



S.N. **738** ~~From~~ the Supreme Court

As per the application submitted by the Applicant Advocate Ms. Srijana Adhikari, let the duplicates of the Judgment be issued to her upon collecting Rs. 65/- for 13 pages at the rate of Rs 5/- per page.

Seal of the Supreme Court

Sd.

Mar. 12, 2026

The Supreme Court, Joint Bench

Hon'ble Justice Mr. Kumar Regmi

Hon'ble Justice Mr. Shanti Singh Thapa

Order

080-WO-0186

Case: Mandamus with Certiorari

Advocate Ms. Srijana Adhikari, daughter of Mr. Jagannath Adhikari, granddaughter of Mr. Devi Lal Adhikari, a resident former Ward No. 9 of Dhikurpokhari V.D.C., presently converted into Ward No. 2 of Annapurna Rural Municipality, and presently residing at Ward No. 29 of Kathmandu Metropolitan City, Kathmandu District.....1 **Writ Petitioners /Plaintiffs**

Chartered Accountant Mr. Shailendra Uprety, son of Mr. Rajesh Kumar Uprety, grandson of Mr. Dwijraj Uprety, a resident of 429 Dillibazar Height Marg, Kathmandu-29.....1

Versus



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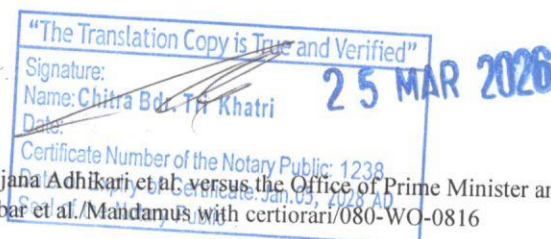
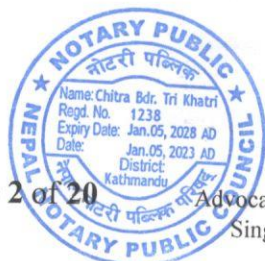
The Office of Prime Minister and Council of Ministers,
Government of Nepal, Singhdarbar, Kathmandu1
The Ministry of Finance, Singhdarbar, Kathmandu.....1
The Department of Inland Revenue, Lazimpat, Kathmandu...1
The Ministry of Health, Singhdarbar, Kathmandu.....1
The Ministry of Federal Affairs and General Administration,
Singhdarbar, Kathmandu.....1

**Opponents/
Respondents**

Brief descriptions and verdict of the present writ petition filed pursuant to Sub-Articles (2) and (3) of Articles 35, 46 and 133 of the Constitution of Nepal are as follows:-

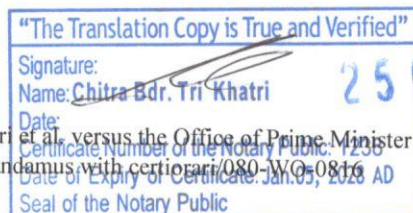
Fact Part:

1: A Petition reads, *inter alia*, that we, the writ petitioners, are citizens of Nepal who have been practicing our profession and business having registered with the Nepal Bar Council and the Nepal Chartered Accountants Association and also registered with the Internal Revenue Office (IRO) by following the rules and regulations of the Government of Nepal. In addition, we, who use spectacles due to various problems with the power of our eyes to see, are also representatives of other general Nepali people, such as our families dependent on us. Since VAT is not levied on the transaction of goods or services exempted from VAT pursuant to the Section 5(3) of the Value Added Tax Act, 1996 and the legal status and situation of Section 31 of the Finance Act, 2023 is similar to Section 5(1) of the Value Added Tax Act, 1996, and based on that, the provision made to levy VAT on spectacles used in continuous eye treatment falling under basic health services and all related provisions are contrary to rights of entire Nepali citizens including the





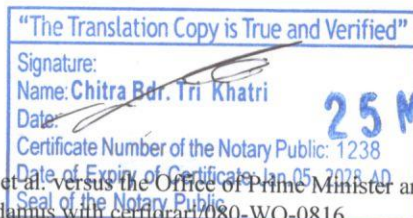
petitioners pursuant to Articles 35 and 115 of the Constitution of Nepal, the principle of natural justice, Note 1 of Group 5 of Schedule 1 of the Value Added Tax Act, 1996, and Point No. (3) and Point No. (4) of Schedule 1 of the Public Health Service Rules, 2020, therefore, we pray to issue necessary appropriate orders including mandamus pursuant to Articles 46 and 133(2) and (3) Constitution of Nepal ordering to not levy, collect and recover VAT by annulling the act to collect VAT on medical spectacles and the decisions and all related actions and proceedings by the order of certiorari. We further pray to issue order of mandamus in the names of opponents to include medical spectacles in Group 5 of Schedule 1 of the Value Added Tax Act, 1996 for the legal clarity. Similarly, levying value added tax on medical spectacles has placed a financial burden on the general Nepali people, especially those with eye disabilities or problems, thereby causing irreparable damage and serious violation of the right to live with dignity, the right to receive basic health services free of charge from the state, and equal access to health services as guaranteed by the Constitution. In view of the balance of convenience, since the non-imposition of VAT on medical spectacles at present will not cause any harm to the opponents, and since the immediate non-issuance of an interim order on the issue raised in the present matter will cause irreparable harm to the writ petitioners and the public, we pray to issue an interim order in the name of the opponents pursuant to Rule 4(1) and (2) of the Supreme Court Rules 2017 ordering not to implement or not to cause implement the act to levy VAT on medical spectacles by the implementation of Section 31 of the Finance Act, 2023, and not to take any other action or cause not to take any other action in this regard until the final resolution of the present case. In addition, since the present writ is the matter





to be given priority by considering the seriousness of the issue raised in the present writ, we pray to be heard by giving precedence.

2. An Order of this Court, dated Feb. 20, 2024, reads, *inter alia*, that it is ordered that a notice, accompanied by one copy of the order and Writ Petition, be sent to the Opponents requiring the Opponent to submit an affidavit along with the concerned file through the Office of Attorney General within 15 days from the date of receipt of this order except the time required for journey, thereby responding to: what happened in this matter? Why the order as sought by the Petitioner should not be issued? and that a reference thereof be sent to the Office of Attorney General; let submit as per the rule if the written statement of defense is submitted within the time limit or after crossing the period. In addition, considering the fact that the petitioner has also sought an interim order, since the nature of the petition presented is such that it should be addressed at the time of the final order, it is not necessary to issue an interim order at this time. Considering the sensitivity of the matter, it is necessary to resolve it quickly, and let submit as per the rule by fixing hearing date within 10 days after submission of the written statement of defense or expiry of the period.
3. An affidavit submitted on behalf of the Ministry of Finance reads, *inter alia*, that in the context of the facts alleged by the writ petitioner in the petition, the subject of tax assessment, collection, tax audit, regulation and interrelated work related to such taxes, including the tax assessment and collection according to the rate of such taxes, is a matter of law made by the legislature and that matter falls under the principle of Legislative Wisdom. The prevailing Value Added Tax Act, 1996, enacted by the Parliament, has been systematizing the work related to Value Added Tax through the Inland





Revenue Department, Inland Revenue Office and various types of Taxpayer Service Offices under this Ministry. Since the writ petitioners have entered the court by making the law made by the legislature itself to levy and collect tax as per the Constitution, using legislative wisdom, as the matter of judicial dispute without any base, the writ petition is prima facie repealable. The Finance Act, 2023 is also a law made by the legislature and is being implemented by exercising the authority of Article 115 of the Constitution. There should be no dispute that the matters under this Act are pursuant to the Constitution. The issue raised by the petitioners regarding the Section 31 of the Finance Act, 2023 will apply if the Eye Hospitals has not submitted the collected amount from the transaction carried out in the past which is to be levied VAT. According to the understanding of the writ petitioners, the transactions carried out by the Eye Hospitals do not only include the sale of spectacles, but also include various services such as surgery, treatment, etc. Eye Hospitals has collected such tax, such as the value added tax paid by the service recipients while receiving services from other hospitals and if such collected amount has not been deposited within the specified time, then that amount has to be deposited pursuant to the Section 31. If the collected amount is not deposited, the economy will be hit hard and the Eye Hospitals will be given an opportunity to take undue advantage, so it is certain that the order sought by the petitioners will cause irreparable damage. As pleaded by the petitioners, Section 31 of the Finance Act, 2023 has not levied VAT on essential and indispensable medical spectacles for people with eye disabilities or problems in a roundabout way, but there is a provision to exempt fines, outstanding taxes, fees, etc., while filing by Oct. 17, 2023 to the extent that VAT was not submitted in relation to transactions subject to

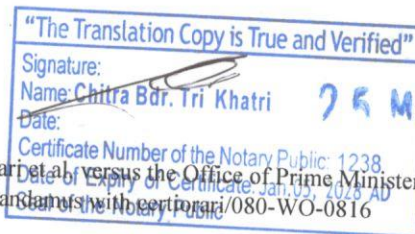
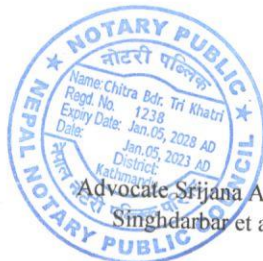


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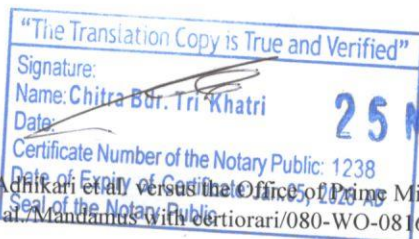
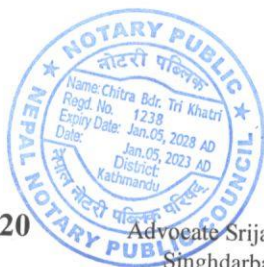
VAT for services provided by Eye Hospitals in the past. The charge imposed in a roundabout way that VAT was levied on medical grade spectacles could not be confirmed in any chapters by the petitioners. In addition, I pray the Honorable Court that since the Ministry of Finance, Government of Nepal is always committed to respecting and protecting the fundamental rights granted by the Constitution, it has been allocating a large amount of budget every year to make health services free, easy, quick and accessible as much as possible. Therefore, since this Ministry has not done anything to curtail or harm any constitutional and legal rights of the petitioners, I pray repeal the writ petition filed by making the Ministry the opponent. Since no action or decision has been taken by the Ministry in this regard and the petitioners are unable to prove the justification for making the Ministry the opponent, and since it does not appear that any constitutional and legal rights have been curtailed or violated, and since there is no need or justification to go into the facts of the present writ petition, the writ petition, therefore, filed with the intention of misleading the court should be repealed.

4. An affidavit submitted on behalf of the Department of Inland Revenue reads, *inter alia*, that there is a provision for tax exemption on the transactions of goods and services mentioned in Schedule 1 of the Value Added Tax Act, 1996. Under Group 5 of Schedule 1, medical treatment and similar health services are mentioned as services that are exempt from VAT. The provision for levying tax on other goods and services, except those specified in the Act as exempt, remains under a general principle of tax law. In the event that medical spectacles are not included in the exempt group in Group 5 of Schedule 1, it is clear that VAT is levied on the supply of such equipment and services. Also, since the Tax Law is a special law, the provisions of this





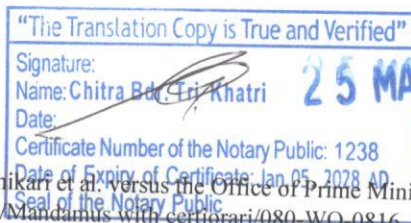
law should be implemented specifically in the case of taxation. The special provision in Section 31 of the Finance Act, 2023 is a law formulated by the competent legislature pursuant to the Constitution of Nepal. Since this Act provides for special facilities made by the competent body to make the provisions of the Value Added Tax Act, 2016 effective in implementation, it does not seem necessary to seek legal status in the provisions of Section 31 of this Act. This Act itself is an independent Act. Matters under the EXCLUSIVE EXECUTIVE DOMAIN of the government are not subject to judicial review. Since the EXECUTIVE power to implement this legal provision formulated by the COMPETENT AUTHORITY using Article 115 of the Constitution exists, there should be created no obstacle in the implementation of the existing provision. Since the provision of Section 31 of the Finance Act, 2023 is similar to Section 5(1) of the Value Added Tax Act, 2016, it adversely affects the petitioner's constitutionally clarified right to tax on basic health services, and since it is adverse of points (3) and (4) of Schedule 1 of the Public Health Service Rules, 2020, the provision of the Finance Act, 2023 is not an administrative decision but an independent law formulated by a competent body in the case of the petition filed to have the recovery of value added tax on medical spectacles and the decisions related thereto annulled by the order of the certiorari. Since the provision of the Value Added Tax Act, 2016 has made provision to levy tax, and the remedy should sought as per provision for its implementation should be through the ordinary means of law enforcement in its implementation, it does not appear to have come from a clean hand in approaching the court with the intention of obstructing the implementation, stating that it is inconsistent with the Constitution. It is not sufficient to simply state that the provisions of the law





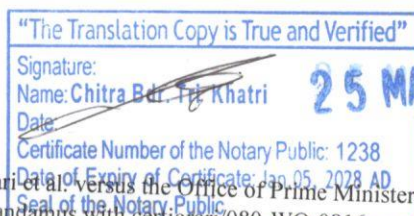
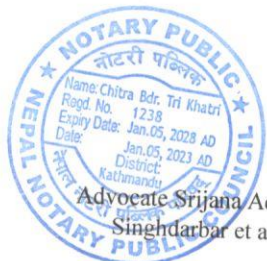
or rules are inconsistent with the Constitution for the invalidity of the provisions of the law or rules. Since the application for the implementation of the Value Added Tax Act, 2016 has been filed without using the ordinary means of Section 31a. and 32 of the same Act, I pray to repeal the same. In addition, since the writ petition has not been able to state that the rights and rights of the petitioners have been affected by such actions or decisions taken by this department and there is no situation where any legal and constitutional rights of the petitioners have been affected, and therefore, I pray to annul the writ petition filed making this department the opponent since this department does not need to be made the opponent.

5. An affidavit submitted on behalf of the Office of Prime Minister and Council of Ministers reads, *inter alia*, that the writ petitioners have pointed out the issue of their relationship and concern in the present writ petition by mentioning the matter that they have *locus standi* to file the writ application in the present matter that they are representatives of the other general Nepali people like they and their dependent family members using spectacles due to arisen of various problems in the ability of the eyes to see. Regarding the present matter, in the context of the principle that the petitioner should have a meaningful relationship and substantive interest in any dispute (Case No. 25) of the petitioner with such dispute on the matter of any dispute propounded by the Constitutional Bench of the Honorable Supreme Court in the writ petition of mandamus with certiorari et al. filed by Advocate Dr. Ganesh Regmi with writ petition No. 078-WC-0035, it is seen that the writ petitioners are unable to establish that the issue raised in the present writ petition under the special provision regarding VAT exemption for the Eye Hospitals under Section 31 of the Finance Act, 2023 is a matter of





meaningful relationship and substantive interest with the writ petitioners. Pursuant to the Constitution of Nepal and the prevailing laws, the issue of levying and collecting tax, increasing or decreasing tax rates and granting tax exemptions is a matter of privilege of the Federal Parliament. Since such power has been given to the legislature in other countries as well, there should be no dispute regarding the issue of Parliamentary Competence. When levying taxes, the Parliament levies them pursuant to the international practice and the Constitution of Nepal. In the context of the matter raised by the writ petitioners in the petition, the matter of levying and collecting taxes, including the assessment and collection of tax rates, tax audit, regulation and interrelated work of the same nature, is a matter that is governed by the law made by the legislature and falls under the principle of legislative wisdom of the legislature. All acts and actions relating to the tax administration including Value Added Tax as provided in the prevailing Value Added Tax Act, 1996 enacted by the Parliament and the prevailing Government of Nepal (Division of Work) Rules, 2017 have been managed by the Ministry of Finance, the Government of Nepal. Since it is seen that the writ petitioners have entered the court without any basis by making the law made by the legislature on the matter of levying and collecting taxes pursuant the Constitution of Nepal a matter of judicial dispute, the writ petition of the petitioners is prima facie repealable. The Finance Act, 2023 is also a law made by the legislature and is being implemented by exercising the power of Article 115 of the Constitution of Nepal. The issue raised by the petitioners regarding to the Section 31 of the Finance Act, 2023 is a special provision regarding VAT exemption for Eye Hospitals, which was issued to apply in cases where the Eye Hospitals has made transactions in the past that are

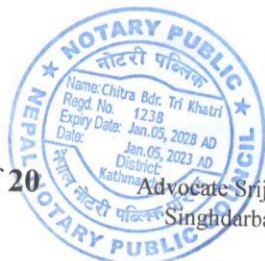




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subject to VAT and has not submitted the amount collected from such transactions. The transactions carried out by the Eye Hospitals do not only include selling spectacles, but also include various services such as surgical treatment. In cases where the Eye Hospitals has collected such tax, such as the VAT paid by the service recipient when receiving services from other hospitals, according to Section 31 of the said Act Such collected amount should be deposited within the stipulated time. In this regard, in the event of non-deposit of the collected amount, the matter that the negative impact on the country's economy and the creation of an undue advantage by the Eye Hospitals cannot be ignored. As claimed by the petitioners, Section 31 of the Finance Act, 2080, does not impose value added tax on essential medical spectacles for people with eye disabilities or problems in a roundabout way, but there is a provision to exempt fines, outstanding tax and fees from filing by Oct. 27, 2013 to the extent that the value added tax was not deposited in the transactions for which the Eye Hospitals provided services in the past. The charge imposed in a roundabout way that VAT was levied on medical grade spectacles could not be confirmed in any chapters by the petitioners. In addition, I pray the Honorable Court that since the Government of Nepal and concerned ministries of the Government of Nepal are always committed to respecting and protecting the fundamental rights granted by the Constitution and remain active to make health services free, easy, quick and accessible as much as possible. Therefore, I pray repeal the writ petition.

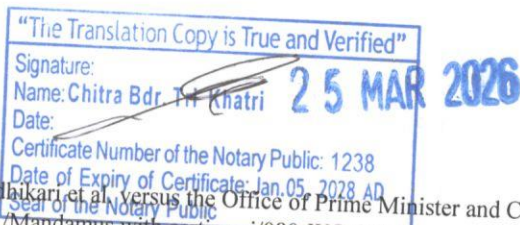
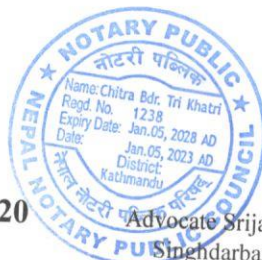
6. An affidavit submitted on behalf of the Ministry of Health reads, *inter alia*, that the Section 31 of the Finance Act, 2023 states that "Special provisions have been made regarding VAT exemption for the Eye Hospitals. It is mentioned in subsection (1) that if an Eye Hospitals, whether registered with



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VAT or not, has made a transaction subject to VAT in the past and has not collected and submitted VAT, if it submits the tax within Oct. 17, 2013 from the fiscal year 2020/2021, the remaining tax, additional fees, interest and penalty will be waived. Such a way, the tax, additional fees, interest and penalty of the previous fiscal years of the Eye Hospitals that submit the tax in this way will be waived." And, in subsection (2) of the same section, it is stated that "If the tax has been assessed and is due in the transaction subject to tax pursuant to subsection (1) or the case pending for administrative review or other judicial body on such tax assessment is withdrawn and five percent of the transaction amount from the fiscal year 2020/2021 to May 28, 2023 is submitted in the year 2023, the remaining tax, additional fees, interest and penalty will be waived. Such a way, the tax, additional fees, interest and penalty of the previous fiscal years of the Eye Hospitals that submit the tax in this way will be waived." In addition, this ministry should not be made the opponent in the work done by the authorized body pursuant to the law as per the constitutional provisions. Similarly, since the finance bill proposed by the Ministry of Finance of the Government of Nepal in every fiscal year is discussed in the Parliament through the representatives of the people, and since there is no action, decision or order of this ministry on the matter of tax levied through the people's representatives as per the law, and since this ministry has not been found to have the jurisdiction to do so, there is no basis for the petitioners to make this ministry the opponent and since there is no action that would cause substantial or irreparable damage to them by the decision of this ministry, and since it is not seen that this ministry should be made the in the present writ petition, I pray to repel the present writ petition.

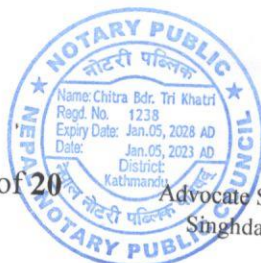





An affidavit submitted on behalf of the Ministry of Federal Affairs and General Administration reads, *inter alia*, that the Ministry of Federal Affairs and General Administration, Government of Nepal is committed to implementing the concept of a rule of law by ensuring compliance with the Constitution of Nepal and the prevailing Nepalese laws, ensuring the enjoyment by respecting, protecting and promoting the rights and interests conferred by the Constitution and laws, and implementing the orders of the esteemed courts. Since the petitioners are failed to mention in their writ petition to mention anything in this regard that what kind of actions or decisions of this Ministry have affected the legal and constitutional rights of the petitioner?, it is not reasonable to file a writ petition without any basis and reason by making this Ministry the opponent. Also, while establishing the opponent in a case, it is necessary to explain what kind of actions of such opponent and what kind of injustice has been done to the petitioners. Since the writ petitioners are unable to mention anything in this regard and the writ petition is prima facie repealable, therefore, I pray to repeal the said writ petition.

Order Part

8. In the present writ petition tabled at the Bench after being duly enlisted in the weekly and daily cause list as per the rule, it is heard the pleadings of learned advocates Ms. Shanti Devi Khanal, Mr. Saroj Ram Ghimire, Mr. Sudip Kumar Subedi, Ms. Roshani Paudel, Ms. Swostika Dangal, Ms. Srijana Adhikari, Ms. Akriti Dhakal and Mr. Binod Paudel, appearing on behalf of the writ petitioners, arguing that since the VAT is not levied on the transaction of goods or services exempted from VAT as per Section 5(3) of the Value Added Tax Act, 1996, the legal status and situation of Section 31



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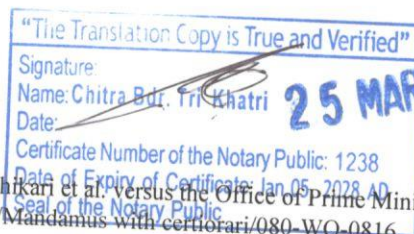
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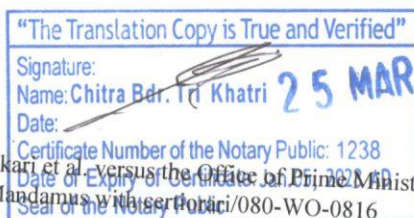
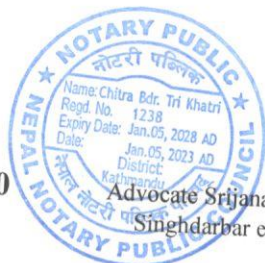
of the Finance Act, 2023 is similar to Section 5(1) of the Value Added Tax Act, 1996, and on the basis of that, the provision made to levy VAT on medical spectacles used in continuous eye treatment under basic health services and all related provisions are contrary to Articles 35 and 115 of the Constitution of Nepal, the principle of natural justice, Note 1 of Group 5 of Schedule 1 of the Value Added Tax Act, 1996, and Point No. (3) and Point No. (4) of Schedule 1 of the Public Health Service Rules, 2020 for the petitioners and entire stakeholders, it is prayed to issue order not to levy, collect and recover or cause not to levy, collect and recover VAT by repealing all acts to recover VAT on medical spectacles and the decisions and all related actions and proceedings by the order of certiorari and it is also heard the pleadings of Mr. Bidur Kumar Karki, the Deputy Attorney General on behalf of the respondent Government of Nepal, arguing that since the Finance Act is a law that is made annually and is enforced by passing by the House of Representatives through the people's representatives, it cannot be said that the government issued the law with the intention of levying taxes. Since the Finance Bill proposed by the Ministry of Finance, the Government of Nepal in every fiscal year is discussed in the Parliament through the people's representatives, and since it is the matter of levying tax through the people's representatives as per the law by accepting the concept that t taxes cannot be levied without people's representation, I pray to repeal the present writ petition of the petitioners.

9. In the present writ petition having aforementioned petition, written statement of defense and pleading notes, basically, it is seen to be decided whether the present writ petition should be issued or not.





is not levied on the transaction of goods or services exempted from VAT as per Section 5(3) of the Value Added Tax Act, 1996, the legal status and situation of Section 31 of the Finance Act, 2023 is similar to Section 5(1) of the Value Added Tax Act, 1996, and on the basis of that, the provision made to levy VAT on medical spectacles used in continuous eye treatment under basic health services and all related provisions are contrary to Articles 35 and 115 of the Constitution of Nepal, the principle of natural justice, Note 1 of Group 5 of Schedule 1 of the Value Added Tax Act, 1996, and Point No. (3) and Point No. (4) of Schedule 1 of the Public Health Service Rules, 2020 for the petitioners and entire stakeholders, it is prayed to issue necessary proper order including mandamus pursuant to Articles 46 and 133 (2) and (3) of the Constitution of Nepal not to levy, collect and recover or cause not to levy, collect and recover VAT by repealing all acts to recover VAT on medical spectacles and the decisions and all related actions and proceedings by the order of certiorari and separate written statement of defense have been submitted which reads, *inter alia*, that it is clear that the prevailing Value Added Tax Act, 1996, enacted by the Parliament, has been systematizing the work related to Value Added Tax and since the writ petitioners have entered the court by making the law made by the legislature itself to levy and collect tax as per the Constitution, using legislative wisdom, as the matter of judicial dispute without any base, the writ petition is repealable. The Finance Act, 2023 is also a law made by the legislature and is being implemented by exercising the authority of Article 115 of the Constitution. There should be no dispute that the matters under this Act are pursuant to the Constitution. The issue raised by the petitioners regarding the





Section 31 of the Finance Act, 2023 will apply if the Eye Hospitals has not submitted the collected amount from the transaction carried out in the past which is to be levied VAT. If the collected amount is not deposited, the economy will be hit hard and the Eye Hospitals will be given an opportunity to take undue advantage, so it is certain that the order sought by the petitioners will cause irreparable damage. As pleaded by the petitioners, Section 31 of the Finance Act, 2023 has not levied VAT on essential and indispensable medical spectacles for people with eye disabilities or problems in a roundabout way, but there is a provision to exempt fines, outstanding taxes, fees, etc., while filing by Oct. 17, 2023 to the extent that VAT was not submitted in relation to transactions subject to VAT for services provided by Eye Hospitals in the past. The charge imposed in a roundabout way that VAT was levied on medical grade spectacles could not be confirmed in any chapters by the petitioners. In addition, I pray the Honorable Court that since the Ministry of Finance, Government of Nepal is always committed to respecting and protecting the fundamental rights granted by the Constitution, it has been allocating a large amount of budget every year to make health services free, easy, quick and accessible as much as possible and since no act is done anything to curtail or harm any constitutional and legal rights of the petitioners, it is prayed repeal the writ petition.

11. In view of the existing constitutional and legal provisions raised by the petitioner and the opponent/respondents in various cases in their petition and written statement of defense, Article 35 of the Constitution of Nepal has provided for the right to health as a fundamental right. It appears that the Public Health Service Act, 2018 has been issued to implement the right in clause (1) of the said article that every citizen shall have the right to receive

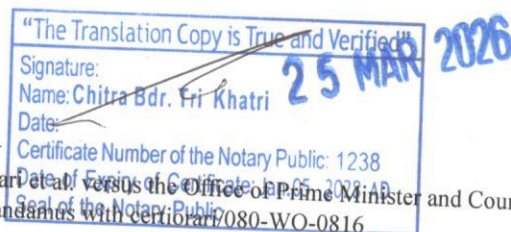
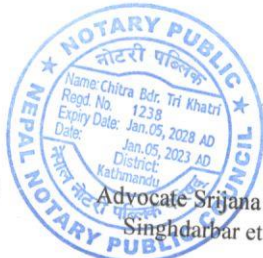


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basic health services free of charge from the state and no one shall be deprived of emergency health services. Section 2(b) of the Public Health Service Act, 2018 provides that "Basic health service" means promotional, retributive, diagnostic, remedial and rehabilitative service easily and freely available from the state for the sake of fulfillment of health need of citizens generally, pursuant to sub-section (4) of Section 3, while Section 3(4) (d) also includes service relating to non-communicable disease and physical disability under basic health service.

12. Rule 3 of the Public Health Service Rules, 2020 provides that under the basic health service, every citizen shall be provided with the basic health services as mentioned in Schedule-1 under the headings as per Sub-section (4) of Section 3 of the Act free of cost by each Basic Health Service Center and health institutions designated by the Government of Nepal, Provincial Government and Local Level. Since this writ petition is related to levying Value Added Tax on medical spectacles worn due to eye-related problems and while looking that Schedule-1 of the Rules includes which eye-related diseases in the basic health service, Schedule-1 (3) includes eye infections, (4) includes provisional diagnosis, symptomatic treatment, counseling and referral in eye problems under non-communicable diseases and physical disabilities related services and (7) includes foreign body in the eye: Primary treatment counseling and referral in Eye and ENT related common emergencies. It appears that since the aforementioned eye health problems are defined as basic health, there is a provision that the eyes are an important part of the body and the state will have to provide free treatment for the aforementioned health problems related to it. It appears that the state has also made provisions for tax exemption on some health facilities to ensure



access of all classes to free and accessible health care provided to the citizens.



13. In this regard, Section 5 (3) of the Value Added Tax Act, 1996 states that tax shall not be levied on the transaction of goods or services referred to in Schedule -1. In addition, the tax paid prior to the purchase of such goods or services shall not be liable to be deducted pursuant to Section 17 and to be refunded pursuant to Section 24. In Schedule-1 of the Value Added Tax Act, 1996, Group 5 under goods and services exempted from tax: in 90.21 of medical treatment and similar health services “Orthopedic instruments, including crutches, surgical belts and trusses; splints and other devices used in the case of bone fractures; artificial body parts, other devices used to compensate for defects or disabilities of the body, to enhance hearing and similar devices worn, worn or implanted in the body” and in Note (4) of 90.21, it is seen that tax is not levied on magnifying spectacles.
14. The purpose of these legal provisions is clearly to ensure access to health for the general public by exempting from taxation even assistive devices used to compensate for physical weakness or disability in citizens. Since spectacles used on the recommendation of a doctor (medically prescribed) is assistive device to compensate for vision-related disability, their nature should be evaluated as therapeutic and restorative health materials, not as luxury consumer goods. Since spectacles used as per the recommendation of a doctor (medically prescribed) are the devices worn on the body to correct eye defects, although medically prescribed spectacles are not mentioned under the goods and services exempted from tax in Schedule-1 of the Value Added Tax Act, 1996, Group 5: Medical treatment and similar health services 90.21, it seems that the “other devices used to compensate for



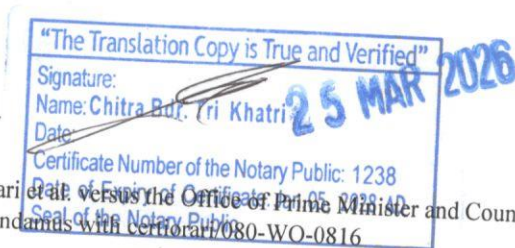
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physical defects or disabilities, to enhance hearing and similar devices worn, worn or implanted in the body” mentioned there also includes medically prescribed spectacles. Therefore, it seems that medically prescribed spectacles fall under the goods and services exempted from tax under 90.21 of Medical treatment and similar health services under Group 5 under the goods and services exempted from tax in Schedule-1 of the Value Added Tax Act, 1996.

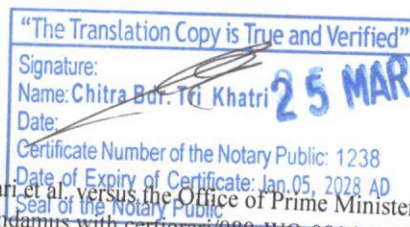
15. While considering towards that the writ petitioners have pleaded that Section 31 of the Finance Act, 2023 has levied VAT on essential and indispensable medical spectacles for people with eye disabilities or problems in a roundabout way, the provisions of Section 31 of the Finance Act, 2023 should be looked at. The said section has made special provisions regarding VAT exemption for the Eye Hospitals, while in Sub-section (1), if an Eye Hospitals, whether registered with VAT or not, has made transactions subject to VAT in the past and has not collected and deposited VAT, if it deposits five percent of the transaction amount from the fiscal year 2020/2021 to May 28, 2013 by Oct. 17, 2013, the remaining tax, additional fees, interest and fine will be waived. The Eye Hospitals that submits the tax in this way will have the tax, additional fees, interest and fines of the previous fiscal years waived. Similarly, in subsection (2) of the same section, it is stated that "If the tax has been assessed and is due in the transaction subject to tax pursuant to subsection (1) or the case pending for administrative review or other judicial body on such tax assessment is withdrawn and five percent of the transaction amount from the fiscal year 2020/2021 to May 28, 2023 is submitted within Oct. 17, 2023, the remaining tax, additional fees, interest and penalty will be waived. Such a way, there is





provision that the tax, additional fees, interest and penalty of the previous fiscal years of the Eye Hospitals that submit the tax in this way will be waived. In this way, it seems that Section 31 of the same Act is basically focused on the purpose of regularizing past tax liabilities and providing concessions. It does not appear to create a new tax liability or to make it mandatory to levy tax on any particular item. Article 115(1) of the Constitution of Nepal appears to provide that no tax shall be levied and collected except in accordance with law. While Section 31 of the Finance Act, 2023 does not clearly state that VAT is levied on medically prescribed spectacles, Article 25 of the Constitution of Nepal has established the right to health as a fundamental right and eye-related problems mentioned in the Public Health Act and Rules made to implement that right fall under basic health services and it is discussed on above chapters that Medically Prescribed Spectacles fall under the “Other devices used to compensate for physical defects or disabilities, to enhance hearing, and to wear, adopt, or implant similar devices” in 90.21 of in Group 5: Medical Treatment and Similar Health Services under the goods and services exempted from tax in Schedule-1 of the Value Added Tax Act, 2052 and if VAT is levied or collected on medically prescribed spectacles for the eye patient against the health interest of the citizen, such act cannot be considered lawful.

16. Thus, as mentioned in the aforementioned various chapters, the tax collected from eye patients while providing medically prescribed medical spectacles to eye patients by Eye Hospitals as per the demand of the petitioners is contrary to Schedule-1 of the Value Added Tax Act, 1996, Sub-section 4 (d) of Section 3 of the Public Health Service Act, 2018, and since the prevailing law related to this matter does not include medically prescribed spectacles





among the tax-exempt goods and services ignoring the fact that Article 35 of the Constitution of Nepal has established the service of protecting the eyes as a fundamental right, considering the eyes as a sensitive part of human life and recognizing the service of protecting that part as a basic health service, the act of levying tax on the medically prescribed spectacles with meaning to collect the tax is not in accordance with the law. In addition, it is sustained to issue the order of mandamus in the names of opponents not to levy VAT on medically prescribed spectacles and to include the term "medically prescribed spectacles from Eye Hospitals" in the group of tax-exempt goods and services in the Finance Act to be issued by the Government of Nepal hereinafter. Let be given the information of the order to the opponents through the Attorney General's Office, and be handed over the case file to the Record Section of this court as per the rule after crossing off the diary list of the present writ application and entering the electrical copy of the order into the Electrical Case Management System of this court.

Sd.

Kumar Regmi

Justice

I agree with that opinion

Sd.

Shanti Singh Thapa

Justice

Bench Officer: Hari Bahadur Chaudhary

Done this on Tuesday, Jan. 6, 2026.



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