv Gandhi University of Health Sciences.[11]

d. Principal Additional Director General, DGGSTI vs. Rajiv Gandhi University of Health Sciences.[12]

e. M/s Doypack Systems Pvt. Ltd. Vs. Union of India &Ors.,[13]

f. Renusagar Power Co. Ltd. Vs. General Electric Company &Anr.,[14]

g. Coca Cola India (P.) Ltd. Vs. Commissioner of Central Excise, Pune III.[15]

h. Commissioner of Central Excise & Customs vs. Parth Poly Wooven (P.) Ltd[16]

i. State Wakf Board, Madras Vs Abdul Azee Sahib and Ors.[17]

SUBMISSIONS ON BEHALF OF THE RESPONDENTS.

12. Affiliation is the formal grant by the University admitting a college to its privileges upon fulfillment of prescribed statutory

9 2025 SCC OnLine Bom 1262
10 WP No.5205/2024 Karnataka High Court
11 (2025) 32 Centex 526 (Kar.)
12 WA No.856/2022 Karnataka High Court
13 (1988) 2 SCC 29
14 (1984) 4 SCC 679
15 Central Excise Appeal No.118/2007 Bombay High Court
16 Tax Appeal No.1704/2010 Gujarat High Court
17 AIR 1968 Mad 79

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conditions. Affiliation charges are prerequisites for enabling colleges to admit students and run courses and are distinct from fees collected by colleges from students. While tuition and examination fees collected from students are exempt under Notification No. 12/2017-CT (Rate) dated 28.06.2017**,** affiliation services provided by the University to colleges are not covered by the exemption and are therefore taxable.

12.1 Notification exempts specified services provided by educational institutions to students, faculty, and staff, and certain services provided to educational institutions (such as transportation, catering, security, housekeeping, admission, examination, and supply of journals). Affiliation services are not included in the exempted categories and hence remain taxable.

12.2 The exemption framework by Notification, limits exemptions for higher educational institutions to specific entries—namely clauses (a), (aa), and sub-items (iv) and (v) of clause (b) under Serial No. 66—none of which cover affiliation.

12.3 The GST Council, after deliberation, chose to exempt services directly connected with students (e.g., transport, catering, admission, examinations). Services relating to recognition or regulatory oversight of colleges, such as affiliation, were not exempted. Entry 66(b)(iv) specifically covers services relating to admission or conduct of examinations, not affiliation.

12.4 Under Section 2(102) of the CGST Act, "services" include any activity other than goods, money, or securities. Grant of affiliation for consideration qualifies as a supply of service classifiable under Heading 9992 (Education Services) and is taxable at 18% under Notification No. 11/2017-CT, *ibid*. Clarification issued following the

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GST Council's deliberations expressly state that affiliation services provided by universities to colleges are not covered by the exemption under Notification No. 12/2017-CT.

12.5 Exemption notifications must be strictly construed according to their text and legislative intent; no benefit can be claimed unless the case clearly falls within the specified conditions. Courts cannot expand exemptions by implication. The exemption must be analyzed with reference to the parties to the transaction. While services between colleges and students may qualify as exempt educational services, the transaction here is between the University and the college, which falls outside the exemption.

12.6 The contention that GST on affiliation ultimately burdens students is irrelevant, as exemption depends on the nature of the supply, not its economic incidence; student-facing fees are already exempt.

12.7 Accepting a broad interpretation would render the exemption otiose by allowing all activities connected to education (e.g., construction, procurement) to claim exemption. Therefore, the notification must be applied as written. Since affiliation is not expressly exempt, consideration for affiliation services attracts GST, and any exemption cannot be inferred in the absence of explicit statutory provision.

13. JUDGMENTS RELIED UPON :

i. Commissioner of Customs (Import), Mumbai Vs Dilip Kumar and Company and Ors.[18]

18 Civil Appeal No.3327/2007 SC

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ii Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Vs. Commissioner of Central Excise and Service Tax, Alwar.[19]

iii Care College of Nursing and Ors. Vs. Kaloji Narayana Rao University of Health Sciences and Ors.[20]

14. In the aforesaid backdrop of the rival contentions we shall now proceed to render our opinion by recording discussion and upon analysis of the applicable law.

ISSUES FOR DETERMINATION

15. The following issues arise for consideration:

(i) Whether grant of affiliation by a University constitutes a "supply of service" under Section 7 of the CGST Act, 2017?

(ii) Whether affiliation fees can be regarded as "consideration" for such alleged supply?

(iii) If affiliation is assumed to be a service, whether it is exempt under Entry 66 of Notification No. 12/2017-CT (Rate)?

(iv) Whether levy of GST on affiliation fees is legally sustainable?

DISCUSSION AND ANALYSIS

16. Affiliation to the University is the sine qua non for the Colleges to admit the students to University classes, impart education to them, and the taking of the examinations and obtaining of University degrees by the students. Affiliation is thus an essential and integral part of imparting of education. It is not a 'business' as defined in sub-section 17 of section 2 reproduced above. The element of 'in the course or furtherance of business' is

19 2022 SCC OnLine SC 224
20 WP No.34617/2022 Telangana High Court

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the sine-qua non for applicability of sub-clause (a), sub-section (1) of section 7 ibid, which does not exist in the present case.

17. University affiliation is a statutory and regulatory function, intrinsically connected with admission of students, imparting them education, their taking the examination, and conferment of University degrees. Colleges are merely recipient of the affiliation; act as facilitators or extended arms for imparting University education to the students, while the real beneficiaries of affiliation are students, who are ultimately conferred degrees by the University.

18. It is also pertinent to note that vide section 2 of the Rajasthan Technical University Act, 2006, 'affiliated college' means a college or institution which has been granted affiliation to the University. Under section 4, the objects of the University include the promotion of better interaction and co-ordination among different universities and colleges, to improve the governance and facilities for technical education, etc. Section 5 provides that the University shall have the powers, inter alia, to hold examinations, institute and award degrees, lay down conditions for affiliation of course and colleges, to rescind affiliation. Grant/obtaining of affiliation is a statutory mandate.

19. Thus, the grant of affiliation is a statutory function, enabling the University to discharge its core mandate of imparting education through affiliated colleges. It is non-negotiable and devoid of quid pro quo. Affiliation fees charged by the University from the Colleges is a compulsory statutory levy and not in the nature of "consideration" for supply of a service.

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20. We, therefore, hold that sub-clause (a) of sub-section (1) of section 7 *ibid* is not attracted to the function of grant of affiliation on charging of fee by the University.

21. Learned counsel for respondents pointed out that there are no words in clause (aa) of the sub-section (1) ibid to show that the activities and transactions mentioned therein have to be in the course or furtherance of business. On that basis, it is strongly argued that, even in the absence of element of 'furtherance of business', the charging of affiliation fee by the University from colleges would be covered by clause (aa) of the sub-section (1) ibid and be subject to levy of service tax. We are unable to accept the contention.

22. As observed above, the categorical mandate of clause (a), sub-section (1) of section 7 ibid is that, for the purpose of levy of tax, the supply of service must be 'in the course or furtherance of business'. As against this, of course, there are no words in clause (aa) of the sub-section (1) ibid to show that the activities and transactions mentioned therein have to be in the course or furtherance of business.

23. Clause (aa), if so read narrowly and in isolation from the aforesaid remaining provisions of Section 7 would be obviously contradictory to and destructive of clause (a) and lead to absurdity. While the categorical mandate of sub-clause (a), sub-section (1) of Section 7 *ibid* is that, for the purpose of levy of tax, the supply of service must be 'in the course or furtherance of business'. As against this, clause (aa), if read narrowly and in isolation from the aforesaid remaining provisions of Section 7 (a)

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would attract liability for service tax even if the activities and transactions mentioned in clause (aa) are otherwise than 'in the course or furtherance of business'.

24. We are of the considered opinion that a purposive and harmonious construction of these two apparently divergent sub-clauses has to be attempted by adopting the doctrine of ejusdem generis. Accordingly, we now proceed for that exercise.

25. In the 'introduction' to 'statement of objects and reasons' of the Central Goods and Services Tax Bill, culminating into the 2017 Act, it is mentioned that 'the Bill proposes a single tax to be levied on supply of goods and services or both at each stage of supply chain, ranging from manufacture or import to the retail level. It will broaden tax base as well as improve compliance. It provides for anti-profiteering clause to ensure that the business passes on the benefit of reduced tax incidence on goods and services or both to the consumers. An overall reading of the introduction and statement of objects and reasons of the Bill seems to show that the Act is intended primarily to rationalize the tax on business, trade, commerce, manufacturing, or activities of commercial character.

26. By resorting to an attempt at purposive and harmonious construction of these two apparently divergent sub-clauses, i.e., (a) and (aa), we are inclined to hold that the requirement of *'in the course or furtherance of business'* is implicit for the activities and transactions mentioned in clause (aa) for attracting liability to tax. This being so, it follows that the aforesaid other observations

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against applicability of clause (a) would equally apply against applicability of clause (aa), sub-section (1) of section 7.

27. As a result, it is held that sub-clause (aa) of sub-section (1) of section 7 ibid is also not attracted for the levy of tax on fee charged by the University from the Colleges for grant of affiliation.

28. Adverting now to Notification No. 12/2017, dated 28.06.2017, issued by the Central Government, exempting from Central the supply of certain services. The notification issued under Sections 9, 11, 15 and 148 of the CGST Act is a beneficial exemption intended to keep core educational functions outside the GST net. Entry 66 reflects the legislative intent to protect the entire educational ecosystem, including its regulatory and academic framework, recognizing education as a public function rather than a commercial activity. Entry 66, covering services under Heading 9992, must be construed purposively to include all activities integrally connected with imparting and administering education, extending beyond classroom teaching to the institutional mechanisms through which education is delivered.

28.1. Clause (a) thereof broadly exempts services provided by an educational institution to its students, faculty, and staff without restricting the nature of services. Functions performed by a university that ultimately benefit students i.e. affiliation, which enables admission, examination, and conferment of degrees are, therefore, covered. Clause (aa), exempting entrance examinations, confirms that procedural and regulatory activities forming part of the academic continuum fall within the exemption, supporting a broad reading that encompasses affiliation. Clause

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(b)(iv) exempts services "relating to admission to, or conduct of examination." Given the wide import of "relating to," affiliation being the foundational requirement for admissions and examinations, the same falls within this ambit.

28.2. Affiliation is a statutory regulatory function to maintain academic standards and integrate colleges into the university system; it is inseparable from the educational process and cannot be treated as an independent commercial supply. The scheme of Entry 66 shows an intent to exempt essential institutional processes that enable education. Excluding affiliation would defeat the purpose of keeping education tax neutral. The provisos do not exclude affiliation, and in the absence of express exclusion, a harmonious and purposive interpretation requires that it be treated as exempt to advance the object of promoting education. Accordingly, it so appears that affiliation services, being integral to admissions, examinations, and conferment of degrees, are covered by Entry 66.

29. Thus we hold that affiliation being inseparably linked to admission of students to courses, conduct of examinations, and the award of degrees, it squarely falls within the exemption Entry 66 of Notification No. 12/2017, dated 28.06.2017. Vide the said notification, services provided: (a) by an educational institution to its students, faculty, and staff; …(b) to an educational institution by way of … (iv) services relating to admission to, or conduct of examination by such institution, are exempt from the levy of service tax.

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30. Furthermore, relevant Sections 7 and 9 (liability and levy tax on supply of goods and services) of the Central Goods and Services Act, 2017, came into force from 01.07.2017. The exemption position under Notification No. 12/2017, dated 28.06.2017, is a continuation of the pre-July, 2017 regime. Thereunder, affiliation fees was exempted from and was not subject to tax. Thus, argument to the contrary, as canvassed by the respondents that Entry 66 of Notification No. 12/2017 does not expressly exempt affiliation services and must be interpreted strictly, is rejected in light of the discussion in the preceding part.

31. Circulars or executive clarifications cannot override statutory provisions or exemption notifications. In the face of statutory exemption from tax in respect of specified services, as provided vide Notification No. 12/2017, dated 28.06.2017, the reliance on CBIC Circular letter No. 151/07/2021-GST dated 17.06.2021, clarifying that services such as affiliation and accreditation are taxable, is also misplaced.

32. Reliance has also been placed by respondents on the DB judgment of Delhi High Court in ***NBEMS Vs. Union of India***[21]. In that case, the challenge was to Notification No. 12/2017, dated 28.06.2017, laying down that the services rendered by such State or Central Boards (like the petitioner), such as providing accreditation to an institution or to a professional [accreditation fee such as fee for Foreign Medical Graduate Examination (FMCG) screening test], would be chargeable to GST. It was held in that case that the services provided by the petitioner for conducting

21 2024 SCC OnLine Delhi 3029

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screening test and the fee charged for accrediting medical institutions does not fall within the scope Serial No. 66(a) and Serial No. 66(aa) of the 2017 notification and that the petitioner was snot exempted from the payment of GST in respect of said services by virtue of the aid notification.

32.1 It was noted by Delhi High Court that screening tests are not conducted as a part of the curriculum; the said tests are also not in the nature of entrance examinations but for the purpose of recognizing primary medical qualifications secured by candidates from institutions abroad; the accreditation fee is charged from medical institutions for accrediting them; these services are not covered under the 2017 notification and that the candidates appearing for the screening tests are not students of the petitioner. There are no such facts and circumstances in the present case. The said judgment is, therefore, not applicable and does not help the respondents in the instant case.

33. Affiliation of a college with a university and accreditation of a college or university are conceptually and legally distinct processes, though both operate within the broader framework of higher education governance. Affiliation refers to a formal and statutory relationship established between a college and a university, whereby the university grants the college the authority to conduct courses of study prescribed by it, admit students to those courses, and present them for university examinations. In essence, affiliation is the legal mechanism that integrates a college into the academic and examination system of the

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university, enabling the university to confer degrees upon students studying in the affiliated college.

34. Moreover, accreditation, by contrast, is a process of quality assessment and assurance carried out by specialized external bodies such as the National Assessment and Accreditation Council (NAAC) or the National Board of Accreditation (NBA), functioning under the broader regulatory framework of the University Grants Commission. The purpose of accreditation is not to create a legal relationship permitting the institution to function, but rather to evaluate whether the institution meets prescribed standards in respect of teaching, infrastructure, governance, research, student support, and outcomes. Accreditation culminates in the award of a grade or status that reflects the quality of the institution.

34.1. The fundamental difference lies in their purpose and legal effect. Affiliation is a mandatory precondition for a college to operate lawfully and to offer recognized degree programmes under a university. Without affiliation, a college cannot admit students to university courses or present them for examinations, and any degrees purportedly awarded would lack legal validity. Accreditation, on the other hand, is not a condition precedent to existence; an institution may function if duly affiliated even without accreditation, although it may face limitations in accessing grants, autonomy, or reputational advantages. Another important distinction concerns the nature of control exercised.

34.2. Through affiliation, the university exercises academic and administrative oversight over the college, including approval of courses, adherence to curriculum, conduct of examinations, and

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compliance with statutory regulations. The affiliated college operates, in effect, as an academic extension of the university. Accreditation bodies, however, do not exercise day-to-day control; they periodically assess the institution through peer review and performance metrics, focusing on continuous improvement rather than direct governance.

34.3 Affiliation is typically granted and renewed in accordance with the statutes or regulations of the university and may involve periodic inspections to ensure compliance with prescribed norms. Withdrawal of affiliation has serious consequences, potentially disabling the college from continuing its academic programmes.

34.4 Accreditation, in contrast, is granted for a fixed cycle and results in a quality grade; failure to secure or maintain accreditation affects credibility and eligibility for certain benefits but does not automatically terminate the institution's operations.

34.5. To sum up, affiliation operates in the domain of legality and academic authorization, establishing the formal link that allows a college to participate in the university's educational system. Accreditation operates in the domain of quality assurance, providing an evaluative judgment on the standards maintained by the institution. While both mechanisms are important for the proper functioning and credibility of higher education institutions, they serve different purposes and are not interchangeable.

35. Our view that affiliation is integral to education and affiliation fee is exempt from tax, is also supported by judgments rendered by other High Courts in:-

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(i) ***Madurai Kamaraj University v. Joint Commissioner,***[22]

"19. In this context, sub-clause (iv) of clause 9, referred to above, is so important, which says that services related to admission or conduct of examination by such institution are exempted services. Here, the services rendered to admission is two fold, one is the admission being made for the students in a particular institution. However, such admission can be made legally by the said institution only on the basis of the affiliation granted by the University, fixing the intake strength of each and every course for the particular academic year. Illustratively, if there is a class where the university has given permission/affiliation for 100 students, not even 101 students can be admitted by the college. Therefore, that admission of the students strictly relates to the affiliation granted by the university. Therefore, the affiliation activity is an integral part of imparting education for any student for getting qualified to get a qualification like degree or diploma. Accordingly, the services provided by the educational institution like the petitioner institution, i.e., the university, to give affiliation can be an integral part of the educational services being provided jointly, both by the University and the college. The college cannot independently function without the affiliation of the university. Therefore, for the purpose of providing the services of education, both the university as well as the college concerned, who get affiliated to the university, cannot be separated.

20. This is the purposive interpretation which is only possible because the services relating to admission and also the conduct of examination by such institution has been exempted. When we talk about the conducting of examination, it is the vehement contention of the revenue, as submitted by the learned Standing Counsel by relying upon the advance ruling referred to above, stating that exempted service on the conduct of examination is that it relates to admission to institution and anything related to examination, based on which degree, title, or diploma is conferred to the students.

21. With respect, this Court is of the concerned view that that kind of narrow or pedantic interpretation cannot be possible in the words "conduct of examination". The reason being, the very prime function of the petitioner university under the statute, under which it has been created, under Section 4(4) of the University Act, which has been quoted herein above, is to hold examinations and to confer degrees, titles, diplomas, and other academic distinctions. Therefore, holding or conducting an examination is primarily a job of the university, and the colleges affiliated to the university are only facilitators. Therefore, examinations are not conducted directly by the colleges, it is being conducted by the university, but the facilitator is the college. Therefore, the word "conduct of examination by such institution" means conduct of examination by the university and the college and not by the college alone. The examination is the examination of the university, for which facilitation is given by the college, wherein the examinations are conducted and ultimately valuation is to be done by the university and marks are awarded and degree is conferred by the university. Therefore, it is the university where the facilitator is the college, where the examination is being taken place, and therefore the word "conduct of examination" cannot have such a narrow and pedantic interpretation as has been given by the Advance Ruling

22 WP (MD) No.20502/2019, Madras High Court

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Authority in their order dated 19.11.2020, which has been, in fact, heavily relied upon by the respondent revenue. Therefore, this Court is not subscribing the said view given by the Advance Ruling Authority in their order dated 19.11.2020."

(ii) *Manonmaniam Sundaranar University v. Joint Director (GST Intelligence).*[23]

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"*7. Be that as it may, the fee collected by the petitioner will be in the nature of compulsory levy, as per the provisions of the relevant statute. The petitioner University was established by legislation. Section 24(16) of the said statute enables the Syndicate of the University to prescribe the fees to be charged for the approval and affiliation of colleges, for admission to the examinations, degrees, titles, and diplomas of the University, for the registration of graduates, for the renewal of such registration, and for all or any of the purposes specified in Section 4.*

8. There can be no doubt that a college, as per the UGC regulations, will have to be affiliated to some University. Therefore, the affiliation fees, as well as the inspection commission collected by the University, are in the nature of statutory levies. By performing those activities, the petitioner is only discharging a statutory function, and the fees collected by the petitioner cannot be amenable to e to levy of Service Tax.

9. However, the demand of the respondents with regard to renting of immovable property will stand on a different footing. The learned counsel appearing for the petitioner draws my attention to Section 4(18) of the Act to sustain the contention that the petitioner was only discharging statutory function.

10. I am unable to accept the said proposition. It is true that authorisation is given to the University to maintain the property. But then, there is clear commercial element in these transactions. The University is renting the property to other institutions and collecting rent from them. Therefore, the second respondent was justified in raising demand for the said service. However, there is no justification in levying penalty. The assessee is not a private entity. The respondents do not allege forgery or misrepresentation. I sustain the impugned order in so far as the demand for payment of Service Tax on renting of immovable property is concerned. In all other respects, it is quashed. The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed."

(iii) *Goa University vs. Joint Commissioner of Central Goods and Services Tax.*[24]

"*35. Let us turn to the present case. The Petitioner University is established under a statute, namely the Goa University Act, 1984, with the purpose of ensuring proper and systematic instruction, teaching, training, and research. The fees, such as affiliation fees, prospectus fees, migration certificate fees, sports fees, etc., received by the Petitioner are per se not commercial in nature. The State has a*

23 WP (MD) No.12879/2019, Madras High Court
24 2025 SCC OnLine Bom 1262

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duty to provide education to the people of India, and this duty is being discharged through the University.

36. We have already noticed the requirements of Section 7 of the CGST Act. Section 2(31) of the CGST Act defines the phrase "consideration," whereby money or money value, in respect of or in response to a supply, would qualify as consideration. In our opinion, affiliation is undertaken by the University in terms of statutory requirements and in discharge of public functions; therefore, the fee collected for affiliation fails to qualify as "consideration." The fees collected by the University, i.e., affiliation fees, PG registration fees, and convocation fees, are not amenable to GST, as the fees are statutory or regulatory in nature and not contractual. The same cannot be given the colour of commercial receipts, as there is no element of commercial activity involved in the subject transaction. In Assistant Commissioner of Income Tax (Exemptions) v. Ahmedabad Urban Development Authority (supra), Para 160 held as follows:

> *"Fee, cess and any other consideration' has to receive a purposive interpretation in the present context. If a fee, cess, or such consideration is collected by a State department or statutory entity in furtherance of its mandate, such collection cannot be treated as consideration towards trade or business. Therefore, regulatory activity necessitating the collection of fees or cess in terms of enacted law, or collection of amounts in furtherance of activities such as education, regulation of professions, etc., are per se not business or commercial in nature… [text retained as provided]."*

37. The concept of consideration involves an element of contractual relationship, wherein the person undertaking the activity of supply does so at the desire of another in exchange for consideration, involving a quid pro quo. In our opinion, the fee collected for affiliation will not qualify as consideration, since neither quid pro quo is involved nor is it a contractual obligation. In Principal Addl. Directorate General DGGSTI v. Rajiv Gandhi University of Health Sciences (supra), the Karnataka High Court in Para VIII held as follows:

> *"Affiliation creates a kind of umbilical cord between the affiliating body and the affiliated entity… [text retained as provided with minor grammatical corrections] … 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… The periodicity of collection of affiliation-related fees pales into insignificance."*

38. The Petitioner is actively involved in imparting education to students and acts as a regulator of education. It is by virtue of the affiliation granted by the Petitioner University to constituent colleges that such colleges conduct programmes of study. The activities undertaken by the Petitioner University are statutory and regulatory in nature.

39. The High Court of Madras in Manonmaniam Sundaranar University v. The Joint Director (GST Intelligence), 2021-TIOL-888-HC-MAD-ST, held that affiliation fees, as well as inspection commissions collected by the University, are statutory levies. It was

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held that, by performing such activities, the Petitioner is only discharging a statutory function and the fees collected are not amenable to Service Tax. From a conjoint reading of the statutory provisions and judicial precedents, the fees collected by the Petitioner University under statutory mandate for regulating affiliated colleges cannot be brought within the GST net.

40. We are in respectful agreement with the Karnataka High Court in Rajiv Gandhi University of Health Sciences (supra), which held that a University granting affiliation is also an educational institution. The Madras High Court in Madurai Kamaraj University v. Jt. Comm of GST & C.Ex., Madurai [(2021) 54 GSTL 385 (Mad.)] held that the term "educational institution" includes not only affiliated colleges but also the University itself. Even assuming that affiliation fees constitute a service, such services would fall within the exemption entry, as students of affiliated colleges are ultimately students of the University that grants the degree.

41. Without affiliation from the Petitioner University, constituent colleges are not permitted to admit students for courses. Further, examinations are conducted by the Goa University, leading to the award of degrees. Hence, the fees collected from colleges are covered by the exemption notification. The activity of collecting affiliation fees is exempt from GST and is therefore not liable to tax.

42. Goa University is actively involved in imparting education and regulating education. Section 24 of the Goa University Act empowers the University to frame ordinances relating to admission, enrolment, and fees for admission and examination. Affiliation forms the basis upon which affiliated colleges conduct courses, examinations, and degree-awarding processes. The term "education" should not be narrowly restricted to classroom instruction; rather, it includes curriculum design, affiliation to maintain educational standards, and conferral of degrees."

36. To support tax ability of affiliation fees, the respondents have relied upon Advance Ruling in Bharathiar University[25], vide which the composite supply comprising sale of application forms, course registration, inspection, and related charges were held to be not exempt under Sl. No. 66 of Notification No. 12/2017-C.T. (Rate), dated 28.06.2017.

37. Reliance is also placed by respondents on a judgment of the Telangana High Court in ***Care College of Nursing vs. Kaloji Narayana Rao University of Health Sciences (supra)***. However, in our view, the same do not advance their case in any manner.

25 Authority for Advance Ruling, Tamil Nadu

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38. In ***Care College of Nursing***, a Division Bench of the Telengana High Court observed that, since the inspection and affiliation fee charged by the respondent University from the affiliated colleges had not been specifically exempted from tax, the benefit of exemption under Notification No. 12/2017, dated 28.06.2017, could not be extended to the petitioners.

38.1 With utmost respect to the learned Division Bench, we are of the opinion that a perusal of Notification No. 12/2017, dated 28.06.2017, in background of aforesaid fact situation, leaves no manner of doubt that the grant of affiliation by the University to it's constituent colleges clearly falls within the scope exemption under Entry 66 of Notification No. 12/2017, dated 28.06.2017, the same being services provided (a) by an educational institution to it's students and (b) to an educational institution by way of …(iv) services relating to admission to, or conduct of examination by such institution. The preceding words 'relating to' are significant and show that the import of relevant entry is wide and comprehensive and not narrow or restrictive.

39. In ***Goa University vs. Joint Commisioner (supra)***, a Division Bench of the Bombay High Court noted that, without the affiliation from the petitioner University, the constituent colleges are not permitted to admit students for the courses. Further, the examination is conducted by the Goa University, which in turn leads to award of degree to the students. It was held that, hence, the fee which are collected from the colleges are clearly covered by the Entry No. 66 of the exemption notification No. 12/2017-CT(R), dated 28.06.2017, and the activity of the Goa University in

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collecting the affiliation fee is exempt from GST and hence the fees collected by the Goa University is not liable to tax. The situation in the present case is analogous. We are in respectful agreement with the aforesaid view taken by the learned Division Bench of the Bombay High Court. Accordingly, we hold that the activity of the petitioner University in collecting the affiliation fee is exempt from GST and hence the affiliation fees collected by the petitioner University is not liable to tax.

40. Before concluding, there is another aspect of the matter which deserves to be noted i.e. demand for tax has been raised by the respondents against the petitioner University (paid substantially, though under protest). Obviously, the petitioner is an aggrieved party, entitled to challenge the legality of demand. Merely because the liability, if any, for payment of tax on affiliation fee would/could ultimately fall on the shoulders of the concerned colleges, that does not negate the locus standi of the petitioner to challenge the demand. We, therefore, reject the contention of the respondents that the petitioner has no locus standi to file the writ petition challenging the legality of demand.

SUMMARY

41. Affiliation is a statutory and regulatory function intrinsically connected with imparting education, conduct of examinations, and conferment of degrees, and does not amount to a commercial activity. Colleges merely act as facilitators or extended arms of the University; the real beneficiaries of affiliation are students, who are ultimately conferred degrees by the University.

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41.1. Affiliation is a mandatory, non-negotiable, and devoid of quid pro quo; hence, affiliation fees are a compulsory statutory levy and not "consideration".

41.2. We are thus unable to persuade ourselves with the stand taken by the respondent that affiliation is a distinct service rendered by the University to colleges for consideration and is taxable at 18% under Heading 9992. Even assuming affiliation to be a service, it squarely falls within the exemption under Entry 66, being inseparably linked to admission and conduct of examinations. The exemption position under GST is a continuation of the pre-GST service tax regime, under which affiliation fees were never subjected to tax.

41.3. Hence, argument to the contrary, as canvassed by the respondents that Entry 66 of Notification No. 12/2017 does not expressly exempt affiliation or accreditation services and must be interpreted strictly, is rejected in light of the discussion in the preceding part.

FINDINGS

42. Issue (i): Whether Grant of Affiliation is a Supply of Service-

Section 7 of the CGST Act contemplates supply only when an activity is carried out in the course or furtherance of business. Grant of affiliation is a statutory function enabling the University to discharge its core mandate of imparting education through affiliated colleges. Applying the doctrine of ejusdem generis to Section 2(17), affiliation cannot be equated with trade, commerce, or any activity of commercial character. Accordingly, we hold that grant of affiliation does not constitute a "supply of service".

42.1. Issue (ii): Whether Affiliation Fees Constitute Consideration-

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Affiliation is compulsory for colleges; there is no element of choice, bargaining, or reciprocity. The fee is a statutory levy, not a payment for a negotiated service. We thus hold that in absence of quid pro quo, the essential element of "consideration" is missing.

42.2. Issue (iii): Applicability of Exemption under Entry 66.

Even assuming affiliation to be a service, it is inseparably connected with: curriculum approval, admission of students, conduct of examinations, and conferment of degrees. Students admitted through affiliated colleges are, in law, students of the University. We hold that entry 66 must be interpreted purposively to cover services forming the backbone of educational delivery, including affiliation.

42.3. Issue (iv): Validity of GST Levy :-

Circulars or executive clarifications cannot override statutory provisions or exemption notifications. Levy of GST on affiliation fees results in indirect taxation of education, which is impermissible. We hold that the impugned levy is therefore without authority of law.

CONCLUSION

43. As an upshot of the what is reasoned and discussed in the preceding part, it is held that grant of affiliation by a University is a statutory and regulatory function and does not constitute a supply of service under the CGST Act. Affiliation fees are not consideration for any taxable activity. Even otherwise, affiliation services are exempt under Entry 66 of Notification No. 12/2017-CT (Rate). Levy and collection of GST on affiliation fees is illegal and unsustainable.

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44. Before we part, though we have already opined as above, but it bears reiteration, notwithstanding the views already recorded, that under the Affiliation Bye-laws of the Central Board of Secondary Education, "affiliation" is expressly understood as an institutional arrangement enabling a school to prepare its students for admission to the Board examinations. A careful reading of the Bye-laws makes it abundantly clear that the conditions governing affiliation of schools with the Board are, in substance and effect, pari materia with those governing affiliation of colleges with a university. These conditions include adherence to the prescribed curriculum, maintenance of academic and infrastructural standards, and presentation of students for evaluation by the examining body.

44.1. Pertinently, by Revenue Notification No. 14/2018 dated 26.07.2018, a clarification was introduced in the parent Notification No. 12/2017 whereby Central and State Educational Boards were deemed to be "educational institutions" for the limited purpose of providing services by way of conduct of examinations to students.

45. Thus, in this backdrop, any attempt to deny universities similar treatment at par with Central and State Educational Boards is manifestly arbitrary and ex facie discriminatory, particularly when universities equally discharge the function of conducting examinations for students of affiliated colleges as an integral step towards conferment of degrees.

46. Consequently, aside all above, for this reason too, the so-called service of affiliation rendered by a university to its affiliated

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colleges squarely falls within the ambit of exempt services under Entry 66(a) as well as Entry 66(b)(iv).

RELIEF

47. D.B. CWP No.9556/2024 and all other writ petitions as per Appendix 'A' are allowed. Proposed levy and demand of GST on affiliation fee is held to be unsustainable in law. Impugned show cause notice dated 26.12.2023 issued by Office of Commissioner, Central Excise & CGST Commissionerate is quashed. It is also directed that subject to the verification that the burden of the GST on affiliation fee has not been fastened / recovered from the students by factoring it in the tuition fee, any amount of GST on affiliation fee already paid by the petitioner shall be refunded within four months, failing which the same shall also attract interest @ 7% per annum from the date of payment till refund.

(YOGENDRA KUMAR PUROHIT),J **(ARUN MONGA),J**

Anshul/-

Appendix "A"

S. No.	Writ Petition Number	Case Details	Relief Claimed
1.	2906/2022	TRIBAL AREA PRIVATE COLLEGE WELFARE SOCIETY V/S UNION OF INDIA & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
2.	7559/2022	SWA POSHIT SHIKSHAK PRASHIKSHAN MAHAVIDYALAYA SAMITI V/S MOHANLAL SUKHADIA UNIVERSITY, UDAIPUR & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
3.	8814/2022	NIJI COLLEGE SAMITI JODHPUR SAMBHAG V/S JAI NARAIN VYAS	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.

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		UNIVERSITY, JODHPUR & Ors.	
4.	9514/2022	NIJI COLLEGE SHIKSHAN SANSTHAN WELFARE SOCIETY THE JAI NARAIN VYAS UNIVERSITY, JODHPUR & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
5.	19516/2022	SWAIM SEVI SHIKSHNIK SANSTHAN SANRAKSHAN SANSTHAN STATE OF RAJASTHAN & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
6.	6732/2023	AKHIL BHARTIYA NIJI SANSTHAN FEDERATION DR. SARWAPALLI RADHAKRISHAN AYURVED UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
7.	6867/2023	CHOUDHARY PARMARAM GODARA AGRICULTURE COLLEGE UNION OF INDIA & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
8.	7284/2023	NIJI COLLEGE SHIKSHAN SANSTHAN WELFARE SOCIETY THE JAI NARAIN VYAS UNIVERSITY, JODHPUR & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
9.	7701/2023	RAJASTHAN ENGINEERING COLLEGES SOCIETY RAJASTHAN TECHNICAL UNIVERSITY, KOTA & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
10.	7702/2023	AKHIL BHARTIYA NIJI SANSTHAN FEDERATION RAJASTHAN UNIVERSITY OF VETERINARY AND ANIMAL SCIENCES, BIKANER & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
11.	8494/2023	RAJASTHAN PRADESH NIJI COLLEGE SANGH THE MAHARSHI DAYANAND SARASWATI UNIVERSITY, AJMER, RAJASTHAN & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
12.	8830/2023	SWAPOSHIT SHIKSHAK PRASHIKSHAN MAHAVIDYALAY SAMITI MOHANLAL SUKHADIA UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
13.	8839/2023	SORABH AGRICULTURE COLLEGE	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO

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		THE AGRICULTURE UNIVERSITY & Ors.	COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
14.	8900/2023	SHOURABH COLLEGE OF VETERINARY SCIENCE THE RAJASTHAN UNIVERSITY OF VETERINARY AND ANIMAL SCIENCES & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
15.	8999/2023	RAJASTHAN COLLEGE OF ANIMAL HUSBANDRY STATE OF RAJASTHAN & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
16.	10797/2023	NIJI COLLEGE SHIKSHAN SANSTHAN WELFARE SOCIETY THE JAI NARAIN VYAS UNIVERSITY, JODHPUR & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
17.	3604/2024	SWAIM SEVI SHIKSHNIK SANSTHAN SANRAKSHAN SANSTHA THE STATE OF RAJASTHAN & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
18.	8877/2024	SHRI SHYAM MAHILA MAHAVIDYALAYA THE MAHARAJA GANGA SINGH UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
19.	8879/2024	M.D.M. HIGHER EDUCATION COLLEGE THE MAHARAJA GANGA SINGH UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
20.	8881/2024	M.D. COLLEGE OF EDUCATION THE MAHARAJA GANGA SINGH UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
21.	8883/2024	BABY HAPPY MODERN P.G. COLLEGE THE MAHARAJA GANGA SINGH UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
22.	8885/2024	MURLI SINGH YADAV MEMORIAL PRASHIKSHAN SANSTHAN THE MAHARAJA GANGA SINGH UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
23.	8887/2024	RYAN COLLEGE FOR HIGHER EDUCATION THE MAHARAJA GANGA	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.

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		SINGH UNIVERSITY & Ors.	
24.	8893/2024	M.D.M. CO. EDUCATION B.ED. COLLEGE THE MAHARAJA GANGA SINGH UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
25.	8907/2024	BALAJI COLLEGE OF EDUCATION THE MAHARAJA GANGA SINGH UNIVERSITY & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 30/12/2021.
26.	18070/2024	ALL INDIA ASSOCIATION OF UNAIDED PRIVATE INSTITUTIONS (AIAUPI) THE RAJASTHAN UNIVERSITY OF HEALTH SCIENCES & Ors.	QUASHING OF LEVY OF SERVICE TAX BY THE UNIVERSITY PURSUANT TO COMMUNICATION/ LETTER/ NOTICE DATED 06.01.2024, 07.12.2023 AND 04.11.2023
27.	11791/2025	MAHARAJA GANGA SINGH UNIVERSITY UNION OF INDIA & Ors.	QUASHING OF SHOW CAUSE NOTICE DATED 12.03.24 ISSUED BY COMMISSIONER, CGST & C. EXCISE, JODHPUR AND NOTICE-IN-ORIGINAL DATED 28.01.2025 PASSED BY COMMISSIONER, CGST & C. EXICSE, JODHPUR.

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