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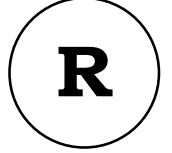
IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 25TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.103139 OF 2021 (T-RES)



BETWEEN:

M/S. BAGALKOT NIRMITHI KENDRA
RS NO.120, BEHIND NEW CIRCUIT HOUSE
VIDYAGIRI, BAGALKOT
DIST. BAGALKOT - 587 102
REPRESENTED BY ITS PROJECT DIRECTOR
SHANKARILNGA
S/O LATE NAGAPPA GOGI.

... PETITIONER

(BY SRI GIRISH A.YADAWAD, ADVOCATE)

AND:

- 1 . THE UNION OF INDIA
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE, NORTH BLOCK
NEW DELHI - 110 001
REPRESENTED BY ITS SECRETARY.
- 2 . THE GST COUNCIL
5TH FLOOR, TOWER-II

JEEVAN BHARAT BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI – 110 001
REPRESENTED BY ITS SECRETARY.

- 3 . THE COMMISSIONER OF CENTRAL TAX (AUDIT)
DHARWAD AUDIT CIRCLE
C.R. BUILDING, NAVANAGAR
HUBBALLI – 580 025.
- 4 . THE ASSISTANT COMMISSIONER (AUDIT)
CENTRAL EXCISE, AUDIT CIRCLE
HUBBALLI – 580 025.
- 5 . THE UNDER SECRETARY TO THE
GOVERNMENT OF INDIA
MINISTRY OF FINANCE, NORTH BLOCK
NEW DELHI – 110 001.
- 6 . STATE OF KARNATAKA
COMMERCIAL TAXES DEPARTMENT
VIDHANA SOUDHA
BENGALURU – 560 001
REPRESENTED BY ITS SECRETARY.
- 7 . THE UNDER SECRETARY TO THE
GOVERNMENT OF KARNATAKA
FINANCE DEPARTMENT
VIDHANA SOUDHA
BENGALURU – 560 001.
- 8 . THE DEPUTY COMMISSIONER
BAGALKOT DISTRICT
DISTRICT ADMINISTRATIVE BUILDING
BAGALKOTE – 587 103.

RESPONDENT NO.8 IS DELETED VIDE COURT
ORDER DATED 21.09.2021.

... RESPONDENTS

(BY SRI M.B.KANAVI, CGSC FOR R1 AND R5;
SRI GIRISH S.HULMANI, ADVOCATE FOR R2 TO R4;
SMT. KIRTILATA R.PATIL, HCGP FOR R6 AND R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE PETITIONER NAMELY M/S. BAGALKOT NIRMITHI KENDRA IS A GOVERNMENT ENTITY AS DEFINED UNDER CLAUSE (ZFA) OF THE NOTIFICATION DATED 32/2017 DATED 13.10.2017 ISSUED BY THE GOVERNMENT OF KARNATAKA VIDE ANNEXURE-C AND CONSEQUENTLY DECLARE THE PETITIONER IS ENTITLED TO TAX EXEMPTION UNDER ENTRY NO.9B OF THE NOTIFICATION NO.32/2017 DATED 13.10.2017 ISSUED BY THE GOVERNMENT OF KARNATAKA.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.10.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner – M/s. Bagalkot Nirmithi Kendra is at the doors of this Court seeking a direction to declare the petitioner to be a 'Government Entity' as defined under Clause (zfa) of the notification dated 13.10.2017 issued by the Government of Karnataka and consequently, declare that the petitioner is entitled to tax

exemption under Entry No.9B of the said notification and has also called in question a communication dated 07.07.2021 issued by the fourth respondent.

2. Heard Sri Girish A. Yadawad, learned counsel for the petitioner, Sri M.B.Kanavi, learned Central Government Standing Counsel for respondent Nos.1 and 5, Sri Girish S. Hulmani, learned counsel for respondent Nos.2 to 4 and Smt. Kirtilata R. Patil, learned High Court Government Pleader for respondent Nos.6 and 7.

3. Facts in brief, germane, are as follows:

The petitioner is a Society registered under the Karnataka Societies Registration Act, 1960, which comes into existence in terms of a government order dated 05.09.1990. It is the claim of the petitioner that it is an entity established by the Government of Karnataka. The establishment of the petitioner is said to be under the National Network Programme of Building Centres Scheme, by the Housing and Urban Development Corporation of the Government of India, in furtherance of the Scheme notified. The petitioner is exclusively engaged in civil construction works for the

State and Central Governments. The rules and regulations of the petitioner are all said to necessitate approval from the hands of the State. Copies of Memorandum of Association of the petitioner and the Rules governing the petitioner are all appended to the petition.

4. On 29.06.2017, a notification is issued by the fifth respondent – the Ministry of Finance, the Government of India exempting tax liability on certain entities for supply of services after the emergence of GST regime. On 13.10.2017, a notification is issued by the State, Finance Department, amending the definition of 'Government Entity' by including Clause (zfa). Between the audit period from July, 2017 and March, 2018, an audit was conducted of the petitioner by the fourth respondent – the Assistant Commissioner of Central Excise. The third respondent – the Commissioner of Central Excise seeks certain documents for the period between July, 2017 and March, 2018. It is the claim of the petitioner that the petitioner has submitted all the requisite documents as stipulated in the communication for an ongoing enquiry, on 14.09.2020. As a result of the aforesaid communication, on 13.01.2021, the fourth respondent addresses a

communication to the petitioner, based on the documents submitted by the petitioner. On 15.02.2021, the petitioner replies to the said communication, which results in the impugned communication dated 07.07.2021, indicating that the petitioner cannot be exempted from tax liability. The petitioner has clarified by e-mail to the fourth respondent, contending that the petitioner fall into the category of a 'Government Entity' as notified in the notification dated 13.10.2017, as the petitioner is controlled by the State Government and no other person has any control whatsoever on the petitioner.

5. On 17.08.2021, the fourth respondent communicates the eighth respondent to direct the petitioner to comply with the GST liability, since other Nirmithi Kendras in the State of Karnataka are also complying with the GST liabilities accrued to them. It is the aforesaid observation or aforesaid opinion of the fourth respondent that the petitioner cannot be declared to be a 'Government Entity', has driven the petitioner to this Court in the subject petition.

6. Learned counsel for the petitioner would vehemently contend that the petitioner is established and controlled wholly by

the Government of Karnataka and therefore, the petitioner is a 'Government Entity' under Clause (zfa) of the notification dated 13.10.2017. The petitioner enters into contracts and carries out work only for the State and Central Governments and therefore, requires to be exempted from tax liability under Entry No.9B of the notification No.32/2017. The learned counsel further submits that the definition of the 'Government Society' includes a Society established with 90% or more control, which undoubtedly includes the petitioner. He submits that the fourth respondent has seriously misinterpreted the definition Clause itself and indulged in the impugned communication.

7. *Per contra*, Sri Girish S. Hulmani, learned counsel for respondent Nos.2 to 4 would seek to defend the action holding that the petitioner can never be declared a 'Government Entity' and it is liable to pay tax as every Nirmithi Kendras in the State are paying tax. He would seek dismissal of the petition.

8. Smt. Kirtilata R. Patil, learned High Court Government Pleader would submit that they are only formal parties and leave the decision to the hands of this Court.

9. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

10. In furtherance whereof, the only issue that falls for consideration is, whether the petitioner is to be declared as 'Government Entity' as obtaining in the notification dated 13.10.2017, exempting it from tax liability and consequently, the impugned communications to be obliterated.

11. The petitioner comes to existence pursuant to its registration in the year 1990. The registration carried with it a Memorandum of Association of the petitioner and the rules and regulations thereof. The objectives of the petitioner are as follows:

**"MEMORANDUM OF ASSOCIATION OF THE BAGALKOT
NIRMITHI KENDRA**

- I. The name of the Society shall be "NIRMITHI KENDRA", hereinafter called the "Kendra".
- II. The registered office of the Kendra shall be at Bagalkot
- III. Objectives: The objectives of the Kendra are to:

- 1) serve as a seminal agency to generate and propagate innovative ideas on housing:
- 2) a clearing house of information and data bank on housing which would bring the fruits of research from "lab" to "land",
- 3) a production Centre to prefabricate standardised housing materials including rubble filler blocks, standardised country burnt bricks, hollow blocks all stabilised blocks, funicular shell, precast plate floors, filler blocks, RCC frame for doors and windows ferrocement rafters, water tanks, fibre roofing sheet sanitary wares, tiles, smokeless chulah and allied housing material including sanitary ware and electrical fittings etc;
- 4) an agency to set up and run wood processing units, ferrocement, sanitary ware manufacturing units, tile manufacturing units, for manufacture machine/tools and equipments connected with housing, design wing construction wing, R & D wing and consultancy wing;
- 5) a training house to impart skills to local workmen in innovative housing techniques and create a cadre of trained workers in all blocks in the District
- 6) a nodal agency to serve as a catalyst in the field of housing ensuring horizontal co-ordination in implementation of housing programmes;
- 7) a chain for retail outlets of housing material;
- 8) an agency for transportation and distribution of house building materials;
- 9) an agency to arrange for financial assistance for house construction,
- 10) a forum to organise exhibitions, seminars, orientation programmes, demonstration of housing

and publish useful data and literature on housing and allied activities;

- 11) a Research and Development institution and a consultant in the field of housing;
- 12) without prejudice to the generally of the above and for effectively carrying out these objectives the Kendra shall have the power to acquire, hold and receive property of any kind including securities and negotiable instruments to conduct and maintain buildings including the right to alter and improve them and to equip them suitably to manage, sell, transfer or otherwise dispose of or deal with property of any kind belonging to the Kendra to enter into contracts for or in connection with any of the purposes of the Kendra to enter into contracts for or in connection with any of the purposes of the Kendra and on its behalf to raise moneys and funds in such a manner as may be deemed fit for on behalf of the Kendra and;
- 13) to do all such things and to perform all such acts as may be necessary or appropriate for the achievement of any or all of the above objects,
- 14) to take up construction work of any nature like fabrication, manufacture, installation, etc conducive with other objects and generating employment opportunities, particularly for the weaker sections of the Society."

The governing body of the petitioner comprises of 14 members, who are the 14 members are as follows:

"4. **GOVERNING BODY.**

(a) There shall be a Governing Body of 14 members

(b) The Governing Body shall be composed of

1. Deputy Commissioner, Bagalkot - Chairman
2. Chief Executive Officers, Z. P. Bagalkot - Executive Chairman
3. The Deputy Secretary, (Development) Z.P. Bagalkot - Member Secretary
4. The Executive Engineer Z.P. Engg. Division Bagalkot
5. The District Welfare Officer, Bagalkot
6. The Chief Planning Officer, Z. P. Bagalkot
7. Director KARNIK, Bangalore
8. Representative from Engg. College/Polytechnic Bagalkot
9. The Lead Bank Officer, Bagalkot
10. The General Manager, District Industries Centre, Bagalkot
11. A representative of Nodal agency
12. A representative of NGO agency
13. A leading architect
14. Three representatives from the category of individual members in be nominated by the chairman which can be Ex-officio, Entrepreneurs, and the Volunteers ."

The Chairman is the Deputy Commissioner, the Executive Chairman is the Chief Officer of the Zilla Panchayat, the Member Secretary is the Deputy Secretary (Development) of the Zilla Panchayat, the Executive Engineer of the Zilla Panchayat, the District Welfare Officer, the Chief Planning Officer of the Zilla Panchayat are the ex-officio members and other office bearers of the governing body of the petitioner as noticed hereinabove. Right from the Chairman – the Deputy Commissioner upto the Chief Planning Officer of the Zilla Panchayath, will be the members of the Executive Committee. The Executive Committee of the petitioner – Nirmithi Kendra is as follows:

“7. EXECUTIVE COMMITTEE.

- (a) There shall be an Executive Committee of five members
- (b) The members of the Executive Committee shall be:
 1. The Chairman of the Governing body Deputy Commissioner
 2. Executive Chairman
 3. The Project Manager. Nirmithi Kendra.
 4. The Executive Engineer, ZP division, Bagalkot
 5. Deputy Secretary (Development) Z.P. Bagalkot”

The petitioner is headed by the Chairman, the Chairman is the Deputy Commissioner. Therefore, the petitioner is completely controlled by the government. It is funded from the grants and contributions from the corporate bodies, banks and other financial institutions is a matter of record. The Goods and Services Tax, 2017 (for short 'the GST') in a supersession of Value Added Tax, 2005, which comes about on 01.04.2017. After the new regime comes into existence *i.e.*, GST, a notification is issued bearing No.12/2017 by the Central Government exempting tax liability to certain entities for supply of services. The said notification is followed by the Government of Karnataka by the Finance Department, in notification bearing No.32/2017 dated 13.10.2017 wherein, in the definition clauses, Clause (zfa) comes to be added. The additions are as follows:

"FINANCE SECRETARIAT

NOTIFICATION (32/2017)

No. FD 48 CSL 2017 Bengaluru, dated :13.10.2017

In exercise of the powers conferred by sub-section (1) of section 11 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017), the Government of Karnataka, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the

Council, hereby makes the following further amendments in the notification, No.(12/2017) FD 48 CSL 2017, dated the 29th June, 2017, published in the Gazette of Karnataka, Extraordinary, Part - IVA, Number 602, dated the 29th June, 2017, namely:

1. In the Table, -

- (1) in serial number 5, in column (3), for the words "governmental authority" the words "Central Government, State Government, Union territory, local authority or Governmental Authority" shall be substituted;
- (2) after serial number 9A and the entries relating thereto, the following serial number and entries shall be inserted namely: -

| (1) | (2) | (3) | (4) | (5) |
|-----|-------------------|---|-----|-------|
| "9B | Chapter 99 | Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants. | Nil | Nil"; |

- (3) after serial number 21 and the entries relating thereto, the following serial number and entries shall be inserted namely: -

| (1) | (2) | (3) | (4) | (5) |
|------|-----------------|---|-----|-------|
| "21A | Heading 9965 | Services provided by a goods transport agency to an unregistered person, including an unregistered casual | Nil | Nil"; |

| | | | | |
|--|-----------------------|---|--|--|
| | or Heading 9967 | taxable person, other than the following recipients, namely: - (a) any factory registered under or governed by the Factories Act, 1948(63 of 1948); or (b) any Society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any Co-operative Society established by or under any law for the time being in force; or (d) any body corporate established, by or under any law for the time being in force; or (e) any partnership firm whether registered or not under any law including association of persons; (f) any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act. | | |
|--|-----------------------|---|--|--|

- (4) after serial number 23 and the entries relating thereto, the following serial number and entries shall be inserted namely: -

| (1) | (2) | (3) | (4) | (5) |
|------|-----------------|---|-----|-------|
| "23A | Heading 9967 | Service by way of access to a road or a bridge on payment of annuity. | Nil | Nil"; |

- (5) in serial number 41, for the entry in column (3), the following entry shall be substituted namely: -

"Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.";

2. in paragraph 2, for clause (zf),the following shall be substituted, namely: -

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

(zfa) “Government Entity” means an authority or a board or any other body including a society, trust, corporation,

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

or

(ii) established by any Government,

with 90per cent. or more participation by way of equity or control, to carry out a function

entrusted by the Central Government, State Government, Union Territory or a local authority.”

(Emphasis supplied)

The Clause (zfa) in the definition clause defines a 'Government Entity'. A 'Government Entity' means an authority or a board or any other body including a society, trust, corporation, set up by an Act of Parliament or State Legislature or established by any government with 90% or more participation by way of equity or control, to carry out the functions entrusted to it by the Governments, Union Territory or a local authority. It is again a matter of record that the Society is controlled by the State Government and funded *inter alia* by the State Government. Therefore, undoubtedly the petitioner fits into the definition of Clause (zfa) - a 'Government Entity'. Entry No.9B in the afore-quoted notification also describes a 'Government Entity'. On a coalesce of the definitions noted hereinabove, what would unmistakably emerge is, the petitioner is a 'Government Entity'.

12. I now deem it appropriate to notice the law as considered by the Apex Court or the High Courts, whereby, it is held that the

exemption clause would become applicable to the entities completely controlled by the government. A division bench of the High Court of Patna in the case of **SHAPOORJI PALOONJI & COMPANY PRIVATE LIMITED V. COMMISSIONER, CUSTOMS, CENTRAL EXCISE AND SERVICE TAX**¹, holds as follows:

“

11. It is undisputed that the Indian Institute of Technology, Bihta, Patna, whose academic block was to be constructed by the petitioner, was set up by an Act of Parliament, i.e., Indian Institutes of Technology Act, 1961 (59 of 1961) as an institute of national importance under article 248 of the Constitution of India read with Seventh Schedule, List I. As per the definition of Governmental Authority as amended on January 30, 2014, an authority or board or any other body set up by an Act of Parliament or State Legislature is a Governmental Authority. Therefore, the notification dated June 20, 2012, exempts the activity of construction undertaken by the petitioner from payment of service tax.

12. However, the arguments of Mrs. Nivedita Nirvikar, learned counsel for respondent No. 1, is that only an authority 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 alone is the Governmental Authority, entitled to exemption from benefit of service tax. Such provision in the notification dated January 30, 2014 is applicable to both parts of clause

¹ 2016 SCC OnLine Pat 1602

2(s) and not to sub-clause (ii) of clause 2(s) alone of the said notification.

13. We have heard learned counsel for the parties and found the arguments raised by Mrs. Nivedita Nirvikar are not sustainable in law. The Governmental Authority as defined in the notification dated January 30, 2014, means an authority or a board or any other body set up by an Act of Parliament or State Legislature. The provisions contained in sub-clause (i) and sub-clause (ii) of clause 2(s) are independent disjunctive provisions and the expression "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" is related to sub-clause (ii) of clause 2(s) alone. The clause (i) is followed by ";" and the word "or". Therefore, each of the sub-clauses is independent provision. The condition of 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 is relatable to only sub-clause (ii) of clause 2(s). It means that an authority established by Government should have 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 to be eligible for exemption. The authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to the condition of 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. **Thus, the construction activity undertaken by the petitioner in respect of the academic block of the institute-respondent No. 4, is exempt from payment of service tax in terms of notification, dated June 20, 2012 as amended.**

14. Thus, the service tax paid either by the petitioner or respondent No. 4 and collected by respondent No. 1, cannot be levied or collected as it is not chargeable levy. Consequently, the direction contained in the communication dated September 5, 2014 (annexure 5), is quashed.

15. At this stage, another argument advanced by Mrs. Nivedita Nirvikar, needs to be discussed. She argues that the petitioner shall not be entitled to refund of the service tax as it would be a case of undue enrichment. We do not find any merit in this argument as well. **The payment of service tax has not been made by the numerous consumers and collected by the petitioner. It is paid by the petitioner alone. The petitioner is entitled for the reimbursement of the amount of service tax by respondent No. 4 in terms of the letter of award of contract. Such payment of service tax by the petitioner is not indirect collection of taxes but the direct payment by the petitioner. Therefore, it is not a case of undue enrichment."**

(Emphasis supplied)

The said judgment was tossed by the Department of Central Excise before the Apex Court. The Apex Court in terms of the judgment rendered in the case of **COMMISSIONER, CUSTOMS, CENTRAL EXCISE AND SERVICE TAX V. SHAPOORJI PALLONJI & CO. (P) LTD.**², dismisses the appeal, upholding the order passed by the division bench of the High Court of Patna. The Apex Court held as follows:

"....

37. In the present case, the use of a semicolon is not a trivial matter but a deliberate inclusion with a clear intention to differentiate it from sub-clause (ii). Further, it can be observed upon a plain and literal reading of Clause 2(s) that while there is a semicolon after sub-clause (i), sub-clause (ii) closes with a

² (2024) 3 SCC 358

comma. This essentially supports the only possible construction that the use of a comma after sub-clause (ii) relates it with the long line provided after that and, by no stretch of imagination, the application of the long line can be extended to sub-clause (i), the scope of which ends with the semicolon. We are, therefore, of the opinion that the long line of Clause 2(s) governs only sub-clause (ii) and not sub-clause (i) because of the simple reason that the introduction of semicolon after sub-clause (i), followed by the word "or", has established it as an independent category, thereby making it distinct from sub-clause (ii). If the author wanted both these parts to be read together, there is no plausible reason as to why it did not use the word "and" and without the punctuation semicolon. While the Clarification Notification introduced an amended version of Clause 2(s), the whole canvas was open for the author to define "governmental authority" whichever way it wished; however, "governmental authority" was redefined with a purpose to make the clause workable in contradistinction to the earlier definition. Therefore, we cannot overstep and interpret "or" as "and" so as to allow the alternative outlined in Clause 2(s) to vanish.

38. Let us consider the problem from a different angle. The revised definition of "governmental authority" and the few punctuations in the definition (two semicolons and two commas) and the conjunction "or" have been noticed above. **Literally read, the conjunction "or" between sub-clauses (i) and (ii) clearly divides the two clauses in two parts with the first part completely independent of the second part. The first part is by itself complete and capable of operating independently. A construction leading to an anomalous result has to be avoided and to so avoid, it has to be held that the long line of Clause 2(s) starting with "with 90%" and ending with "Constitution" qualifies sub-clause (ii); and, if the conjunction "or" is to be read as "and", meaning thereby that the portion "with 90% ... Constitution" has to be read as qualifying both sub-clauses (i) and (ii), then the intention of redefining**

“governmental authority” would certainly be defeated. As discussed earlier, the purpose for which “governmental authority” was redefined must have been to make it workable. We cannot, therefore, resort to a construction that would allow subsistence of the unworkability factor. Assuming what Ms Bagchi contended is right, it was incumbent for the appellants to bring to our notice, if not by way of pleading, but at least with reference to the relevant statutes, which of the particular authorities/boards/bodies are created by legislation — Central or State — “with 90% or more participation by way of equity or control by Government”. Each word in the definition clause has to be given some meaning and merely because promoting educational aspects is one of the functions of a municipality in terms of Article 243-W of the Constitution read with Schedule XII appended thereto is no valid argument unless equity or control by the Government, to the extent of 90%, is shown to exist qua the relevant authority/board/body. Incidentally, neither is there any indication in the petition nor has Ms Bagchi been able to disclose the identity of any such authority/board/other body which is covered by her argument. **No such identified authority/board/body covered by the aforesaid construction of the definition of “governmental authority” in Clause 2(s) of the Clarification Notification, which the appellants appeal to us to accept, having been brought to our notice, we are unable to find any fault in the decisions [*Shapoorji Paloonji & Co. (P) Ltd. v. CCE, Customs & Service Tax, 2016 SCC OnLine Pat 1602*]’ [*Shapoorji Pallonji v. Union of India, WP (C) No. 17188 of 2015, order dated 5-2-2018 (Ori)*] of the Patna High Court and the Orissa High Court extending the benefit of the Exemption Notification to the educational institutions, and a fortiori, to SPCL.”**

(Emphasis supplied)

Therefore, on a plain consideration of the notifications and the definition and description of the ‘Government Entity’, the exemption

13. The above would indicate that the control and supervision of the Nirmiti Kendra is by Government Officers, the funding is from HUDCO, which is again a Government entity, and contracts are issued by the government for the works done. There is a preference for the Nirmiti Kendra to carry out works of the Government.

14. Section 2(h) of the Right to Information Act is reproduced hereunder for easy reference:

Section 2. Definitions. In this Act, unless the context otherwise requires,

(h) "public authority" means any authority or body or institution of self-government established or constituted—

- (a) by or under the Constitution;*
- (b) by any other law made by Parliament;*
- (c) by any other law made by State Legislature;*
- (d) by notification issued or order made by the appropriate Government, and includes any—*

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

15. A perusal of Section 2(h) of the RTI Act, would indicate that it is not only funding, but also control, which would have to be considered to determine whether it is a public authority or not.

16. Insofar as control is concerned, the above extracts make it clear that, firstly, Nirmiti Kendras were established on the recommendation of the Rural Development and

Panchayat Raj Department. **A working committee comprising Government Officers was created, comprising Secretaries, Chief Engineers, etc., to supervise the working of the Nirmithi Kendra.**

17. The general body of the Nirmithi Kendra consists of all the top officers of each District, and the day-to-day activities of the Nirmithi Kendra are run by officers belonging to the State Government, many of whom belong to the Indian Administrative Service and the Karnataka Administrative Service. Thus, it is clear that Nirmithi Kendra is under the complete control of Government servants.

18. Insofar as the funding is concerned, as observed supra, the funding is by HUDCO, Government organisations, and financial institutions, and these funds are used for the implementation of public works. Thus, not only is the funding provided by the Government, but the works carried out by Nirmithi Kendra are also considered Government works.

19. I answer the question framed by holding that, a Nirmithi Kendra would be a public authority in terms of Section 2(h) of the RTI Act."

(Emphasis supplied)

The coordinate bench holds that Nirmithi Kendras are public authorities and cannot escape diligence of information. The said judgment is only relied to notice that the Nirmithi Kendras like the petitioner in the case at hand, are a public authority as it is the observation of the coordinate bench and the petitioner is a 'Government Entity'. It is further germane to notice two of the

judgments rendered by this Court and one by coordinate bench interpreting the word 'public servant' *qua* the employees of Nirmithi Kendra. The coordinate bench of this Court in the case of **G. KRISHNEGOWDA VS. STATE OF KARNATAKA** reported in **2021 SCC OnLine Kar 15332**, holds that a Project Director working in Nirmithi Kendra is a 'Public Servant', within the meaning of 'Public Servant' as defined under Prevention of Corruption Act, 1988. The said judgment is followed by this Court in the case of **V. KRISHNAREDDY Vs. STATE** in **CrI.P.No.685/2022, disposed on 02.08.2022**, again holding that an employee of Nirmithi Kendra to be a public servant. Though the Nirmithi Kendras are registered under Karnataka Societies Registration Act, 1960, jurisprudence is replete holding that the employees of the Nirmithi Kendras to be the public servants and Nirmithi Kendra itself being amenable to the provisions of the Right to Information Act, 2005.

14. In the light of the afore-quoted law declared by the Apex Court and granting exemption from tax liability upon the Government Entities, it becomes germane to notice the impugned

action. On 07.07.2021, the fourth respondent communicates to the petitioner demanding tax on certain premise or observations as the case would be. The observations relevant are as follows:

".....

It is noticed from the documents furnished to this office that M/s Bagalkot Nirmithi Kendra is established not by an Act or Parliament or State Legislature but by the Government of Karnataka Order No.G.O.110.RDP.ADP.47.NK:89, BANGALORE, DATED 05.03.1990 and based on the order is registered under the Societies Act. Regarding 90% or more participation by way of equity or control, neither government nor private organization have invested in the entity as capital and in the absence of capital there is no question of equity participation. However, the entire establishment amount has been provided by Government and M/s.Bagalkot Nirmithi Kendra is 100% controlled by Government. No work is carried out without the consent and approval of the government and all the activities are controlled by Chairman-Deputy Commissioner, Executive chairman-Chief Executive Officer of Zilla Panchayat, The Deputy Secretary, Zilla Panchayat, The Executive Engineer, Zilla Panchayat, The District Welfare Officer, The Chief Planning Officer, Z.P, Director, Bagalkot, Director KARNIK, Bangalore, Representatives from Engineering College, Lead Bank Officer, The General Manager, District Industries Centre, representative of NGO Agency, a leading architect and three representatives nominated by the Chairman as per the copy of Memorandum of Association furnished. Further as per para 8(c) of the byelaws the number of members of the society is limited to 20, with Individuals @ 20%, Institutions @ 20% and Ex-officio members at 60%. As such it appears that the participation of 90% or more by way of government control is not being fulfilled as the ex-officio members are only 60% of the

members presuming that the ex-officio members are government officials.”

(Emphasis added)

Upon the aforesaid audit, a communication dated 17.08.2021 is sent by the Commissioner of the Central Tax. The communication reads as follows:

“....

With kind reference to the above, your attention is invited that the officers of Central Goods and Service Tax, Dharwad Audit Circle have been conducting GST Audit on the records of M/s Bagalkot Nirmithi Kendra (hereinafter referred to as the “Tax payer”). During the course of Audit the officers have noticed certain discrepancies in discharging of the tax liability and the observations are communicated. One of the major observation conveyed is that the Tax payer has been availing ineligible exemption benefit from payment of tax in terms of Notification No.32/2017-Central Tax (Rate) dated 13.10.2017(Copy enclosed for kind reference). The gist of the observation is furnished as under for your kind information and requested to take urgent action in the matter

2. The Notification No.32/2017-Central Tax (Rate) dated 13.10.2017 was issued amending the Notification No. 12/2017-Central Tax(Rate) dated 28.06.2017 by substituting the words "Governmental authority" as "Central Government, State Government, Union territory, local authority or Governmental Authority" for the services listed at SL.No 5 of Notfn. No 12/2017, but has not changed the conditions specified. Also, the Notification No. 32/2017-Central Tax(Rate) dated 13.10.2017 at para (ii)(zf) and ii(zfa) have defined the Governmental Authority/entity as;

- (zf) "Governmental Authority" means an authority or a board or any other body,
- (i) Set up by an Act of Parliament or State Legislature, or
- (ii) Established by any Government, With 90 percent 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,"
- (zfa) "Government entity" means on authority or a board or any other body including a society, trust, corporation,**
- (iii) Set up by an Act of Parliament or State Legislature; or
- (iv) Established by any Government. With 90 percent or more participation by way of equity or control, to carry out function entrusted by the Central Government, State Government, Union Territory or a local authority."

4. It is noticed from the documents furnished to this office that M/s Bagalkot Nirmithi Kendra is established not by an Act of Parliament or State Legislature but by the Government of Karnataka Order No.G.O 110 RDP ADP 47 NK:59, BANGALORE, DATED 05.03.1990 and based on the order is registered under the Societies Act. Regarding 90% or more participation by way of equity or control, neither government nor private organization have invested in the entity as capital and in the absence of capital there is no question of equity participation.

Further as per para 8(c) of the byelaws the number of members of the society is limited to 20 with the following rating,

Individuals @ 20%,
Institutions @ 20% and
Ex-officio members at 60%

As per the rules and regulations of the Kendra, the control, administration and management of the affairs of the Kendra shall vest in a governing body, which has the following members:

| No | Governing body Members | Represented by |
|----------|------------------------|--|
| 1 | Chairman | Deputy Commissioner |
| 2 | Executive Chairman | Chief Executive Officer of Zilla Panchayat, Bagalkot |
| 3 | Member Secretary | Deputy Secretary, Zilla Panchayat, Bagalkot |
| 4 | Member | Executive Engineer, Zilla Panchayat, Bagalkot |
| 5 | Member | District Welfare Officer |
| 6 | Member | Chief Planning Officer, Z.P. Bagalkot |
| 7 | Member | Director, KARNIK, Bangalore |
| 8 | Member | Representative from Engg.College/Polytechnic Bagalkot |
| 9 | Member | The Lead Bank Officer, Bagalkot |
| 10 | Member | The General Manager, District Industries Centre, Bagalkot |
| 11 | Member | A Representative of NGO agency |
| 12 | Member | A leading architect |
| 13 to 15 | 3 Member | Three representatives from the category of Individual members to be nominated by the chairman which can be Ex-officio, Entrepreneurs, and the Volunteers |

As such it appears that the participation of 90% or more by way of government control is not being fulfilled as the ex-officio members are only 50% of the members presuming that the ex-officio members are government officials

5. The auditors contended that M/s Bagalkot Nirmithi Kendra was not set up by an Act of Parliament/Legislature or established by any Government with 90% or more participation by way of equity or control and furthermore, the Tax payer is neither carrying out any of the activity/functions entrusted to a municipality as listed in entry no. 2 of 12th Schedule of the Notification.

6. The observations were forwarded to the tax payer viz., M/s Bagalkot Nirmithi Kendra and requested to discharge their GST liability along with applicable interest and penalty, In reply, the Authorised signatory has furnished his reply to this Department by e-mail on 26.07.2021 stating that M/s. Bagalkot Nirmithi Kendra fits in to the definition of Government entity and has also relied on a High Court Judgement to substantiate their interpretation. **It is submitted that the High Court Judgement relied upon is with regards to an appeal made to the Hon'ble High Court, wherein a case of corruption was booked against the Project Director of M/s. Bagalkot Nirmithi Kendra and it was submitted to the Hon'ble Court that M/s. Bagalkot Nirmithi Kendra is not a Government Entity and as such the Anti Corruption Bureau does not have any rights to book a case against a non-governmental authority. However, the Hon'ble Court has dismissed the petition on the grounds that the accused is performing duties which are public in nature. The Hon'ble Court has not commented on the taxability of the Tax pay under GST laws. More so, in the given circumstances of taxability of the activity undertaken by Nirmithi Kendra, ratio of the Hon'ble High Court Order has no relevance.**

7. Sir, as per the MOA copies, the Deputy Commissioner of the District is the Chairman of the Governing Body constituted and without the approval of the Deputy Commissioner, the financial transactions are not carried out. **It is pertinent to inform to your kindself that the Department of CGST after much deliberations has come to a conclusion that the activities undertaken by the Nirmithi Kendra clearly fit into the definition of supply and are rightly taxable. As**

ascertained, various other Nirmithi Kendras constituted and undertaking similar activities in different parts of the State of Karnataka have been discharging their GST liability and filing the statutory returns. In spite of written communication and appraisal of the provisions of Act and Rules/Notification provisions to the concerned, if the GST liability is not discharged by M/s. Bagalkot Nirmithi Kendra, unnecessary interest and penalties are likely to add up to the GST liability which will become an additional financial burden on the Kendra, In view of the above facts enumerated, it is requested to look into the matter with diligence and necessary directions may be issued to the Project Director to discharge the liabilities at the earliest."

(Emphasis added)

When the statutory notification is read in conjunction with the elucidation of the Apex Court as to what would constitute the government entity, the entire edifice of the impugned action tumbles down. The petitioner's entitlement to exemption emerges not as a matter of judicial indulgence but as a clear command of law. This is brought to the notice of the fourth respondent, who declines to accept that the petitioner is a Government Entity, which in the considered view of this Court is an error. Merely because other Nirmithi Kendras are paying tax, it would not mean that the petitioner would also become liable to pay tax. **Thus, in the unambiguous language of the notification,**

read along side the elucidation by the Apex Court, the High Court of Patna and this Court, the petitioner's status as a 'Government Entity' stands firmly and incontrovertibly established. The petition thus, deserves a full and complete success.

15. For the aforesaid reasons, the following:

ORDER

- a. The writ petition is allowed.
- b. The impugned communication dated 07.07.2021, stands quashed.
- c. All consequential actions taken, if any taken or to be taken, pursuant to the impugned communication are held to be unsustainable and therefore, obliterated as nullity in law.

Sd/-
(M.NAGAPRASANNA)
JUDGE

nvj
CT:SS