

GAHC010152842022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5055/2022

GAUHATI UNIVERSITY,
A STATE UNIVERSITY ESTABLISHED UNDER THE GAUHATI UNIVERSITY
ACT, 1947 HAVING ITS OFFICE AT GOPINATH BORDOLOI NAGAR,
GUWAHATI-781014 AND IN THE PRESENT PROCEEDINGS REPRESENTED
BY THE REGISTRAR, DR. HEMANTA KUMAR NATH.

VERSUS

UNION OF INDIA AND 2 ORS.
THROUGH UNDER- SECRETARY GOVERNMENT OF INDIA, MINISTRY OF
FINANCE (DEPARTMENT OF REVENUE) NORTH BLOCK, NEW DELHI.

2:PRINCIPAL COMMISSIONER

GST AND CENTRAL EXCISE COMMISSIONERATE
GUWAHATI
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001.

3:THE ADDITIONAL DIRECTOR GENERAL

DIRECTORATE OF GST INTELLIGENCE
GUWAHATI ZONAL UNIT
H/NO. 4
RAJGARH BYE LANE-2
CHANDMARI
P.O. SILPUKHURI
GUWAHATI-781003
ASSA

Advocate for the Petitioner : DR. ASHOK SARAF

Advocate for the Respondent : SC, GST

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

02.09.2022

Heard Dr. Ashok Saraf, learned senior counsel assisted by Mr. P. Baruah, learned counsel appearing for the writ petitioner. Also heard Mr. S. C. Keyal, learned Standing Counsel, GST authorities appearing for the respondent Nos.1 to 3.

The petitioner herein is the Gauhati University and it has approached this Court by filing the instant writ petition being aggrieved by the demand of Rs.2,44,13,510/- and also the penalty of equivalent amount made by the GST authorities.

Dr. Saraf submits that the order dated 14.02.2022, based on which, the impugned demand has been made is illegal, arbitrary and without jurisdiction. It is also the submission of Dr. Saraf that the petitioner being an educational institution and considering the fact that an application dated 06.10.2020 filed by the University is pending before the UGC for grant of retrospective approval of the courses offered by the University during the period 2010 to 2017 based on the recommendation of the One Man Enquiry Commission, the impugned demand is liable to be stayed as in the event of grant of approval, the claim made by the GST authorities shall stand wiped out by operation of law. In support of his above argument, Dr. Saraf has also relied upon a decision of the High Court of

Judicature at Madras rendered in connection with W.P.(MD) No.12879 of 2019 and W.M.P.(MD) Nos.9576 & 9577 of 2019 [*Manonmaniam Sundaranar University vs. the Joint Director (GST Intelligence), Coimbatore & others*] to submit that the affiliation fee etc. collected by the University are in the nature of statutory levies and therefore the same would not be amenable to levy of Service Tax.

Mr. S. C. Keyal, learned Standing Counsel, GST, on the other hand, has questioned the maintainability of the writ petition by pointing out that the impugned order dated 14.02.2022 is an appellable order and therefore, the writ petition should not be entertained. The said submission of Mr. Keyal has, however, been opposed by Dr. Saraf by submitting that to prefer an appeal, the University would have to deposit 7.5% of the amount which would cause undue difficulties to the educational institution. Moreover, submits Dr. Saraf, the application seeking retrospective approval of the courses offered by the University is still pending before the UGC authorities and a decision in the matter is expected in near future.

Having heard the submission of learned counsel for both the sides, I am of the view that the matter would call for further examination.

Issue notice of motion returnable in four weeks.

Since the respondent Nos.1 to 3 are already represented, no formal notice is required to be sent to the said respondents. However, extra copies of the writ petition, requisite in numbers, be furnished to Mr. Keyal within three days from today so as to enable him to obtain instruction and file affidavit.

Petitioner to take steps for impleadment of the UGC as respondent No.4 in this writ petition by following the due procedure.

Heard on the prayer of interim relief.

Having regard to the facts and circumstances of the case, it is hereby provided that no coercive action under the impugned order dated 14.02.2022 shall be initiated against the petitioner till the returnable date.

JUDGE

Comparing Assistant