



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 5205 OF 2024 (T-RES)

BETWEEN:

1. BENGALURU CITY UNIVERSITY
CENTRAL COLLEGE CAMPUS
DR B R AMBEDKAR VEEDHI
BANGALORE-560001
REP BY ITS REGISTRAR

...PETITIONER

(BY SRI. RAJENDRA KUMAR SUNGAY T P., ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(ENFORCEMENT)-09 SOUTH ZONE,
OFFICE OF THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES (ENFORCEMENT)
SOUTH ZONE, 'B' BLOCK, 2ND FLOOR,
ROOM 208, V.T.K.-2 BUILDING,
RAJENDRANAGARA, KORAMANGALA
BENGALURU-560047

...RESPONDENT

(BY SRI.K.HEMA KUMAR, AGA)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER OF ADJUDICATION (PASSED U/S 73(9) OF KGST/CGST ACTS 2017) BEARING NO.ADCOM/ENF/SZ/ACCT-09/ORDER-03/2023-24, DATED 28.11.23 ISSUED BY THE RESPONDENT (VIDE ANNEXURE-E) AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:





CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner is before this Court seeking the following prayers:

"a) Issue a writ in the nature of certiorari to quash the Order of Adjudication (passed u/s 73(9) of KGST/CGST Acts - 2017) bearing No.ADCOM/ENF/SZ/ACCT-09/Order-03/2023-24, dated 28.11.2023 issued by the Respondent (Vide ANNEXURE-E);

b) Declare that the respondent has no authority under the provisions of KGST / CGST Act 2017 to demand the tax from the petitioner university in respect of affiliation fee collected by it from the institutions/colleges and;

c) Grant such other relief/s as deemed fit, in the fact and circumstances of the case, in the interest of justice and equity."

2. The petitioner is Bangalore City University. It is aggrieved by the adjudication orders dated 28.11.2023 passed under Section 79(9) of the KGST/CGST Acts, 2017.

3. Learned counsel for the petitioner submits that the issue in the *lis* stands answered by the judgment rendered by the Co-ordinate Bench in the case of ***M/s. Bengaluru North University vs. Joint Commissioner of Central Tax and***



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others in **W.P.No.4254/2024 and connected matters**

disposed of on **22.04.2025**, wherein it held as under:

"10. Before proceeding further, it would be apposite to state that the issues involved in the present petitions stand directly and squarely covered and answered in favour of the petitioners-University in the case of **Goa University Vs. Joint Commissioner of Central Goods and Service Tax & Ors- W.P.No.723/2024** dated **15.04.2025**, in which all the judgments, circulars, notifications etc., relied upon by the petitioners as well as the respondents were considered and the petition was allowed by the Hon'ble Division Bench of Bombay High Court which upheld the claim of the petitioner and quashed the impugned Show Cause Notices/Orders therein.

11. After having referred to the aforesaid judgment of the Bombay High Court in **Goa University's case supra**, I deem it appropriate to elaborate further for the purpose of disposal of the present petitions. Accordingly, the following Issues arise for consideration in the present petitions:

(i) Whether activities of Universities are commercial in nature and can be termed as 'supply' in the course or furtherance of business?

(ii) Whether activities incidental to education can be brought to tax under the GST regime on the ground that it amounts to a business?



(iii) *Whether the fee collected by the Universities is 'consideration'?*

(iv) *Whether the activities undertaken by the Universities are statutory and regulatory in nature?*

(v) *Whether the services provided by the Universities are exempt from GST in terms of Entry No. 66 of Notification No. 12/2017-CT (R) dated 28.06.2017?*

(vi) *Whether the impugned Circulars dated 17.06.2021 and 11.10.2024 are legally valid ?*

(vii) *Whether the affiliation fees, PG registration fees, admissions fees, convocation fees and other sums collected by the petitioners-Universities from the College/students would be exigible to payment of GST ?*

(viii) *Whether the impugned Show Cause Notices and Orders warrant interference by this Court in the present petitions?*

Re: Issue No. (i) - Whether activities of Universities are commercial in nature and can be termed as 'supply' in the course or furtherance of business?

12. Before adverting to the aforesaid issue, it is relevant to refer to the relevant statutory provisions of the CGST/KGST Act.

Section 9 of the CGST Act reads as under:
Levy and collections



(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(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.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that *where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:*

Provided further *that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.*

Section 7 of the CGST Act, reads as under:

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;



(b) import of services for a consideration whether or not in the course or furtherance of business;[and]

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration;[****]*

*(d) [*****].*

(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.

Section 2(17) of the CGST Act, 2017 reads as:

"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;*



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(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;

12.1 Section 7(1) of the CGST/KGST Act provides for the scope of supply; it includes all forms of supply of goods and 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.

12.2 On the aspect of the nature of activities carried out by a University, in **Goa University's case supra**, it was held as under:

" **27.** The GST is a value added tax which applies to 'all commercial activities' involving production of goods and provisions of services. GST is a destination-based consumption tax as it is borne by the consumer/end user in the supply chain.

28. In *Laxmi Engineering Works v. P.S.G. Industrial Institute* - (1995) 3SCC 583, the Supreme Court held that the term "commercial activity" in turn has been held to mean something pertaining to commerce or connected with or engaged in commerce; mercantile; having profit as the main aim.

29. The term 'education' has been neither defined under the CGST Act/SGST Act nor under the Constitution of India. The Supreme Court in *Gujarat University v.*



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Krishna Ranganath Mudholkar - AIR 1963 SC 703 held that the expression "education" is of wide import and includes all matters relating to imparting and controlling education. The expression 'education' has been interpreted by the Hon'ble Supreme Court in various cases. In Sole Trustee, Lok Shikshana Trust v. CIT (supra), the term "education" was held to mean (para 5) the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. What education connotes is the process of training and developing the knowledge, skill, mind and character of students by formal schooling.

30. *In T.M.A. Pai Foundation v. State of Karnataka (supra), Their Lordships observed that education plays a cardinal role in transforming a society into a civilized nation. It accelerates the progress of the country in every sphere of national activity. No section of the citizens can be ignored or left behind because it would hamper the progress of the country as a whole. It is the duty of the State to do all it could, to educate every section of citizens who need a helping hand in marching ahead along with others.*

31. *In P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537, the Hon'ble Supreme Court has held thus:*

"81. 'Education' according to Chambers Dictionary is 'bringing up or training;... strengthening of the powers of body or mind; culture'.

82. In Advanced Law Lexicon (P. Ramanatha Aiyar, 3rd Edn., 2005, Vol. 2), 'education' is defined in very wide terms. It is stated:



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'Education is the bringing up; the process of developing and training the powers and capabilities of human beings. In its broadest sense the word comprehends not merely the instructions received at school, or college but the whole course of training Moral, intellectual and physical; is not limited to the ordinary instruction of the child in the pursuits of literature. It also comprehends a proper attention to the moral and religious sentiments of the child. And it is sometimes used as synonymous with "learning".

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84. In 'India-Vision-2020' published by the Planning Commission of India, it is stated (at p. 250):

'Education is an important input both for the growth of the society as well as for the individual. Properly planned educational input can contribute to increase in the gross national products, cultural richness, build positive attitude towards technology and increase efficiency and effectiveness of the governance. Education opens new horizons for an individual, provides new aspirations and develops new values. It strengthens competencies and develops commitment. Education generates in an individual a critical outlook on social and political realities and sharpens the ability to self-examination, self-monitoring and self criticism'."

32. In *State of Tamil Nadu v. K. Shyam Sunder*, (2011) 8 SCC 737, the Supreme Court emphasized the importance of common curriculum and prescription thereof as an integral and essential requirement of education. In *Indian Medical Assn. v. Union of India*, (2011) 7 SCC 179 (Para 232), it is observed that education is one of the principal human activities to establish a humanised order in our country. Its ontological specification is simple: every individual, in every group, is worthy of being educated.

33. Significant observations are made in *Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel*, (2012) 9



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SCC 310 (Para 21) that education not only means learning how to write and read alphabets or get mere information, but it means to acquire knowledge and wisdom so that one may lead a better life and become a better citizen to serve the nation in a better way. While laying emphasis on the examination, the Hon'ble Supreme Court in Nidhi Kaim v. State of Madhya Pradesh (2016) 7 SCC615, held that the examination is considered as a common tool around which the entire education system revolves.

34. *The High Court of Gujarat in Sahitya Mudranalaya Private Limited v. Additional Director General (supra), while examining the issue as to whether services in relation to examination conducted by the Education Boards were exempted from service tax, held that conducting of examinations are indispensable part of education process. The University confers degrees/diplomas etc. after holding examinations. Unless a student holds a certificate or degree issued by a Board/University, his or her school education would not be complete, similarly, without a degree or diploma being conferred by the University, college education would not be complete. Therefore, examinations are an indispensable component of education, without which such education is incomplete. Therefore, to say that Boards/Universities are not "educational institutions" would amount to divorcing examinations from education. Similar was the view taken by the Karnataka High Court in Principle Addl. Directorate General DGGSTI v. Rajiv Gandhi University of Health Sciences (supra).*

35. *Let us turn to the present case. The Petitioner*



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University is creature of statute i.e., the Goa University Act, 1984. The Petitioner was established with a purpose of ensuring proper and systematic instruction, teaching, training and research. The fees such as affiliation fees, prospectus fees and migration certificate fees, sports fee etc. received by the Petitioner are per se not commercial in nature. The State has a duty to provide education to the people of India. This duty is being discharged through the University.

58. Learned Senior Advocate for the Petitioner University is justified in contending that where the main activity is not a business then any incidental or ancillary transaction held, would normally amount to business only if an independent intention to carry on business in the incidental or ancillary transaction is established. The burden to prove such intention rests on the Department. Hence, where the main and dominant activity of the University is education, it cannot be termed as business activity to demand tax. We draw support from the decision of the Supreme Court in Commissioner of Sales Tax v. Sai Publication Fund, (2002) 4 SCC57 for the view that we take.

61. *For the reasons aforementioned we are of the opinion that the activities of the petitioner University not being commercial in nature, are not amenable to GST”.*

12.3 On a careful analysis of the above, I am in agreement with the aforesaid view of the Bombay High Court; in addition thereto, I deem it appropriate to supplement the same as hereunder:

That the term ‘business’ is defined in Section 2(17) to include trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit; it is clear that



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education per se cannot fit into the above terminology of trade, commerce, manufacture, profession, adventure, wager or any other similar activity; the term "any other similar activity" pertains only to wager and not to the rest of the clause as it is separated by two commas.

12.4 Further, as per the dictum of the Apex Court in **T.M.A Pai's case supra**, while interpreting Article 19 of the Constitution, their Lordships held that education is neither trade nor business but could be covered under the term "occupation"; vocation which keeps company with trade, commerce etc., will have to be interpreted *noscitur a sociis* as meaning gainful occupation which partakes the nature of words such as trade, commerce, etc., and generally does not cover education.

12.5 Further, in the decision of the Delhi High Court in the case of **Central Electricity Regulatory Commission vs The Additional Directorate General of GST Intelligence - 2025(1) TMI 887 (Delhi)**, it was held that the regulatory functions discharged by statutory bodies do not fall within the scope of the word 'business' as defined in Section 2(17)(i) as hereunder:

27. The definition clauses referred to above assume significance in light of the language employed in Section 7 and which speaks of the supply of goods, services or both provided by a person for consideration being in the course or furtherance of business. When we revert to Section 2 (17), we find that the statute defines the said expression to mean any trade, commerce, manufacture, profession, vocation, adventure, wager or



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any other similar activity irrespective of whether it be for a pecuniary benefit or not. Clauses (b) and (c) of Section 2 (17) are again coupled to clause (a). Clause (d) of Section 2 (17) is concerned with the supply or acquisition of goods, while clauses (e), (f), (g) and (h) would also have no application whatsoever considering the nature of activities which are contemplated therein.

28. That thus leaves us to consider whether the power to regulate, as exercised, could be said to be an activity akin to trade, commerce, manufacture, profession, vocation, adventure, voyager and which are activities enumerated in Section 2 (17) (a). We find ourselves unable to fathom how a power of regulation which stands statutorily vested in a Commission could be countenanced to fall within the ambit of any of those activities. It becomes pertinent to note that while Section 2 (17) (i) also encompasses activities or transactions undertaken by the Central or State Governments or a local authority, the said clause too would have no application since a Commission which comes to be constituted under the Electricity Act cannot be equated with the Central or State Governments. The expression "local authority" is defined by Section 2 (69) to include local bodies such as Panchayats, Municipalities, Municipal Committees, Cantonment Boards or Regional Councils and other authorities which may come to be constituted in terms of Articles 371, 371A, 371J or the Sixth Schedule to the Constitution. A Commission which is constituted under the Electricity Act would undisputedly not fall within the ken of such authorities.



29. The word "consideration", in our considered opinion, would necessarily have to draw colour and meaning from Section 2(31) and which speaks of payment made in respect of, in response to or for the inducement of a supply of goods. Suffice it to note that it was not even remotely sought to be contended by the respondents that the payments in the form of fee as received by Commissions were an outcome of an inducement to supply goods or services.

30. More importantly we find that by virtue of Section 7, a supply would necessarily have to be of goods or services not only for consideration but more importantly in the course or furtherance of business. We have in the preceding parts of this decision clearly found that the regulatory function discharged by Commissions would clearly not fall within the scope of the word "business" as defined by Section 2 (17). Thus, even if the fee so received by such Commissions were to be assumed as being consideration received, it was clearly not one obtained in the course or furtherance of business. We are thus of the considered opinion that the view as expressed by the respondents in the SCNs' impugned before us are rendered wholly arbitrary and unsustainable."

12.6 In view of the aforesaid, I am of the view that the activities of Universities are not commercial in nature and cannot be termed as 'supply' in the course or furtherance of business.

Issue No.(i) *is accordingly answered in favour of*



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the petitioners-Universities.

Re: Issue No. (ii) - Whether the activities incidental to education can be brought to tax under the GST regime on the ground that it amounts to a business?

13. At the outset, it is significant to note that from the definition of the first three clauses contained in Section 2(17), it would become clear that activities such as trade, commerce, etc., would be business and activities incidental, in connection with or ancillary to such trade, commerce, etc., would also be business. If the activity falls within clause 2(17)(a), then incidental activities or activities in connection or ancillary activities to such business would be covered by Section 2(17)(b). However, if the activity does not fall at all within sub clause (a), then the question of attracting sub clause (b) does not arise in the first place. In other words, if the activity of the University does not fall within clause (a), the question of taxing ancillary, etc., activities under clause (b) would never arise.

13.1 Additionally, I find that this question was answered in the following manner by the Bombay High Court in **Goa University's case supra**:

" 57. The GST has been demanded based on the income recorded in the financial statements, however the activity has to qualify supply to be made liable to GST.



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*The amounts that are chargeable to tax arise on account of supply of goods or services or both and in the absence of this, the show cause notice would be bad on jurisdictional facts. We rely on the decision of the **Supreme Court in Girdhari Lal Nannelal Vs Commissioner of Sales Tax (1976) 3 SCC 701 (Para 7), Haleema Zubair Vs State of Kerala 2009 (13) STR 113 (SC) (Para 22) and P.C. Ittymathew & Sons Vs Deputy Commissioner of Sales Tax (2000) 9 SCC 318** in support of our observations.*

58. The petitioner University has reported income in the income and expenditure account and its schedules and sub-schedules have been listed and the GST is demanded on the same without establishing as to how these incomes would be liable to GST. The GST is proposed on the sale of prospectus, sale of old newspaper, various fees towards sports, eligibility certificate, migration certificate, admission fee etc., received from students are also taken for the purpose of demand. Further, demand of tax is also proposed on interest income earned by the University. The Petitioner University has also tabulated the details of income which are listed for tax and also provided the reasons why such income cannot be subjected to tax. Learned Senior Advocate for the Petitioner University is justified in contending that where the main activity is not a business then any incidental or ancillary transaction held, would normally amount to business only if an independent intention to carry on business in the incidental or ancillary transaction is established. The burden to prove such intention rests on the Department.



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Hence, where the main and dominant activity of the University is education, it cannot be termed as business activity to demand tax. We draw support from the decision of the **Supreme Court in Commissioner of Sales Tax Vs. Sai Publication Fund, (2002) 4 SCC 57** for the view that we take.

59. Incomes such as rent/license fee received from teachers or staff are clearly exempt from tax being residential in nature and being services rendered to faculty. The interest income is exempt from tax in terms of serial 27 of Notification 12/2017-CT(R) dated 28.06.2017.

13.2 I am in respectful agreement with the view expressed above and for the reasons given by me independently in the aforesaid paragraph and the reasons given by the Bombay High Court and consequently, I hold that the income derived from students and colleges and other income incidental to the main functions of the University cannot be brought to tax under GST on this principle.

Issue No. (ii) is accordingly answered in favour of the petitioners-Universities.

Re: Issue No. (iii)- Whether the fee collected by the Universities is 'consideration' ?

14. Before adverting to the aforesaid issue, the definition of 'consideration' as defined under CGST/KGST Act, 2017 reads as under:

Section 2(31) – definition of 'consideration' reads as:



2(31) "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

14.1 The Bombay High Court in the case of **Goa University's case supra**, observed that the fee collected by the University cannot be termed as 'consideration' as contemplated under Section 7 of the CGST Act, 2017. The Court held as under:

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' in terms whereof, the money or money value in respect or in response to the supply would be a consideration. In our opinion, the



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affiliation is undertaken by the University in terms of the requirement of the statute and in discharge of public functions, the fee so 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 in as much as the fees collected by the University is not a consideration as contemplated in section 7 of CGST Act/GGST Act, as the fees are collected in the nature of statutory fee or regulatory fee in terms of the statutory provisions and not contractual in nature. The same cannot be given a 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/s. Ahmedabad Urban Development Authority (supra), in Para 160, it is held thus:-

"Fee, cess and any other consideration" has to receive a purposive interpretation, in the present context. If fee or cess or such consideration is collected for the purpose of an activity, by a State department or entity, which is set up by the statute, its mandate to collect such amounts cannot be treated as consideration towards trade or business. Therefore, regulatory activity, necessitating fee or cess collection in terms of the enacted law, or collection of amounts in furtherance of activities such as education, regulation of profession, etc. are per se not business or commercial in nature. Likewise, statutory boards and authorities, who are under mandate to develop housing, industrial and other estates, including development of residential housing at reasonable or subsidised costs, which might entail charging higher amounts from some section of the beneficiaries, to cross-subsidise the main activity, cannot be characterised as engaging in business. The character of being "State", and such corporations or bodies set up under specific laws



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(whether by States or the Centre) would, therefore, not mean that the amounts are "fee" or "cess" to provide some commercial or business service. In each case, at the same time, the mere nomenclature of the consideration being a "fee" or "cess", is not conclusive. If the fee or cess, or other consideration is to provide an essential service, in larger public interest, such as water cess or sewage cess or fee, such consideration, received by a statutory body, would not be considered "trade, commerce or business" or service in relation to those. Non statutory bodies, on the other hand, which may mimic regulatory or development bodies such as those which promote trade, for a section of business or industry, or are aimed at providing facilities or amenities to improve efficiencies, or platforms to a segment of business, for fee, whether charged by subscription, or specific fee, etc. may not be charitable; when they claim exemption, their case would require further scrutiny.

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 of consideration. Essentially there shall involve 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 it is 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 thus:-*

"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



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&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 sub-section (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. "

14.2 Therefore, I am of the view that since Universities are not covered under Section 2(17)(i) as also the fact that they perform public functions and are entrusted with a statutory duty in public interest, the aforesaid decision of the Bombay High Court and our own Hon'ble Division Bench decision in **RGUHS's case supra**



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would be applicable and it cannot be said that the activities fall within the contractual realm. Therefore, it cannot be said that the statutory functions carried out for a fee would constitute "consideration" under the GST legislations.

Issue No.(iii) is accordingly answered in favour of the petitioners-Universities.

Re: Issue No. (iv) - Whether the activities undertaken by the Universities are statutory and regulatory in nature ?

15. The Bombay High Court in the case of **Goa University's case supra**, observed that the activities of the University are statutory/regulatory in nature. The Court held as under:

40. The petitioner is actively involved in imparting education to students, and it acts as a regulator of education. It is in view of the affiliation from the petitioner University to constituent colleges that the colleges conduct programmes of study. The activities undertaken by the Petitioner University are statutory and regulatory in nature.

41. In the context of statutory function, the Hon'ble Supreme Court in *Shri Ramtanu Co-operative Housing Society Ltd. v. State of Maharashtra and Others* 1970 (3) SCC 323, held that the Maharashtra Development Corporation, incorporated under the Maharashtra Industrial Development Act, 1961, was



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established for carrying out the purposes of the Act. It was held that pith and substance of the Act is establishment, growth and organization of industries; acquisition of land in that behalf and the Corporation was functioning as one of the limbs or agencies of Government. It was further held that powers and functions of the Corporation show that these are all in aid of the principal and predominant purpose of the corporation which is growth and establishment of industries. In Assistant Commissioner of Income Tax (Exemptions) v. Ahmedabad Urban Development Authority (supra) (Para B), the Court held that the amounts or money charged by the statutory bodies or institutions is for achieving public functions or services. Such amounts are excluded from the mischief of commercial receipts.

42. *This Court in Commissioner of Central Excise, Nasik v. Maharashtra Industrial Development Corporation 2018 (9) GSTL 372 (Bom), while examining the levy of service tax on the maintenance activities undertaken by the corporation, held that Maharashtra Industrial Development Corporation is a statutory corporation which is virtually a wing of the State Government, and it discharges several sovereign functions. It was held that for providing amenities to plot holders the service fees or charges collected by the Corporation are obviously in the nature of compulsory levy which is used by the Corporation in discharging its statutory obligations and hence they cannot be subjected to service tax.*

43. *The High Court of Madras in the case of Manonmaniam Sundaranar University v. The Joint*



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Director (GST Intelligence), 2021-TIOL-888-HC-MAD-ST, held that the affiliation fees as well as the inspection commission collected by the University are in the nature of statutory levies. It was held that by performing those activities, the Petitioner is only discharging statutory function and the fees collected by the Petitioner cannot be amenable to levy of Service Tax. We are in agreement with the learned Senior Advocate for the Petitioner when he submits that from a conjoint reading of the relevant statutory provisions and judicial precedents, the fees collected by the Petitioner University are in terms of the statutory mandate to undertake the activities as set out in the Goa University Act towards regulating the activity of colleges affiliated to the University cannot be brought under the GST net.

15.1 In the present case in W.P.No.26067/2023, M/s Visvesvaraya Technological University is established under the Visvesvaraya Technological University Act, 1994 (VTU Act) and notified under Government Order No. Law/63/LGN/94 dated 03.04.1995.

15.2 On perusal of the statutory provisions of VTU Act, it is clear that the objective of the Act is to establish and to incorporate a University for the purpose of ensuring proper and systematic instruction, teaching, training and research in development of engineering, technology and allied science in the State of Karnataka. The statutory provisions also provide for powers to develop, promote and organize continuing education system in co-ordination and with co-operation of the



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constituent units. To grant affiliation to constituent colleges [See Sections: 2(2), 2(10), 2(13), 2(14), 4, 5, 7, 8, 40 of VTU Act, 1994].

15.3 In W.P.No. 26064/2023, M/s Rajiv Gandhi University of Health Sciences (RGUHS) is established under the Rajiv Gandhi University of Health Sciences Act, 1994 (RGUHS Act) and notified under Government Notification dated 18.03.1996 and came into force w.e.f. 01.06.1996.

15.4 Similarly, the objective of RGHUS is to ensure proper and systematic instructions, teaching, training and research in modern medicine and Indian systems of medicine in the State of Karnataka. The statutory provisions also provide for affiliation of colleges to the privilege of University [See Sections: 2(a), 2(l), 2(q), 4, 5, 7, 45, 46, 47 ,48 of RGUHS Act, 1994]. In the context of levy of service tax on the affiliation fee, the Hon'ble Division Bench of this Court in **Principal Additional Director General, DGGSTI vs Rajiv Gandhi University of Health Sciences - (2024) 22 Centax 526 (Kar.)**, held that the affiliation activities undertaken by the Universities are in the nature of statutory functions. The Hon'ble Division Bench held as under:

"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.....”

15.5 In W.P.No.4254/2024, M/s. Bengaluru North University (BNU) is established in the year 2017 under the Karnataka State University (Amended) Act, 2015. The Petitioner was part of Bangalore University and it was trifurcated by creating Bangalore North University and Bangalore Central University.

15.6 On the same lines, the objective of the Petitioner (BNU) is to review and enact a new legislation for governance of Universities replacing the existing Act. The statutory provisions also provide for affiliation of colleges to the privilege of University [See sections: 2(2), 2(13), 3, 4, 59 of KSU (Amended) Act, 2015].

15.7 Therefore, the activities carried out by the Universities are under the respective statutory provisions, which are in the nature of statutory/regulatory functions and the same cannot be termed as commercial in nature. In terms of the above, the activities not being commercial or business in nature and the fee so charged not qualifying as consideration, I am of the view that the charging provisions under Section 9 r/w Section 7 of



CGST/ KGST Act, 2017 would not get attracted to the activities of the University.

Issue No. (iv) is accordingly answered in favour of the petitioners-Universities.

Re: Issue No. (v) - Whether the services provided by the Universities are exempt from GST in terms of Entry No. 66 of Notification No. 12/2017-CT (R) dated 28.06.2017 ?

16. It is contended by the learned Senior counsel that the services, if any, provided by the Universities are covered under exemption i.e., Entry No. 66 of Notification No. 12/2017-CT (R) dated 28.06.2017. Entry No. 66 of the Notification No. 12/2017-CT (R) dated 28.06.2017 exempts services in relation to education. Entry No.66 of the said Notification reads as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)
66	Heading 9992 or Heading 9963	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	Nil



		<p><i>of entrance fee;</i></p> <p><i>(b) to an educational institution, by way of,</i></p> <p><i>(i) transportation of students, faculty and staff;</i></p> <p><i>(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</i></p> <p><i>(iii) security or cleaning or housekeeping services performed in such educational institution;</i></p> <p><i>(iv) services relating to admission to, or conduct of examination by, such institution;</i></p> <p><i>(v) supply of online educational journals or periodicals:</i></p> <p><i>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</i></p>	
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		<i>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.</i>	
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16.1 Paragraph 2(y) of the Notification defines the phrase 'educational institution' as below:

2(y) "educational institution" means an institution providing services by way of,—

- (i) pre-school education and education up to higher secondary school or equivalent;*
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) education as a part of an approved vocational education course;*

16.2 As pointed out by the learned Senior counsel the above exemption entry is similar to the exemption entry under the erstwhile service tax law, which exempted educational services; while interpreting the



above exemption entry, the High Court of Bombay in **Goa University's case supra**, by referring to the decision of the Hon'ble Division Bench of this Court in the case of **Principal Additional Director General, DGGSTI vs Rajiv Gandhi University of Health Sciences - (2024) 22 Centax 526 (Kar.)**, observed that University would also qualify as an educational institution for the purpose of exemption. The Court held as under:

46. We are in respectful agreement with the view of the High Court of Karnataka in **Rajiv Gandhi University of Health Sciences (supra)** where it is held that University which grants affiliation is also an educational institution. The Madras High Court in **Madurai Kamaraj University vs Jt. Commr. of GST & C.Ex., Madurai [2021 (54) GSTL 385 (Mad.)]**, held that the word "educational institution", cannot denote only the college affiliation to the University, but it includes the University. We therefore find merit in the submissions of the learned Senior Advocate that even assuming that the affiliation fees collected by the University, is to be regarded as a service, the said services provided by Goa University are covered under the 1st limb of the exemption entry as ultimately the student of an affiliation college has to be regarded as a student of the University which grants him the degree.

47. It is material to note 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. Hence the fees which are collected from colleges are clearly covered by the exemption notification.



The activity of the Goa University in collecting the affiliation fees is exempt from GST and hence the fees collected by Goa University is not liable to tax.

48. *The Goa University is actively involved in imparting education to students, and it acts as a regulator of education. Section 24 of the Goa University Act specifically empowers University to pass 'ordinance' for the admission of students to the University and their enrolment, fee to be charged for admission and examination. It is on the basis of the affiliation that is granted by the University that the affiliation colleges conduct courses, conduct examinations and also award the degree to the students admitted to secondary education. The term 'education', in our opinion, and as rightly submitted by the learned Senior Advocate for the petitioner University, should not be restricted to the activity of teaching/providing instruction to students inside a classroom, rather it is a wider term which would involve the activity of designing the curriculum for the course of study which would be used by constituent colleges, giving affiliation to colleges so that the standard of education imparted by them is in accordance with the standards set by the Goa University, conferring the degree at the end of the course to the students.*

16.3 *Based on the above, the Bombay High Court observed as below on the aspect of exemption under clause (a) of Entry No. 66:*

54. *The University is also an educational institution and students of the University, include students studying through affiliated colleges. Thus, the*



activities of the University, in so far as it relates to levying of affiliation fees is exempt from GST.

16.4 Further, the Bombay High Court observed that the affiliation and other services would also be covered under clause (b)(iv) of Entry No.66, which exempts the services relating to admission to, or conduct of examination. The Court held as under:

54. The Circular dated 11.10.2024 in its application to the Goa University where it is clarified that the affiliation services by universities to colleges are not by way of services related to the admission of students to such colleges or the conduct of examinations by such colleges, is erroneous.

16.5 Respondents placed reliance on the judgment of the Telangana High Court in the case of **Care College of Nursing's case supra** to contend that affiliation fees charged by the University from colleges for granting affiliations to colleges is not exempted under Sl.No.66 of Notification No.12 of 2017, dated 28.06.2017. In my view, with due respect, the High Court of Telangana in the case of **Care College of Nursing's case supra** has not addressed the issue as to whether Universities undertake a supply in the course or furtherance of business for a consideration and consequently, GST could be levied on a University. Further, the Telangana High Court failed to notice that the definition of 'educational institution' is contained in the



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Notification itself and does not restrict the same to colleges but is wide enough to cover a University and this aspect of the matter is very important to preserve the object of the Notification. It should also be noted that the High Court records a finding that the University has been paying GST and the colleges are only challenging the said levy.

16.6 Respondents also placed reliance upon the judgment of the Apex Court in **Dilip Kumar's case supra**, to contend that the exemption notification is to be interpreted strictly and where there is an ambiguity in the interpretation of exemption notification, the benefit should enure in favour of revenue. However, as rightly pointed out by the learned Senior counsel, while interpreting an exemption notification strictly, the purpose of the exemption notification itself should not be defeated [See: *Mother Superior v. State of Kerala*, 2007 SCC OnLine Ker 578 (Para 27); *DGGSTI vs Rajiv Gandhi University of Health Sciences* (2024) 22 Centax 526 (Kar) (Para IX(d)); *Canterbury Ladies Hockey Club vs The Commissioners for Her Majesty's Revenue and Customs in Case C-253/07 (ECJ)* (Para 17, 19, 23, 25 and 29)].

16.7 In light of the clarification issued by CBIC vide C.B.E. & C. Flyer No. 41, dated 01.01.2018, the purpose of the exemption entry is to promote education. Consequently, the exemption cannot be restricted to classroom teaching as held by the Bombay High Court in **Goa University's case supra** at Paragraph 48.

16.8 It is noticed that the very purpose of the notification is to ensure that students need not have to



pay GST on the fees that they are paying. If GST levy is fastened on the Universities, they would necessarily pass on the same to the colleges (being an indirect tax), and in turn colleges will pass on the same to the students. Therefore, the very object of exemption will stand defeated. For these additional reasons and the reasoning given by the Bombay High Court, I hold that the exemption is available to the Universities.

***Issue No. (v)** is accordingly answered in favour of the petitioners-Universities*

Re: Issue No. (vi) – Whether the impugned Circulars dated 17.06.2021 and 11.10.2024 are legally valid ?

17. On the aspect of validity of Circulars dated 17.06.2021 and 11.10.2024, the Bombay High Court held as under:

***50.** We are of the opinion that so far as the University is concerned, these clarifications are contrary to the statutory provisions of Sections 7 and 9 of the GST Legislations in as much as the said Circular assumes that the said activity of affiliation service provided by the University to their constituent colleges would qualify as supply.*

***51.** The Supreme Court in **CCE Vs. Ratan Melting and Wire Industries, 2008 (231) E.L.T. 22 (S.C)** held that the clarifications which are contrary to the statutory provisions have no existence in law to attract levy of GST in terms of section 9, it has to be first established that the activity undertaken by the petitioner University would*



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qualify to be 'supply' in terms of Section 7 of the CGST Act. Imposing levy by way of clarifications in our view is impermissible. Moreover, by the impugned Circular, additional restrictions for availing exemption duty under Entry 66 of the Notification dated 28.06.2017 is enforced and therefore also the clarification which is not in consonance with the statutory provisions and the exemption Notification dated 28.06.2017 cannot be acted upon.

52. *Thus, the said clarifications restrict the scope of exemption notification and makes the fee collected by the board from the educational institution for the purpose of accreditation to such board, liable for GST. Learned Senior Advocate submitted that relying on the said circular, the Respondent has demanded GST on affiliation and other fees collected by the Petitioner University.*

54. *In our view the impugned Circular dated 11.10.2024 in its application to the Petitioner University is contrary to the plain language of the notification which exempts services by educational institution to its students, faculty and staff and also services provided to educational institution. The Impugned clarifications issued by the Respondent No. 2, does not notice the existence of the exemption under clause (a) of entry 66 of the exemption notification no. 12/2017 in so far as it relates to demanding GST on affiliation fees. The University is also an educational institution and students of the University include students studying through affiliated colleges. Thus, the activities of the University, in so far as it relates to levying of affiliation fees, is exempt from GST. The Circular dated 11.10.2024 in its application to*



the Goa University where it is clarified that the affiliation services by universities to colleges are not by way of services related to the admission of students to such colleges or the conduct of examinations by such colleges, is erroneous.

55. *The Hon'ble Supreme Court in **Bhartia Education Society v. State of H.P., (2011) 4 SCC 527**, in the context of the NCTE Act, observed that "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, etc. In **Principal and others Vs Presiding Officer and Others, (1978) 1 SCC 498**, the Hon'ble Supreme Court observed that affiliation is meant to prepare and present students for public examination. In our view, affiliation is essentially an activity relating to admission and examination of students and hence the Circular dated 11.10.2024 in its application to the petitioner University is contrary to the settled legal position. The circular cannot take away the effect of the notification statutorily issued. The Respondents cannot whittle down the exemption notification and restrict the scope of the exemption notification by issuing a circular, whereby a new condition is sought to be incorporated thereby restricting the scope of the exemption. To support this view, we rely on **Sandur Micro Circuits Ltd. Vs. CCE, Belgaum, 2008 (229) ELT 641 (SC)**. Reliance is also placed by learned Senior Advocate on Union **Of***



India V/s. Inter Continental (India) 2008 (226) ELT 16 (SC). Their Lordships while examining the issue as to whether CBEC by way of circular could introduce additional condition for claiming exemption for imported crude palm oil, held that that by issuing a circular subsequent to a notification, the department could not add new conditions to the notification, thereby restricting the scope of exemption notification or whittling it down.

17.1 Therefore, I am of the opinion that the impugned Circulars are contrary to the legal provisions and the express wordings of the exemption notification.

Issue No.(vi) is accordingly answered in favour of the petitioners-Universities.

Re:Issue No. (vii) : Whether the affiliation fees, PG registration fees, admissions fees, convocation fees, and other sums collected by the petitioners-Universities from the College/students would be exigible to payment of GST ?

and

Issue No. (viii): Whether the impugned Show Cause Notices and Orders warrant interference by this Court in the present petitions?

18. As stated herein before, the activities of the Universities in collecting the various fees/income listed in the petitions do not satisfy the twin conditions of being "consideration" or "in the course or furtherance of



business” appearing in Section 7 of the CGST Act, 2017/ KGST Act, 2017. The functions of the Universities are statutory in nature and do not fall within the ambit of the GST provisions on first principles. Even otherwise, the exemption Notification No.12/2017-CT(R) dated 28.06.2017 exempting educational institutions is wide enough to cover the activities of the Universities. Therefore, the issuance of impugned Circulars herein are contrary to the terms of the exemption notifications and the statutory scheme. The main functions of the University being not taxable, the ancillary, incidental or activities in connection with education cannot also be brought to tax.

18.1 Under these circumstances, I am of the considered opinion that the activities of Universities are not commercial in nature and cannot be termed as “supply” in the course or furtherance of business and consequently, activities incidental to education cannot be brought to tax under the GST regime on the ground that it amounts to a business; so also, the fee collected by the Universities is not consideration and the activities undertaken by the Universities are statutory and regulatory in nature; the services provided by the Universities are exempt from GST in terms of Entry No. 66 of Notification No. 12/2017-CT (R) dated 28.06.2017 and the impugned Circulars dated 17.06.2021 and 11.10.2024 are illegal and invalid in law.

Issue Nos. (vii) and (viii) are answered accordingly in favour of the petitioners by holding that affiliation fees, PG registration fees, admissions fees,



convocation fees and other sums collected by the petitioners-Universities from the College/students would not be exigible/amenable to payment of GST and consequently, the impugned Show Cause Notices and Orders deserve to be quashed.

19. *In the result, I pass the following:*

ORDER

(i) W.P.No.4254/2024 is hereby allowed;

(ii) The impugned Show Cause Notice at Annexure – A dated 10.10.2023 issued by the respondents is hereby quashed.

(iii) W.P.No.26064/2023 is hereby allowed;

(iv) The impugned Show Cause Notices at Annexure-A dated 27.09.2023, Annexure-B dated 27.09.2023, Annexure-B1 dated 17.10.2023, Annexure-B2 dated 17.10.2023 and Annexure-X dated 26.11.2024 are hereby quashed; Order-in-Original and Summary of order both dated 24.02.2025 at Annexures-Y and Y1 are hereby set aside.

(v) W.P.No.26067/2023 is hereby allowed;

(vi) The impugned Show Cause Notices at Annexure-A dated 20.09.2023, Annexure-Q dated 30.05.2024 and Annexure-V dated 14.11.2024 are hereby quashed and impugned order at Annexure-R dated 23.08.2024 is hereby set aside.

(vii) The impugned Circulars dated 17.06.2021 and 11.10.2024 insofar as they relate to affiliation fees and other fees collected by Universities are held to be invalid."



4. On the same reasons rendered by the co-ordinate Bench, the subject petition deserves to succeed.

5. In the result, I proceed to pass the following:

ORDER

- i) Writ petition is ***allowed***.
- ii) The impugned Order of Adjudication at Annexure-E dated 28.11.2023 is hereby quashed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**