

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

PRINCIPAL BENCH - COURT NO.3

Service Tax Appeal No.50713 of 2019

[Arising out of Order-in-Original No.36/COMMR/ST/BPL-II/2018 dated 19.12.2018 passed by the Principal Commissioner, Central Tax Customs & Central Excise, Bhopal]

Rajeev Gandhi Proudhyogiki Vishwavidyalay,
Airport Road, Gandhi Nagar, Bhopal

Appellant

VERSUS

**The Principal Commissioner, Central Tax,
Customs & Central Excise, Bhopal**
GST Bhawan, 35-C, Administrative Area,
Arera Hills, Bhopal

Respondent

APPEARANCE:

Shri Sandeep Mukherjee, Chartered Accountant for the appellant.
Shri S.K.Meena, Authorised Representative for the respondent.

CORAM:

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

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING:03.04.2025

DATE OF DECISION: 26.06.2025

FINAL ORDER NO.50938/2025

HEMAMBIKA R. PRIYA:

The present appeal is filed by Rajeev Gandhi Proudhyogiki Vishwavidyalay¹ against the impugned Order-in-Original No. 36/COMMR/ST/BPL-II/2018 dated 19.12.2018 passed by the Principal Commissioner, Central Tax Customs & Central Excise, Bhopal, wherein

1. the Appellant

the demand of service tax of Rs.6,07,01,622/- was confirmed alongwith interest and penalty under section 75 & 78 of the Finance Act, 1994.

2. The brief facts of the case are that the Appellant is engaged in imparting higher education to students. They were not registered with service tax department for payment of service tax. Intelligence was gathered by the Revenue department that the appellant was granting affiliation to various colleges for which they were collecting charges, viz. affiliation fees, inspection fees, no objection fees from such affiliated colleges. The Department opined that the amount so collected by the appellant was not in the negative list Section 66D of the Act nor was there any notification to exempt the same. Hence, the services provided by the Appellant were taxable. The Appellant had also received rental income for renting out auditorium/buildings located in the university campus to banks, Post Offices, Canteen, Photo copy shops etc.

3. A Show Cause Notice dated 26.03.2018 was issued to the appellant for demand of Service tax of Rs. 6,07,01,622/- [60670128 (on affiliation fees, inspection fees and NOC fees) + Rs.31494 (on rental income)] along with applicable interest and alleging penalty under section 75 & 78 of the Finance Act, 1994. The Show Cause Notice was adjudicated by the Commissioner of CGST & Central Excise, Bhopal vide Order-in-Original No.36/Commr/ST/BPL-II/2018 dated 19.12.2018, wherein adjudicating authority has confirmed the demand

of Rs.6,07,01,622/- imposed penalty of Rs.6,07,01,622/- under Section 78 of the Finance Act, 1994.

4. Being aggrieved, the Appellant has filed the present Appeal before this Tribunal against the said order-in-original.

5. Learned counsel submitted that the order has been passed in ignorance of the facts of the case and is therefore not tenable under law. The order has been passed in violation of the provisions of the Finance Act, 1994 and the Rajeev Gandhi Proudhyogiki Vishwavidhyalay Adhiniyam, 1998 and is therefore not tenable under law. The order is erroneous since it has levied penalty erroneously. Learned counsel further submitted that the issue was no more *res integra* in the light of the decision of the Hon'ble Supreme Court in the case of **Principal Additional Director General & Ors. vs. M/s. Rajiv Gandhi University of Health Sciences²**.

6. Learned Authorised Representative reiterated the findings of the impugned order. However, in all fairness, learned Authorised Representative conceded that the issue relating to affiliation fee is covered by the decisions in **Principal Additional Director General & Ors. vs. M/s. Rajiv Gandhi University of Health Sciences (supra)**.

7. We have heard the learned counsel for the appellant and the learned Authorised representative for the Department. We note that the issue relating to affiliation fee is no longer *res integra* and has

2. SLP (Civil) Diary No.59470 of 2024 dated 24.01.2025

been decided in favour of the appellant by the Tribunal in the case of **M/s Jiwaji Vishwavidhyalaya versus Commissioner, CGST & CE, Bhopal**³. The Tribunal relied on the decision of the Karnataka High Court in **Rajiv Gandhi University of Health Sciences, Karnataka**⁴ where it has been held that the act of a University in granting affiliation to a private college has to be considered as a service in furtherance of providing education and the decision of the department to consider otherwise is erroneous. The view expressed by the learned Single Judge was affirmed by the **Division Bench of the High Court**⁵. We concur with the view taken by the High Court and the same is squarely applicable to the controversy in the present case.

8. The learned Authorised Representative relied on the decision of the Madras High Court in **Pondicherry University versus Joint Commissioner of GST & CE**⁶, where the learned Single Judge had dismissed the writ petition challenging the levy of service tax on affiliation fees. However, we find that the decision relied on by the appellant in the case of **Rajiv Gandhi University** by the Division Bench of the High Court of Karnataka was challenged by the revenue in SLP(C)D No.59470/2024 before the Supreme Court and vide Order dated 24.01.2025, it was dismissed at the miscellaneous stage observing as under:

"2. Having heard the learned Additional Solicitor General appearing for the petitioners and having gone through the

3. Final Order No. 50518/2025 dated 17.04.2025
4. 2022 (64) GSTL 465 (Kar.)
5. 2024 (22) Centax 526 (Kar.)
6. 2024 (14) Centax 160 (Mad.)

materials on record, we see no reason to interfere with the impugned order passed by the High Court.

3. *The Special Leave Petition is, accordingly, dismissed."*

9. The relevant paras of the said decision are reproduced below hereinafter:

"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 therefore 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 v. 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 v. RENGHA 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', 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 V. 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.”

10. As regards the service tax on rental income, as the affiliation fee has been held as not taxable, hence the appellant enjoys the threshold exemption on such rental income. Hence, the demanded is also set aside along with the penalties imposed on the appellant.

11. In view of the above discussions, the impugned order-in-original is set aside and the appeal is allowed.

(Pronounced in the open court on **26.06.2025**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)