

APHC010454232023



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

[3529]

MONDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

**W.P.No.23535, 31934 of 2023, 7867 and 26414 of 2025 and W.P.9123 of
2026**

WRIT PETITION NOs: 23535 of 2023

Between:

1.JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY KAKINADA
(JNTUK), REPRESENTED BY ITS REGISTRAR, PITHAPURAM
ROAD, KAKINADA, EAST GODAVARI DISTRICT, ANDHRA
PRADESH-533 003

...PETITIONER

AND

- 1.THE PRINCIPAL COMMISSIONER OF CENTRAL TAX,
VISAKHAPATNAM CGST COMMISSIONERATE, GST BHAVAN,
PORT AREA, VISAKHAPATNAM-530 035
- 2.THE ADDITIONAL COMMISSIONER OF CENTRAL TAX, OFFICE OF
THE PRINCIPAL COMMISSIONER- OF CENTRAL TAX,
VISAKHAPATNAM CGST COMMISSIONERATE, GST BHAVAN,
PORT AREA, VISAKHAPATNAM-530 035
- 3.THE UNION OF INDIA, THROUGH ITS REVENUE SECRETARY,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, 128-
A/NORTH BLOCK, NEW DELHI

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction particularly one in the nature of 'WRIT OF MANDAMUS' a)Setting aside the Order-in-Original No. VSP-CGST-ADC 08-23-24 dt.06.06.2023 demanding Goods and Services Tax for an amount of Rs. 2,64,87,723/- along with interest and penalties as being arbitrary, illegal, perverse, and contrary to the provisions of the Central Goods and Services Tax Act, 2017 and Rules made thereunder. and b)Pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased For the reasons stated in the affidavit filed in support of the above Writ Petition, the petitioner prays that this Honourable Court to direct Respondent No.2 to refrain from recovery of the demands confirmed in the Order-in-Original No. VSP-CGST-ADC-08-23-24 dt.06.06.2023 passed by the Respondent No.2 and pass such other order or orders as the Honourable Court may deem fit and proper in the circumstances of the case

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to vacate the interim order passed in LA No. 1 of 2023 in dt.11.10.2023 in W P No. 23535 of 2023 and to pass

Counsel for the Petitioner:

1.LAKSHMI KUMARAN SRIDHARAN

Counsel for the Respondent(S):

1.HARINATH N (DEPUTY SOLICITOR GENERAL OF INDIA))

2.SANTHI CHANDRA (Jr. Standing Counsel for CBIC)

Date of Judgment Reserved : 07.04.2026

Date of Pronouncement : 27.04.2026

Date of Upload : 27.04.2026

The Court made the following common order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

As the issues raised in all these Writ Petitions are common, they are being disposed of, by way of this common order.

2. The petitioners, in all these Writ Petitions are Public Universities, established by the State of Andhra Pradesh, by way of different Acts. All these Universities have suffered orders of assessment, calling upon the petitioners to pay GST on the affiliation fees and No Objection Certificate (NOC) fees received by these Universities, from their affiliated colleges. The details of the orders of assessment etc., are given herein below:

S.No.	W.P.No.	Name of the University	Period of Assessment	Date of Order of Assessment
1	W.P 23535 of 2023	Jawaharlal Nehru Technological University Kakinada (JNTUK)	01/07/2017 to 31/03/2020	06/06/2023
2	W.P 31934 of 2023	Acharya Nagarjuna University	01/07/2017 to 31/03/2022	25/08/2023
3	W.P 7867 of 2025	Adi Kavi Nannayya University	01/07/2017 to 31/03/2022	19/11/2024
4	W.P 26414 of 2025	Vikrama Simhapuri University	01/04/2019 to 31/03/2025	03/09/2025
5	W.P 9123 of 2026	Krishna University	01/04/2018 to 31/03/2024	01/12/2025

3. The petitioners have been established under different Acts. The details of these Acts are given below:

Sl.No.	W.P.No.	Name of the University	The Act under which the University has been established
1	W.P 23535 of 2023	Jawaharlal Nehru Technological University Kakinada (JNTUK)	Jawaharlal Nehru Technologies University act, 2008
2	W.P 31934 of 2023	Acharya Nagarjuna University	Andhra Pradesh Universities Act, 1991
3	W.P 7867 of 2025	Adi Kavi Nannayya University	Andhra Pradesh Universities Act, 1991
4	W.P 26414 of 2025	Vikrama Simhapuri University	Andhra Pradesh Universities Act, 1991
5	W.P 9123 of 2026	Krishna University	Andhra Pradesh Universities Act, 1991

4. The assessing authorities in all these cases have sought to tax the receipt of affiliation fees and N.O.C fees, under the GST Act, on the ground that the fees had been paid for services rendered by the respective Universities and the same is taxable under the GST Act. The petitioners had objected to the said taxation, on the ground that they are universities incorporated under the respective Acts, passed by the Andhra Pradesh State Legislature and the affiliation fee and statutory fee collected by them is in discharge of statutory functions which cannot be treated as supply of services in the course of business activity. The petitioners also took the stand that

these fees would fall under Entry No.66 of GST exemption notification No.12 of 2017, dated 28.06.2017, and as such, no GST can be levied on supply of such services. The assessing officers rejected these contentions on the ground that any supply of service, even if it is a supply of service, in pursuance of statutory function, would be taxable, in view of the provisions of the GST Act. The Assessing Officer further held that the petitioners are not entitled to the exemption set out under Entry No.66 of Notification 12 of 2017 on the ground that the supply of service of affiliation and issuance of No Objection Certificates do not fall within the ambit of Entry No.66 of Notification 12 of 2017.

5. Various ancillary issues on the question of whether Section 74 of the GST Act can be invoked, against the petitioners have also been raised. All the aforesaid orders are now under challenge in the present Writ Petitions.

6. Heard Sri C. Raghavan Ramabhadran, Sri Shaik Jeelani Basha, Sri S. Suri Babu, Sri C. Sanjeeva Rao, learned counsel appearing for the Petitioners and Smt. Shanti Chandra, learned Standing Counsel appearing for the Respondent.

7. In order to consider the contentions raised by the petitioners, it would be appropriate that the facts relating to one case be taken up for consideration. Accordingly, the petition in W.P.No.23535 of 2023 is being

taken up for consideration. It may also be noted that the contentions raised by the petitioners are essentially the same.

8. Sri C. Raghavan Ramabhadran, the learned counsel appearing for the petitioner in this Writ Petition contends as follows:

A. The petitioner is the Jawaharlal Nehru Technological University, Kakinada which has been established under the Jawaharlal Nehru Technological Universities Act, 2008. This University has been established to have jurisdiction over eight erstwhile Districts of Andhra Pradesh. The said Act sets out the various functions that will be carried out by the petitioner university as well as the structure of the petitioner university and other aspects. The petitioner University has to act in accordance with the UGC guidelines, which are issued from time to time. Under the relevant UGC guidelines, no college can admit students without obtaining affiliation from the appropriate university. All Engineering Colleges, which are sought to be established and run in the area of jurisdiction of the petitioner university, are required to obtain affiliation from the petitioner university. Similarly, the colleges are also required to obtain no objection certificates from the University for Recognition by the government. The application for grant of affiliation and for no objection certificates are governed by statute. As far as grant of affiliation is concerned, the UGC guidelines require Colleges seeking affiliation to make formal applications and for the concerned universities to ascertain whether the colleges have necessary infrastructure and faculty for

conduct of classes. After such examination and verification, the concerned universities are required to grant affiliation. All these functions are mandatory and the petitioner university does not have any discretion in the matter. The petitioner university would have to consider any application made by any college, within its area, for grant of affiliation and grant such affiliation if all the conditions necessary for such affiliation are complied or refuse affiliation, if such conditions are not complied. The grant of affiliation and issuance of no objection certificates are not voluntary acts by the petitioner university and are acts, which are regulated and governed by the statute as well as the UGC guidelines. Another aspect of the matter is that the petitioner university is not a private organization, but an entity which has been established under a State Act and is discharging functions, stipulated under the said Act and other guidelines such as the UGC guidelines. This would make the petitioner university a government entity or a government authority, for the purposes of the GST Act.

B. Section 9 of the GST Act provides for levy of tax on supply of services. The expression supply of services, is contained in the inclusive definition set out under Section 7 of the GST Act. The said definition makes it clear that only activities conducted in the course or furtherance of a business can be categorized as supply of services which are taxable under Section 9. This is in view of the Definition of business contained in Section 2 (17) of the GST Act.

C. A conjoint reading of all the aforesaid provisions and submissions would make it clear that the petitioner university is not conducting business nor supplying services in the course of or in furtherance of business. In such circumstances, there can be no levy of GST under Section 9 of the GST Act.

D. In the alternative, even if the said activities are to be treated as taxable supplies of service, the same are exempt on account of Entry No. 66 in Notification Number 11 of 2017, dated 28.06.2017. Apart from this there is a further exemption available under Entry 4 and Entry 5 of notification number 12 of 2017 dated 28.06.2017.

E. Entry No. 66 of Notification Number 1 of 2017 states that any service provided by an educational institution to its students, faculty or staff would also be exempt from tax if such service provides for admission of students to colleges. In the present case, no college can admit students unless the university has given affiliation to the college. Therefore, the Admission of students being dependent upon the grant of affiliation, automatically brings the ground of affiliation within the exempted services under Entry No. 66.

F. Entry 4 of Notification Number 12 of 2017 exempts services of a governmental authority, by way of any activity which could be entrusted to a Municipality under Article 243-W of the Constitution. Similarly, services by a governmental authority in relation to any function entrusted to a panchayat would also be exempt. The definition of governmental authority contained in

that notification at Clause 2(z)(f) and the definition of government entity contained in clause 2 (z)(f)(a) includes anybody, which is set up under an Act of a State Legislature. This provision would be squarely applicable to the petitioner university as it has been set up under an Act of a State Legislature. Further, the petitioner university is also carrying out the function of the Panchayaths and Municipalities.

G. These issues have been considered by the High Court of judicature of Bombay at Goa in **Goa University versus Joint Commissioner of CGST Panjab**.¹ ; the High Court of Delhi in the case of **Central Electricity Regulatory Commission vs. The Additional Director, DGGI**.² ; The Hon'ble High Court of Karnataka in the case of **Bengaluru North University vs. Joint Commissioner of central tax**³, and all the High Courts have held in favour of the Petitioners.

9. Smt. Shanti Chandra, the learned Standing Counsel, on the other hand, would contend that any supply of service, by a governmental authority is taxable in view of the provisions of Section 7 as well as Section 2(17) defining the term 'business.' She would further contend that the said provisions, when read together, make out a case where any supply of service by a government or any governmental authority, would be taxable unless such activities have been enumerated in schedule-III of the GST Act or where specific exemptions

¹2025 (96) GSTL 513 (Bombay)

² 2025 (95) G.S.T.L. 277 (Del.)

³2025:KHC:16686

are granted by the government under the provisions of Section 7(2)(b). She would submit that since the activities, in question, do not fall under schedule-III nor has any exemption been given under Section 7(2)(b) of the GST Act, the contention that the fees collected, for grant of affiliation and issuance of No Objection Certificates, are taxable.

10. Smt. Shanthi Chandra would also contend that the petitioner does not get any exemption either under Entry No.66 of Notification Number 11 of 2017, dated 28.06.2017 and or Entries 4 and 5 of Notification Number 12 of 2017, dated 28.06.2017. She would further submit that this issue has already been considered by the Hon'ble High Court of Telangana in W.P.No.34617 of 2022 and batch, decided on 17.10.2023. She would contend that the Hon'ble High Court of Telangana after considering the very same arguments followed by the petitioners, in the present case, had rejected these arguments and had held that there was no exemption, under the aforesaid entries in Notification Number 1 of 2017 or Notification Number 12 of 2017.

Consideration of the Court:

11. It would be necessary to notice certain provisions of law and entries in the notifications. Section 2(17), Section 7 and Section 9(1) of the GST Act read as follows:

2(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;

5[(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;

Section 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, deferred payment or other valuable consideration.

Explanation.---For the purposes 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, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

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

(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.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of

the Council, specify, by notification, the transactions that are to be treated as---

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

Section 9. Levy and collection.

- (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 and un-denatured extra neutral alcohol or rectified spirit used for manufacture 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.

12. Sl.Nos.4 and 5, of Notification 12 of 2017 and Serial No. 66 of

Notification No.1 of 2017 are extracted below:

4	Chapter 99	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	Nil	Nil
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5.	Chapter 99	Services by a "Governmental Authority] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution	Nil	Nil
66	(Heading 9992 or Heading 9963)	<p>Services provided-</p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.</p> <p>(b) to an educational institution, by way of-</p> <p>(i) transportation of students, faculty and staff;</p> <p>(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory,</p> <p>(iii) security or cleaning or housekeeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution:</p> <p>(v) Supply of online educational journals or periodicals:]</p>		

13. Section 9(1) provides for levy of tax on all intra-state supplies of goods and services barring certain categories. The term “supply of services” has not been defined in the definitions clause contained in Section 2 of the GST Act. However, the scope of supply, has been explained in Section 7 of the GST Act. This provision, which is an inclusive provision, brings within its ambit, any supply of services, in any form, if it is in the course of or in furtherance of business. While Section 7(1) describes supply of services in the above manner, Section 7(2) (a) states that any activity or transaction contained in schedule-III to the GST Act, would not be treated as a supply of services, even if it falls within the ambit of Section 7(1) of the GST Act. Similarly, Section 7(2)(b) takes out supply of services, undertaken by a Central Government, State Government or local authority, from the ambit of Section 7, if such activities or transactions are notified by the government on the recommendation of the Council.

14. A reading of these provision, reveals that the legislature was envisaging two categories of supplies. Firstly, supplies made by Non State authorities and secondly, by State authorities. Section 7(1), which deals with the first category, covers supply of services, in the course of or in the furtherance of business. This would mean that any supply of service which is not in the course of business, would not be a taxable supply of service. Though, Section 7 (1) is couched as an inclusive definition, the above interpretation appears to be the appropriate interpretation, in the absence of

any further guidance, in this provision. However, the legislature while considering supply of services by the Central Government or State Government or by any local authority appears to have removed the question of whether supply is made in the course of business or not. It appears that the Central, State and Local Governments have been put under a separate category where questions of whether supply of services is in pursuance of business or not, is irrelevant and all supplies of services, irrespective of whether it is in the course of business or not, are taxable, unless they are protected by including them in Schedule-III or by way of a specific notification.

15. This view is further fortified by Section 2(17)(i) which has brought in all activities of the Central Government, State Government or Local Authority into the ambit of business whether the conditions set out in Section 2(17)(a) to (h) are attracted or not. The legislature by including Section 7(2), though in a negative form, appears to reiterate that all activities of the Central Government, State Government, or Local Authorities would be taxable whether they are in the course of or in furtherance of business, or not.

16. This brings up the question of whether the petitioner universities would be the Central Government, a State Government or a Local Authority. This issue comes up because the supply of the service, of grant of affiliations or issuance of No Objection Certificate, by the petitioner university would be taxable, without going into the question of whether such activity is in the

course of or in furtherance of business or not, if the university answers the description of the Central Government, State Government or Local Authority.

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

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

19. This view, of this Court, is fortified by the aforesaid judgments cited by Sri C. Raghavan Ramabhadran. This Court does not propose to

extract any of the aforesaid judgments. However, this Court would only record that it is in respectful agreement with the aforesaid judgments.

20. The second issue of whether these services are exempted under the notifications mentioned above would remain. In view of the fact that this Court has now held that the services, which are sought to be taxed, are not taxable, the question of whether such services require the exemption granted under the aforesaid notifications could not arise. Before parting with the case, it would also be necessary to record that, in the judgment of the Hon'ble High Court of Telangana, cited by Smt. Shanthi Chandra, the issue raised before the Hon'ble High Court of Telangana was only on the question of whether the entries in the notifications mentioned above, provide such exemption. The issue of whether the said services were not taxable, in the first place, was not raised. In such circumstances, the said judgment may not be relevant for the purposes of determining whether the services are taxable or not.

21. In view of the above, these Writ Petitions are allowed setting aside the orders, which have been impugned in these writ petitions, and set out in the table extracted above. There shall be no order as to costs.

As a sequel miscellaneous applications, if any, shall stand closed.

R RAGHUNANDAN RAO, J

T.C.D.SEKHAR, J

RJS

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

W.P.No.23535, 31934 of 2023, 7867 and 26414 of 2025 and W.P.9123 of
2026

(per Hon'ble Sri Justice R Raghunandan Rao)

27.04.2026

RJS

