

	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Dr. S.L. Sreeparvathy, IRS &
: Shri. Abdul Latheef. K

Legal Name of the applicant	University of Calicut
GSTIN	32AAAGU0036K1ZI
Address	Thenjipalam, Malappuram - 673635.
Advance Ruling sought for	<p>1. Whether the activities or services being provided by the University to its affiliated colleges and students would fall under the "Scope of Supply" and thereby exigible to GST?</p> <p>2. If query no. 1 is in the affirmative, then whether the supply of services by University is exempted under Entries 4 and 5 of the Notification No. 12/2017-Central Tax (Rate) dated 28.07.2017 and SRO 371/2017, dated 30.07.2017, being the services rendered by a Governmental authority by way of any activity in relation to the functions entrusted to a Panchayat and Municipality?</p>
Date of Personal Hearing	19.04.2023
Authorized Representative	Shri. V V Ashokan, Senior Advocate



ADVANCE RULING No. KER/17/2023 Dated 25.05.2023

1. The University of Calicut, Thenjipalam, Malappuram (**herein after referred to as the applicant**) is a statutory university established under the Calicut University Act 1975. The university was established as teaching and affiliating university within the State of Kerala with territorial jurisdiction in revenue districts of Wayanad, Kozhikode, Malappuram, Palakkad and Thrissur.
2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (*herein after referred to as CGST Act*) and the Kerala State Goods and Services Tax Act, 2017 (*herein after referred to as KSGST Act*) are same except for certain provisions. Accordingly, a reference herein after to the provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.

3. The applicant requested advance ruling on the following:

3.1. Whether the activities or services being provided by the University to its affiliated colleges and students would fall under the "Scope of Supply" and thereby exigible to GST?

3.2. If query no. 1 is in the affirmative, then whether the supply of services by University is exempted under Entries 4 and 5 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and SRO 371/2017 dated 30.07.2017, being the services rendered by a Government authority by way of any activity in relation to the functions entrusted to a Panchayat and Municipality.

4. Contentions of the Applicant:

4.1. The applicant submits that as per Section 56 of the Calicut University Act, University has the power to grant affiliation to the colleges as per the procedures in terms of Chapter 23 of the University first statute. As per the



statute, University can collect application fee from the colleges seeking affiliation along with other incidental fees. The University provide several functions to the affiliated colleges, some of them are listed below;

- a) conducting periodical inspections with the assistance of experts;
- b) conducting entrance examinations for students' admission;
- c) preparing list of eligible candidate for admission and merit;
- d) allotment of candidates to various collages based on the option;
- e) verification of admission with respect to qualification and eligibility;
- f) registration of candidates with university;
- g) conducting examination;
- h) valuation of answer scripts;
- i) issuance of marks list.

4.2. The definition of the term "services" from CGST/KSGST Act section 2(102) extracted as follows.

"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

4.3. Section 7 of the CGST & KSGST Act prescribes the scope of supply and the same reads as under:

"7. (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, license, 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;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated 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) 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.”

4.4. The supply of goods and services by the University is not in the course or in furtherance of any business. This is clear from the definition of the term “business” under clause (17) of Section 2 which reads as under;

“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 a 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 benefit to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;



- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.”

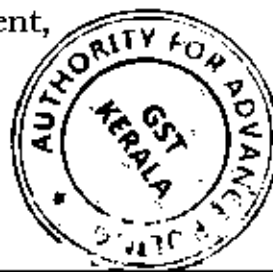
4.5. The University is constituted not to carry out any business as envisioned under the GST Laws and is not doing any such business activities. The Apex Court in State of Tamil Nadu Vs Board of Trustees of the Port of Madras reported in (1999) 4 SCC 630 while addressing the issue on the question whether Port Trust of Madras can be brought under the tax net of the Madras General Sales Tax Act for the auction sales done by them, held that Port Trust is not engaged in any business activity and therefore it cannot be brought under the tax net. The Judgment placed reliance on University of Delhi and another Vs Ram Nath and others reported in AIR 1963 SC 1873 amongst several other judgments, where it was held that it was incongruous to call educational activities of the University as amounting to carrying on business. Education was more a mission and avocation rather than profession or trade or business. The aim of education was the creation of a well-educated, healthy, young generation imbued with a rational and progressive outlook of life. On this reasoning it was held that the University was not carrying on business. The same principle is applicable to their case also.

4.6. The transactions done by the University is not in furtherance of business and hence the activities of the University are beyond the scope of supply under Section 7 of the CGST Act and KSGST Act.

4.7. “Governmental Authority” has been assigned the same meaning as per explanation to Clause (16) of Section 2 of IGST Act 2017 and the same reads as follows;

Explanation- For the purpose of this clause, the expression “government authority” means an authority or a board or any other body,-

- i) set up by an Act of Parliament or a State Legislature; or
- ii) established by any Government,



with ninety percent or more participation by way of equity control to carry out any function entrusted to a municipality under article 243 W of the Constitution.

4.8. The applicant submits that the University is a statutory body which is set up by an Act of State Legislature and has more than 90% control to carry out the functions entrusted to a Municipality or a Panchayat under Articles 243 W or 243 G of the Constitution of India. Thus, the applicant is a Governmental Authority carrying out "educational services" falling under Entry of Twelfth Schedule of the Constitution of India and therefore is eligible for exemption under entries 4 and 5 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and SRO 371/2017 dated 30.06.2017.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The Jurisdictional Officer reported that there is no pending or decided proceedings against the applicant under any provisions of GST Act 2017.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 19.04.2023 through Virtual Mode. Shri. V.V Ashokan, Senior Advocate represented the applicant. The applicant filed detailed Written Submission dated 15.04.2023 reiterating the contentions already made in the application and in addition to that reproducing the service classification codes relating to education services and the exemption entries under Sl No. 4,5,66 and 67 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. They also submitted copy of the Ruling dated 19.11.2020 of the Advance Ruling Authority of Tamil Nadu in the application of Bharathiar University and also the copy of the Order dated 07.12.2022 of the Commissioner of CGST (Appeals), Mangalore in the case of Mangalore University. He requested to issue the ruling on the basis of the submissions made by them in the application, during the personal hearing and the submissions in the Written Submissions dated 15.04.2023.



7. Discussion and Conclusion:

7.1. We have carefully examined the statement of facts, the oral submissions made during virtual hearing and the written submissions dated 15.04.2023. The issue to be decided is whether the services provided by the applicant to its affiliated colleges and students constitute a supply within the meaning and scope of "supply" as defined in Section 7 of the CGST Act, 2017 and if it constitutes a "supply" whether it is exempted in terms of entry at Sl Nos. 4 and 5 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

7.2. The questions on which advance ruling is sought by the applicant falls within the purview of clauses (b) and (g) of sub-section (2) of Section 97 of the CGST Act, 2017; i.e; applicability of a notification issued under the Act and whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term and hence admitted.

7.3. Admittedly, the applicant is a Public University established under the Calicut University Act 1975 an Act passed by the Legislature of the State of Kerala. The applicant is granting affiliation to colleges on collection of affiliation and other incidental fees. The services provided by the applicant to affiliated colleges are stated to be; conducting periodical inspections with the assistance of experts, conducting entrance examinations for admission of students, preparing list of eligible candidate for admission and merit, allotment of candidates to various colleges based on the option, verification of admission with respect to qualification and eligibility, registration of candidates with university, conducting examination, valuation of answer scripts, issuance of marks list etc.

7.4. As per the Calicut University Act, 1975 the applicant is established as a teaching, residential and affiliating university for the northern districts of the State of Kerala and the prime functions of the applicant as per Section 3 of the said Act is to provide for instruction and training in such branches of learning as the University may deem fit and to make provision for research



and for the advancement and dissemination of knowledge; to confer academic autonomy to an affiliated college, department of an affiliated college or University department; to institute degrees, titles, diplomas and other academic distinctions; to hold examinations and to confer degrees and other academic distinctions on persons who shall have pursued a prescribed course of study in a college under the University and shall have passed the prescribed examination or shall have under prescribed conditions carried on research which has been duly evaluated; to confer honorary degrees or other distinctions on distinguished persons in accordance with the conditions to be prescribed in the statutes; to grant diplomas, certificates or other distinctions to persons who shall have pursued a prescribed course of study under prescribed conditions; to withdraw or cancel degree, titles, diplomas, certificates or other distinctions under conditions that may be prescribed in the statutes; to supervise and control the residence and discipline of the students of the University, colleges and recognised institutions and to make arrangements for promoting their health and general welfare etc. Section 2 (2) of the said Act defines; "affiliated college" as a college affiliated to the university in accordance with the provisions of the Act and the Statutes and in which instruction is provided in accordance with the provisions of the Statute, Ordinances and Regulations. The applicant grant affiliation to the colleges as per Section 56 of the said Act subject to the terms and conditions as prescribed by the statute and such statute may provide for the pattern of staff, scale of pay and terms and conditions of service of members of staff and admission and selection of students for courses and examination.

7.5. The first question to be decided is whether the services provided by the applicant to its affiliated colleges and students constitute a supply within the meaning and scope of "supply" as defined in Section 7 of the CGST Act, 2017. Section 7 of the CGST Act, 2017 is reproduced below;

"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; and

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

(d) Omitted;

(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."



7.6. It is contended that as per the above definition of supply one of the essential ingredients for a transaction / activity to constitute supply is that it should be undertaken in the course or furtherance of business and the applicant is providing only education services and not carrying out any business activity. Education is more a mission and avocation rather than a profession or trade or business as the aim of education is creation of well educated healthy young generation imbued with a rational and progressive outlook of life. The applicant placed reliance on the judgments of the Hon'ble Apex Court in the case of State of Tamil Nadu Vs Board of Trustees of the Port of Madras reported in (1999) 4 SCC 630 and University of Delhi and others Vs Ram Nath and others reported in AIR 1963 SC 1873 in support of their contention that a University engaged in educational activities cannot be said to be carrying on business. Therefore, the applicant cannot be considered to be engaged in any business and accordingly the services rendered by them are not in the course or furtherance of business and consequently does not fall within the scope of "supply"; the taxable event in GST.

7.7. The term "business" is defined in Section 2 (17) of the CGST Act, 2017 as follows;

"(17) "business" includes —

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;



- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."

Thus the definition of "business" under the GST Act is an inclusive definition and is so wide in its scope and amplitude that it not only covers all activities or transactions that were subjected to various taxes that were subsumed in GST but also functions undertaken by Central Government, State Government or Local Authority as such public authority. In the case of Dayal Singh Vs Union of India reported in AIR 2003 SC 1140; the Hon'ble Supreme Court held that; "where the language of the statute is clear and unambiguous, nothing can be read into it by implication and the intention of the legislature has to be gathered from the language used." In view of the plain and unambiguous definition of the term "business" in the CGST Act there is no need for recourse to construction or interpretation and the plain meaning of the statute has to be applied. Hence, the observations of the Hon'ble Apex Court relied upon by the applicant being made in the context of the meaning of the term "business" under other laws are not relevant in determining whether an activity or transaction is "business" under the GST Act. Therefore, the services provided by the applicant to its affiliated colleges are covered by the definition of "business" in the CGST Act and consequently constitute a supply within the meaning and scope of "supply" as defined in Section 7 of the CGST Act, 2017.

7.8. Having come to the conclusion that the services provided by the applicant to its affiliated colleges constitute a supply within the meaning and scope of "supply" as defined in Section 7 of the CGST Act, 2017; the next issue to be decided is whether the supply is exempted under the entry at Sl Nos. 4 and 5 of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.



7.9. The entry at Sl Nos. 4 and 5 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 reads as follows;

"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

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"

7.10. The term "Governmental authority" is defined in Para 2 (zf) of Notification No. 12/2017 CT (Rate) dated 28.06.2017 as follows;

"(zf) "Governmental Authority" means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution."

7.11. Article 243G of the Constitution reads as follows;

"243G. Powers authority and responsibilities of Panchayath: Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to -

(a) the preparation of plans for economic development and social justice.

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh schedule."



7.12. The functions entrusted to a Panchayat under the Eleventh Schedule of the Constitution are as under:

1. Agriculture, including agricultural extension.
2. Land Improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor Irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, Village and Cottage industries.
10. Rural housing.
11. Drinking Water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of Communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centers and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.



27. Welfare of the weaker sections and in particular of the scheduled castes and Scheduled tribes.
28. Public Distribution System.
29. Maintenance of the Community assets.

7.13. Article 243W of the Constitution reads as follows;

“243W. Powers, authority and responsibilities of Municipalities etc – Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow –

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to –

(i) the preparation of plans for economic development and social justice;
 (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(c) the committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

7.14. The functions entrusted to a municipality under the 12th Schedule of the Constitution are as under;

1. Urban planning including town planning.
2. Regulation of land-use and construction of building.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.



9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play -grounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds, prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

7.15. Thus, it can be seen that the entry Nos. 17, 18 and 19 of Eleventh Schedule of the Constitution covers all types of education and education is also covered under entry No. 13 of the Twelfth Schedule of the Constitution. Therefore, education is a function entrusted to both Panchayath as well as Municipality under Article 243G and 243W respectively of the Constitution. University is a key institution of social change and development and the applicant being a Public University established under The Calicut University Act, 1975 an Act passed by the Legislature of the State of Kerala falls under the definition of "Governmental authority" in Para 2 (zf) of Notification No. 12/2017 CT (Rate) dated 28.06.2017. Therefore, the services provided by the applicant to its affiliated colleges are services by "Governmental authority" by way of activity in relation to function entrusted to a Panchayath and Municipality under Article 243G and 243 W of the Constitution and accordingly exempted from payment of GST as per entries at Sl Nos. 4 and 5 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.

RULING

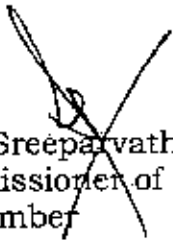
Question-1: Whether the activities or services being provided by the University to its affiliated colleges and students would fall under the "Scope of Supply" and thereby exigible to GST?




Ruling: The services provided by the applicant to its affiliated colleges constitute a supply within the meaning and scope of "supply" as defined in Section 7 of the CGST Act, 2017.

Question-2: If query no. 1 is in the affirmative, then whether the supply of services by University is exempted under Entries 4 and 5 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and SRO 371/2017 dated 30.07.2017, being the services rendered by a Government authority by way of any activity in relation to the functions entrusted to a Panchayat and Municipality.

Ruling: The services provided by the applicant to its affiliated colleges are exempted from payment of GST as per entries at Sl Nos. 4 and 5 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017


Dr. S.L. Sreeparvathy, IRS.
Addl Commissioner of Central Tax
Member


Abdul Latheef. K
Joint Commissioner of State Tax
Member

To,
M/s. University of Calicut,
Thenjipalam, Malappuram - 673635.

Copy to,

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2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
3. The State Tax Officer, Tax Payer Services Circle, Thirurangadi, Malappuram. [E-mail ID: mlptpsctgd.sgst@kerala.gov.in]

