

**IN THE HIGH COURT FOR THE STATE OF TELANGANA ::  
AT HYDERABAD**

\* \* \*

**Writ Petition Nos.34617 of 2022, 26565, 26654, 26656, 26658,  
26659, 26661, 26663, 26688, 26766, 26776, 26779, 26790,  
26793, 27316, 27318, 27321, 27326, 27341, 27377, 27405,  
27420, 27429, 27456, 27458, 27460, 27461, 27462, 27463,  
27465, 27467, 27468, 27469, 27472 and 27475 of 2023**

Between:

Care College of Nursing and others.

Petitioners

VERSUS

Kaloji Narayana Rao University of Health Sciences,  
Rep by its Registrar, and others.

Respondents

**JUDGMENT PRONOUNCED ON: 17.10.2023**

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : **Yes**

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**P.SAM KOSHY, J**

**\* THE HONOURABLE SRI JUSTICE P.SAM KOSHY  
AND  
THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

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Respondents

! Counsel for Petitioner(s) : Mr.Gaddam Srinivas

^Counsel for the respondent(s) : None for 1<sup>st</sup> respondent-University;  
Mr. Dominic Fernandes, learned  
Senior Standing Counsel for  
respondent Nos.2 and 3; &  
Mr.V. Rajeshwar Rao, learned  
Government Pleader for  
Commercial Tax Department, for  
respondent Nos.4 and 5 in Writ  
Petition No.24617 of 2022.

<GIST:

> HEAD NOTE:

? Cases referred ::

1. W.P.No.57941 of 2018, decided on 26.07.2022
2. W.P.No.112 of 2019, decided on 26.07.2022
3. (1978) 1 S.C.C. 498
4. (2011) 4 S.C.C. 527
5. (2017) 6 S.C.C. 675
6. (2018) 9 S.C.C. 1 (F.B.) (S.C.)

**THE HONOURABLE SRI JUSTICE P. SAM KOSHY**

**AND**

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**Writ Petition Nos.34617 of 2022, 26565, 26654, 26656, 26658, 26659, 26661, 26663, 26688, 26766, 26776, 26779, 26790, 26793, 27316, 27318, 27321, 27326, 27341, 27377, 27405, 27420, 27429, 27456, 27458, 27460, 27461, 27462, 27463, 27465, 27467, 27468, 27469, 27472 and 27475 of 2023**

**COMMON ORDER** : *(per Hon'ble Sri Justice P.SAM KOSHY)*

Since the grounds of challenge and the petitioners and respondents, all being the same, we proceed to decide the batch of writ petitions by this common order.

**2.** This batch of writ petitions are filed by the educational institutions assailing the demand notice raised by the 1<sup>st</sup> respondent-University so far as payment of G.S.T. on the affiliation fee and inspection fee together with arrears from July, 2017 onwards.

**3.** For proper appreciation of facts, it would be more relevant to take note of the contents of the demand notice issued by the 1<sup>st</sup> respondent to each of the petitioners in all the writ petitions, which is extracted as under :

*“With reference to the subject cited and vide references cited, the University has been directed by GST authorities to collect and deposit the GST dues from July, 2017 onwards on affiliation and inspection fees paid by private institutions affiliated to K.N.R.U.H.S.*

*In this regard, you are hereby directed to submit 9% S.G.S.T. and 9% C.G.S.T. (a total of 18% as G.S.T.) on the affiliation and inspection fee paid to the University from July, 2017 onwards in the form of Demand Draft in favour of the Registrar, K.N.R.U.H.S. payable at Warangal within 10 days. Kindly note that the D.D.s are to be submitted separately for each financial year and also please provide the details of affiliation fee and inspection fee paid in a table form year-wise for each Financial Year.*

*Any further orders from the G.S.T. authorities shall be communicated to you for further course of action.”*

**4.** For convenience, we are referring to the facts in Writ Petition No.34617 of 2022 as facts for the rest of the batch of writ petitions as well. However, the other connected batch of matters, which are also heard and decided together, are matters where the impugned demand notice have been raised in the present year, i.e., 2023.

**5.** Heard Mr. Gaddam Srinivas, learned counsel for the petitioners; Mr. Dominic Fernandes, learned Senior Standing Counsel, appearing on behalf of respondent Nos.2 and 3; and Mr. V. Rajeshwar Rao, learned Government Pleader for

Commercial Tax Department, for respondent Nos.4 and 5 in Writ Petition No.24617 of 2022. None appeared for the 1<sup>st</sup> respondent - Kaloji Narayana Rao University of Health Sciences (K.N.R.U.H.S.)

**6.** All the petitioners in the present writ petition as also in the other connected writ petitions are educational institutions / colleges primarily imparting nursing course. All the colleges before this Court in the various writ petitions are all affiliated with the 1<sup>st</sup> respondent-Kaloji Narayana Rao University of Health Sciences (K.N.R.U.H.S.), (for short, 'the 1<sup>st</sup> respondent-University').

**7.** The 1<sup>st</sup> respondent is a University which has been established under the provisions of Act 6 of 1986. The colleges which intend to get affiliation the 1<sup>st</sup> respondent-University are required to undergo certain procedure. For the purpose of granting affiliation, the 1<sup>st</sup> respondent-University is required to first conduct an inspection and for this purpose, the University charges inspection fees as also affiliation fees from the respective colleges. All the colleges in this batch of writ petitions have paid the inspection fees for the inspection conducted as also the affiliation fees for the affiliation granted.

**8.** The G.S.T. law came into force w.e.f. 01.07.2017.

**9.** Recently, the respondent Nos.2 and 3 have raised demand of G.S.T. on the affiliation fees and inspection fees from the 1<sup>st</sup> respondent-University. Based upon the said demand, so raised by the respondent Nos.2 and 3, the 1<sup>st</sup> respondent-University in turn demanded payment of G.S.T. on the affiliation fees and inspection fees paid by each of these petitioners before this Court in the present batch of writ petitions. It is this demand raised by the 1<sup>st</sup> respondent-University from the petitioner-educational institutions which has led to filing of the present writ petition.

**10.** At the time when the G.S.T. law was enacted, “Education Service” was one of the subjects which was taxable under the ‘Heading No.9992’ as per notification dated 28.06.2017. Subsequently, there were certain categories of services provided by the educational institutions which stood exempted from levy of G.S.T. It is this exemption of levy of G.S.T. upon certain category of services rendered by the educational institutions as per notification No.12 of 2017, dated 28.06.2017, which has been heavily relied upon by the petitioners praying for allowing of the writ petitions and quashment of the impugned demand

notice raised by the 1<sup>st</sup> respondent-University for payment of G.S.T.

**11.** Learned counsel for the petitioners contended that perusal of Serial No.66 of Notification No.12 of 2017, dated 28.06.2017, would show that the services provided by an educational institution stands exempted from payment of G.S.T. He further contended that the term “educational institution” has been further defined in the same notification in Clause (y) of Section 2 of the G.S.T. Act. According to learned counsel for the petitioners, in terms of the said definition, an institution providing education services as a part of curriculum for obtaining a qualification, would by itself bring within it the University. In the process, the collection of fees towards inspection and affiliation also would get exempted from levy of G.S.T. In addition, he contended that the amendment brought to Serial No.66 of the Notification No.12 of 2017, dated 28.06.2017, by incorporating Clause (aa) also would make it emphatically clear that conduction of entrance examination and collection of entrance fees also has been brought within the exempted category and, thus, it would include affiliation and inspection fees as well.

**12.** In support of his contention, learned counsel for the petitioners firstly relied upon a recent decision of a learned Single Judge of the Karnataka High Court in **M/s. Rajiv Gandhi University of Health Sciences vs. Principal Additional Director General, Directorate General of GST Intelligence and others<sup>1</sup>** and also in **M/s.Bangalore University vs. Principal Additional Director General, Directorate General of GST Intelligence and others<sup>2</sup>**, wherein the learned Single Judge allowed the said writ petitions by setting aside the show-cause notice and also the consequent further actions as well, raised by the University from the respective colleges.

**13.** Additionally, learned counsel for the petitioners also placed reliance on the following decisions of the Hon'ble Apex Court in **The Principal and others vs. The Presiding Officer and others<sup>3</sup>**, **Chairman, Bhartia Education Society vs. State of Himachal Pradesh<sup>4</sup>** and **Maharishi Markandeshwar Medical College and Hospital vs. State of Himachal Pradesh<sup>5</sup>**.

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<sup>1</sup> W.P.No.57941 of 2018, decided on 26.07.2022

<sup>2</sup> W.P.No.112 of 2019, decided on 26.07.2022

<sup>3</sup> (1978) 1 S.C.C. 498

<sup>4</sup> (2011) 4 S.C.C. 527

<sup>5</sup> (2017) 6 S.C.C. 675



**14.** Learned counsel for the petitioners relied on the above decisions to show that affiliation is intrinsically connected with the educational institutions having affiliation from a particular University. That since the object of the University also is to ensure uniform curriculum and standards among the different affiliated colleges imparting education on the same course. In the instant case, it is the nursing course which is being imparted by the petitioners herein, therefore, the 1<sup>st</sup> respondent-University would also fall within the purview of 'educational institution' and as such the petitioners would also be exempted from levy of G.S.T. on the inspection fees and affiliation fees.

**15.** Learned counsel for the petitioners further contended that in the event, the said fees becomes amenable to G.S.T. and if the petitioners are made to pay G.S.T. on the inspection fees and affiliation fees, the petitioner-Colleges would be compelled to pass on the burden on the students who get admitted to the respective colleges of the petitioners. Thus, in terms of Serial No.66 of the notification No.12 of 2007, dated 28.06.2017, since it exempts so far as the services rendered by the educational institutions to the students, the petitioners should not be compelled to pay G.S.T. on the inspection fees and the affiliation

fees. It would also be detrimental to the interest of the students who have meanwhile taken admission to the petitioner-Colleges.

**16.** *Per contra*, Mr. Dominic Fernandes, for Commercial Tax, for respondent Nos.2 to 4, contended that the impugned demand notice is one which is in fact raised by the 1<sup>st</sup> respondent-University and the 1<sup>st</sup> respondent-University as such has not disputed or denied payment of G.S.T. on the inspection fees or affiliation fees.

**17.** Learned Special Standing Counsel for respondent-Department further submitted that in terms of Notification No.11 of 2017, dated 28.06.2017, the Government had made it expressly clear that under the 'Heading – 9992', the educational institution is one which is taxable under the G.S.T. law. The term 'Education Service' includes various components viz., affiliation fees, inspection fees and various other fees which is collected both by the 1<sup>st</sup> respondent-University as also by the respective colleges affiliated to the 1<sup>st</sup> respondent-University. It was further contended that after making education service taxable, the Government relaxed the same to some extent vide Notification No.12 of 2017, dated 28.06.2017, and it is that which is reflected upon in Serial No.66 of the said notification.

Clause (a) of Serial No.66 under the same 'Heading – 9992' prescribing services provided by an educational institution to its students, faculty and staff to be one under the exempted category so far as the levy of tax is concerned.

**18.** According to learned counsel for the respondent-Department, a plain reading of Serial No.66 (which was further amended vide Notification No.2 of 2018, dated 25.01.2018) would go to show that the collection of affiliation fees and inspection fees does not stand exempted. It was the further contention of learned counsel for the respondent-Department that, in the 47<sup>th</sup> G.S.T. Council Meeting held on 28/ 29.06.2022, one of the topic of discussion in their agenda was in respect of the confusion that prevailed regarding the taxability of G.S.T. on sale of application forms to the prospective students, issue of migration, eligibility forms to graduate students, affiliation works and other educational activities. In this context, the G.S.T. Council had in its aforesaid meeting categorically resolved that the services provided by the educational institutions to its students, faculty and staff stands exempted vide Notification No.12 of 2017, dated 28.06.2017.

**19.** It was further resolved in the same meeting that so far as collection of application fees for entrance examination and also collection of fee for issuance of eligibility certificates and for entrance examination and admission fees, etc., all would stand exempted in terms of Notification No.12 of 2017, dated 28.06.2017. However, as regards issue of affiliation of educational institutions with the Universities and Boards, etc., it was resolved that the Circular issued by the Government of India, Ministry of Finance, Department of Revenue, dated 17.06.2021, would be governing the field. As per Clause (4)(iii) of the said Circular, G.S.T. @ 18% applies to such services provided by the Board or University so far as accreditation to education institutions is concerned

**20.** Learned counsel for the respondent-Department further contended that the decisions rendered by learned Single Judge of the Karnataka High Court in **The Presiding Officer and others** (1 supra) **and Chairman, Bhartia Education Society** (2 supra) (as was strongly harped upon by the learned counsel for the petitioners) would not be applicable or come to the rescue of the petitioners as proper material papers were not brought before the said High Court at the time of disposal of the said writ

petitions. That that the learned Single Judge had primarily relied upon Clause 66D of the Finance Act, 1994 which had the negative list of services upon which there would be no levy of tax.

**21.** The learned counsel for the respondent-Department further brought to the notice of this Court that Sub-Clause (l) of the Clause 66D of the Finance Act, 1994 already stood omitted by way of Finance Act, 2016 w.e.f. 14.05.2016. The levy of G.S.T. is under the provisions of the G.S.T. law which does not have any such clause as was relied upon by the learned Single Judge of the Karnataka High Court from the Finance Act, i.e., Clause 66D. Therefore, the said decisions are distinguishable both on facts and also on law.

**22.** Having heard the contentions of learned counsel on either side and on perusal of the records, what needs to be taken into consideration for deciding the issue raised by the learned counsel for the petitioners is the first notification that was issued by the Government, i.e., Notification No.11 of 2017, dated 28.06.2017 which first reflected the description of the services which would be taxable and also reflected the headings and the rate of charges of G.S.T. upon each of the services notified therein.

**23.** Serial No.30 of Notification No.11 of 2017, dated 28.06.2017 is the head subject which is relevant for the decision of this Court, which for ready reference is extracted hereunder :

*Notification No.11/2017-Central Tax (Rate)*

*New Delhi, the 28<sup>th</sup> June, 2017*

*G.S.R.... (E) – In exercise of the powers conferred by sub-section (1) of Section 9, sub-section (1) of Section 11, sub-section (5) of section 15 and sub-section (1) of Section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in Column (4), subject to the conditions as specified in the corresponding entry in Column (5) of the said Table :-*

<b>Sl. No.</b>	<b>Chapter, Section or Heading</b>	<b>Description of Service</b>	<b>Rate (per cent)</b>	<b>Condition</b>
... ..	...	....	...	...
30	Heading 9992	Education services	9	-

**24.** From a plain reading of the above notification, it is evidently clear that educational services have been particularly held to be taxable.

**25.** It is now relevant to take note of the notification issued by the Government of India granting exemption to certain services, vide Notification No.12 of 2017-Central Tax (Rate), dated 28.06.2017, at Serial No.66, which again for ready reference is reproduced hereunder, viz.,

*Notification No.12/2017-Central Tax (Rate)*

*New Delhi, the 28<sup>th</sup> June, 2017*

*G.S.R.... (E) – In exercise of the powers conferred by sub-section (1) of Section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of Section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in Column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in Column (5) of the said Table, viz.:-*

<b>Sl. No.</b>	<b>Chapter, Section or Heading</b>	<b>Description of Service</b>	<b>Rate (per cent)</b>	<b>Condition</b>
...	...	....	...	...
66	Heading 9992	<p>Services provided –</p> <p>(a) by an educational institution to its students, faculty and staff;</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 house-keeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary;</p> <p>Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.</p>	9	-

**26.** The above notification stood amended vide Notification No.2 of 2018, dated 25.01.2018, wherein Clause (aa) was also inserted after Clause (a) under Serial No.66, which reads as under :

*“(o) against serial number 66, in the entry in column (3) –*

*(i) after item (a), the following item shall be inserted, viz.,*

*“(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.”*

**27.** The aforesaid amendment was brought by virtue of a decision that was taken on the recommendations of the Council, and the 25<sup>th</sup> meeting of G.S.T. Council held on 18.01.2018, wherein certain exemptions / changes in the G.S.T. rates was decided and one such item was in respect of the service relating admission and conduction of examination. The decision of the said Council is reproduced hereunder, viz.,

*“(20) To exempt services relating to admission to, or conduct of examination provided to all educational institutions, as defined in the notification.*

*To exempt services by educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.”*



**28.** If we read the provisions of G.S.T. law, the notification No.11 of 2017, dated 28.06.2017, emphatically holds education service to be one which is liable to tax. The relaxations granted vide Notification No.12 of 2017 is confined to the services rendered by the educational institutions to the students, faculty and staff. It also grants exemption in respect of collection of fees relating to entrance examination and other fees chargeable from the students for admission or any such purpose. Nowhere has the respondents declared or notified that charging of inspection fees and the affiliation fees by the 1<sup>st</sup> respondent-University also would fall within the exempted category. Under the taxing law, unless there is a specific exemption granted specifically on inspection fees and affiliation fees, the petitioners cannot be permitted to claim exemption drawing an inference of the affiliation and inspection fees both being part of the Notification No.12 of 2017, dated 28.06.2017, and also being inter-linked to the curriculum which is undertaken by the educational institutions and the admissions derived therefrom.

**29.** The fact that the Notification No.11 of 2017, dated 28.06.2017, has a broader subject when it prescribes education service and Notification No.12 of 2017, dated 28.06.2017,

specifically enumerates specific services which stand exempted and inspection and affiliation fees not reflected in the Notification No.12 of 2017, dated 28.06.2017, the relief sought for by the petitioners or the issue raised by the petitioners would not be sustainable. Since there were certain handicaps and confusions prevailing, the G.S.T. Council itself in its 47<sup>th</sup> G.S.T. Council Meeting held on 28/29.06.2022 very categorically held that as regards the question of granting exemption to the affiliation and other fees collected by the 1<sup>st</sup> respondent-University, it is the Circular dated 17.06.2021 issued by the Government of India which would govern the field and clause (4) thereof reads as under :

*“4. Taking into account the above, the G.S.T. Council has recommended, to clarify as below :*

*(i) G.S.T. is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution [under S.No.66(aa) of Notif.No.12/2017-CT(R)]. Therefore, G.S.T. shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.*

*(ii) G.S.T. is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination,*

*admit card and question papers, etc., when provided to such Boards [under S.No.66(b)(iv) of Notif.No.12/2017-CT(R)].*

*(iii) G.S.T. at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorize them to provide their respective services.”*

**30.** A plain reading of the said Clause (4) would give a clear indication that, except for the exemption that has been specifically enumerated in Notification No.12 of 2017, dated 28.06.2017, all other services rendered by educational institutions and universities are taxable under the G.S.T. law. Another fact which needs to be considered is that under the Notification No.11 of 2017, dated 28.06.2017, (as has been discussed earlier), the entire ‘education service’ itself is held to be taxable under G.S.T. law, and if the Government intended to exempt the educational institutions and universities from the ambit of G.S.T. law, they would have simply, as in Notification No.11 of 2017, incorporated ‘education service’ and would have exempted the petitioners and the universities as well. However, that is not the case.

**31.** Notification No.12 of 2017, dated 28.06.2017, which stood amended further vide Notification No.2 of 2018, dated

25.01.2018, specifically enumerates the specific nature of service rendered by the educational institutions which would stand **exempted. Inspection and affiliation fees however is not part of the said notification granting exemption.** Yet another aspect which needs to be considered is that Notification No.12 of 2017, dated 28.06.2017, provides for exemption of services rendered by the educational institutions to three different categories, i.e., students, faculty and staff. It does not deal with the services rendered by the university to the educational institutions. 'Affiliation' and 'inspection' is a service rendered by the university to the educational institutions for which the university had charged the respective educational institutions.

**32.** Surprisingly, in the instant case, as of now, the 1<sup>st</sup> respondent-University does not seem to be aggrieved of the demand raised by the respondent-Department so far as payment of G.S.T. on the inspection and affiliation fees is concerned. What is further necessary to be reflected at this juncture is that the nature of service rendered by the 1<sup>st</sup> respondent-University to the respective educational institutions is at a stage where the admissions to the students have not commenced. It is at the inception stage of the educational institutions that the

inspection is conducted and the affiliation is thereafter granted. The admission and the services rendered by the educational institutions to the students, the faculty and the staff are all services rendered subsequent to the affiliation. Therefore, the contention that the petitioners have canvassed is hard to accept.

**33.** The Constitution Bench decision of the Hon'ble Apex Court rendered in the case of **Commissioner of Customs (Import), Mumbai vs. M/s. Dilip Kumar and Company**<sup>6</sup>, dealing with the situation where there is any doubt or confusion so far as claiming of exemption is concerned (though there is none in the present writ petition so far as this Bench is concerned) the Hon'ble apex Court held at para Nos.48 to 51 as under :

*“48. The next authority, which needs to be referred is Mangalore Chemicals [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] . As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, be clear. Exemptions from taxation have a tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.*

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<sup>6</sup> (2018) 9 S.C.C. 1 (F.B.) (S.C.)

**49.** *The ratio in Mangalore Chemicals case [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] was approved by a three-Judge Bench in Novopan India Ltd. v. CCE [Novopan India Ltd. v. CCE, 1994 Supp (3) SCC 606] . In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows : (SCC p. 614)*

*“16. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] — and in Union of India v. Wood Papers Ltd. [Union of India v. Wood Papers Ltd., (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , referred to therein — represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee — assuming that the said principle is good and sound — does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State.”*

**50.** *In TISCO Ltd. v. State of Jharkhand [TISCO Ltd. v. State of Jharkhand, (2005) 4 SCC 272] , which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held : (SCC pp. 289-290)*

*“44. The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (see Novopan India Ltd. v. CCE [Novopan India Ltd. v. CCE, 1994 Supp (3) SCC 606] ).”*

*51. In Hari Chand case [CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236] , as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.”*

**34.** Relying upon the constitutional decision of the Hon’ble Apex Court also, we are of the firm view that firstly, the Notification No.12 of 2017, dated 28.06.2017, cannot be made

applicable upon inspection and affiliation fees charged by the 1<sup>st</sup> respondent-University from the educational institutions. Secondly, since so far as inspection and affiliation fees charged by the 1<sup>st</sup> respondent-University from the educational institutions has not been specifically exempted in terms of the Constitution Bench judgment in **M/s. Dilip Kumar and Company** (6 supra), the said benefit cannot be extended to the petitioners. As regards the two decisions rendered by the Karnataka High Court in **M/s. Rajiv Gandhi University of Health Sciences** (1 supra) and in **M/s.Bangalore University** (2 supra), which was heavily relied upon by the learned counsel for the petitioners, we are in complete agreement to the contentions raised by the learned counsel for the respondent-Department that the learned Single Judge of the Karnataka High Court while passing orders in the aforesaid two decisions, has relied upon the provisions of Finance Act, 1994 (Clause 66D). Sub-Clause (l) of Clause 66D of the Finance Act, 1994 which in fact, first of all, stood omitted by the Finance Act, 2016 w.e.f. 14.05.2016. Secondly, what also needs to be mentioned is that under the G.S.T. law there is no such provision as Sub-Clause (11) of Clause 66D of the Finance Act. Therefore, we are inclined



to respectfully disagree with the view taken by the Karnataka High Court in the aforesaid two decisions. Therefore, the said decisions are distinguishable in facts and law.

**35.** For all the aforesaid reasons, we do not find any substance in the contentions raised by the learned counsel for the petitioners. Accordingly, the Writ Petition No.34617 of 2022 stands dismissed. Consequently, all the connected writ petitions also stand dismissed. No costs.

**36.** As a sequel, miscellaneous petitions pending if any in these writ petitions, shall stand closed.

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**P. SAM KOSHY, J**

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**LAXMI NARAYANA ALISHETTY, J**

Date : 17.10.2023

**Note : LR copy to be marked  
B/o.**

*Ndr/kkm*