

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70672 of 2019

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-334-19-20 dated 11.06.2019 passed by Commissioner (Appeals) CGST, Noida)

M/s Keen & Core Developers, **.....Appellant**
(I-525, Beta-II, Greater Noida, U.P.-201306)

VERSUS

Commissioner of CGST, Greater Noida **....Respondent**
(CGST, Gautam Budh Nagar)

APPEARANCE:

Written Submission, for the Appellant

Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70139/2024

DATE OF HEARING : 22 November, 2023

DATE OF DECISION : 15 March, 2024

P. K. CHOUDHARY:

This appeal is filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-002-APP-334-19-20 dated 11.06.2019 passed by Commissioner (Appeals) CGST, Noida.

2. The facts of the case in brief are that the Appellant filed refund claim on 11.11.2016 for Rs.51,38,112/- before the Assistant Commissioner, Central GST Division-I, Gautam Budha Nagar, on the ground that they had rendered services as a sub-contractor of M/s National Buildings Construction Corporation¹ to University of Lucknow (for construction of ONGC Centre of Advance Studies); that the Appellant was under a bona fide belief and was under an impression that during the period 01.03.2015 till 28.02.2016, while providing services to NBCC, tax liability with respect to the service classified as "Works Contract Services" was liable to be discharged in terms of

¹ NBCC

Notification No.30/2012 dated 20.06.2012, S. No.9, i.e. 50% tax liability in the light of Notification No.25/2012, S. No.12(c) dated 20.06.2012 being later omitted vide Notification No.06/2015-service tax dated 01.03.2015. Hence, during the period 01.03.2015 to 28.02.2016, the Appellant was charging service tax on Works Contract Services and was paying to the Department. During the period, an amount of Rs.51,38,112/- has been paid as service tax to the Department in lieu of Works Contract Services provided to NBCC as a sub-contractor. Later, in the event of representations being made by the industry, the board regranted the exemption by once again amending the Mega Exemption Notification and re-inserted Clause 12 as Clause 12A vide Notification No.9/2016-Service Tax dated 01.03.2016, once again granting exemption from service tax. The Appellant approached the Department and filed a refund application in the prescribed format and alongwith all the necessary documents in the light of entry No.29(h) of Notification No.25/2012 dated 20.06.2012. The Adjudicating Authority rejected the claim of the Appellant. Being aggrieved, the assessee filed appeal before the First Appellate Authority. The learned Commissioner (Appeals) rejected the appeal of the Appellant. Hence the present appeal before the Tribunal.

3. The learned Advocate appearing on behalf of the Appellant submitted that it is not in dispute that the Appellant had not rendered the services directly to University of Lucknow but had rendered the services through the main contractor M/s NBCC. It is also not in dispute that the project in question was a Government building and therefore covered under Section 102 of the Finance Act, 1994. The refund was denied to the Appellant by the lower authorities as well as by the first Appellate Authority on the ground that Section 102 exempts services rendered to a Government, a local Authority or a Government Authority and does not exempt services rendered to a private company which in this case is M/s NBCC. There is no dispute regarding the time limit and the application has been filed within six months from the date on which Finance Bill, 2016 has

received assent of President i.e., on 25.05.2016. The refund application was filed on 11.11.2016 i.e. within six months from the date prescribed under Section 102. It is the case of the Revenue that the main contractor M/s NBCC is the one who has rendered services to University of Lucknow and if so they could have claimed refund of service tax under Section 102. However, they have not done so and instead the Appellant had filed the refund claim which is not correct because they rendered services to M/s NBCC which is a private company and not to University of Lucknow. It is the case of the Appellant that they had rendered services to University of Lucknow themselves but as a sub-contractor through the main contractor viz., M/s NBCC. Learned Advocate argues that the nature of their service would not change because they are a sub-contractor. The exemption would apply whether the service is rendered directly by the main contractor or by sub-contractor as long as the building in question is one of the Government or the Governmental Authority etc., prescribed in Section 102 of the Finance Act, 1994. A related issue was whether the main contractor could have filed refund claim instead of the sub-contractor. Before both the lower Authorities, the assessee contested that the main contractor could have filed such a refund claim but had not done so because six months had already lapsed. Learned Advocate further argues that regardless of the fact that who filed the refund claim, as far as the exemption is available, it should be applied. He submitted that the provisions of refund under Section 11B or under Section 102 of the Finance Act, 1994, nowhere, required that a particular person has to file a refund claim. The refund can be claimed by any person who has borne the burden of duty/ service tax. It could be the main contractor or sub-contractor or even the client themselves as long as they could establish that they have borne the burden of service tax. He further relied upon the CBEC Circular F.No.137/57/2011-ST dated 21.10.2011 regarding the exemption to commercial construction/ infrastructure development projects of road, airports, dams, tunnels etc, in which it has been clarified that

where the services are provided by the sub-contractor to the main contractor they too will get covered by the benefit of exemption. He also submits that the logic in this circular is that where a sub-contractor renders service through the main contractor to a client, it should be considered as a service rendered to the client and not to the main contractor and correspondingly any exemption that would be applicable to such service to the client would also apply to sub-contractor.

4. Countering these submissions, the learned Departmental Representative argues that billing by the Appellant was to M/s NBCC and not to University of Lucknow which establishes that the Appellant had rendered the services to M/s NBCC who were not covered by the exemption under Section 102 of the Finance Act, 1994. Therefore, the exemption would not be applicable to the Appellant. He submits that the main contractor M/s NBCC could have applied for refund under Section 102 but have not done so. Because the main contractor had failed to apply for refund, it does not mean that the sub-contractor can claim refund of that amount. Therefore, the appeal may be rejected.

5. Heard both sides and perused the appeal records.

6. On perusal of the records, we find that Section 102 of the Finance Act, 1994 exempts taxable services provided to Government, a local Authority or a Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of –

- A civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;
- A structure meant for use as educational establishment, clinical establishment or an art or cultural establishment.

7. It is not in dispute that the ultimate client in this case is University of Lucknow which is an educational establishment. "ONGC Centre of Advanced Studies" of this educational establishment was being constructed by the main contractor M/s NBCC and a portion of that work has been sub-contracted to the

Appellant. The exemption available to the services provided to University of Lucknow does not depend on whether such services are provided directly by the main contractor or by the main contractor using the services of a sub-contractor. In view of the above, we find that on merits, the services rendered by the Appellant through the main contractor to University of Lucknow are exempted under Section 102 of the Finance Act, 1994. The application for refund has been filed within the time stipulated in the Section. We do not agree with the contention of the first Appellate Authority that merely because the services were rendered through main contractor and the bills were raised in the name of the main contractor, the nature of the service would automatically become one of the services to the main contractor and not to University of Lucknow. We have gone through the work order which shows clearly that a work given by the main contractor to the Appellant was in relation to a construction at University of Lucknow. Although the CBEC Circular (supra) cited by the learned Advocate is in a different context, the logic applies to other cases as well. As long as the service is rendered to a client, the taxability has to be decided accordingly regardless of whether the service was rendered directly by the main contractor or through a subcontractor or through a sub-sub-contractor. Accordingly, we find that the Appellant is not liable to pay service tax as he has already paid the same and he is entitled to refund under Section 102 of the Finance Act, 1994.

8. We also find that the issue is no more *res integra* and is squarely covered by the judgement of Hon'ble Supreme Court in the case of Commissioner, Customs Central Excise & Service Tax, Patna vs. M/s Shapoorji Pallonji And Company Pvt. Ltd. & ORS. and Union of India & ORS. vs. M/s Shapoorji Pallonji & Company Pvt. Ltd. reported as 2023 (10) TMI 748 – S.C. being Civil Appeal No.3991/2023 & Civil Appeal No.3992/2023 judgment dated 13.10.2023 wherein Hon'ble Supreme Court held thus:-

"14. Before we commence our analysis, it would be apt to juxtapose the relevant clauses from the Exemption

Notification and the Clarification Notification for facility of appreciation:

EXEMPTION NOTIFICATION	CLARIFICATION NOTIFICATION
2(s) "government authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;	2(s) "government authority" means an authority or a board or any other body; (i)Set up by an Act of Parliament or a State Legislature; or (ii)established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

15.Having read the two definitions, first and foremost, it is necessary to ascertain the objective behind the Clarification Notification which amended the Exemption Notification and re-defined "governmental authority". A bare perusal of the Exemption Notification reveals that the exemption therein was only extended to those entities, viz. board or authority or body, which fulfilled the three requisite conditions, i.e. : (a) having been established with 90% or more participation by way of equity or control by Government, (b) set up by an Act of the Parliament or a State Legislature, and (c) carrying out any function entrusted to a municipality under Article 243W of the Constitution. It is evident that the scope of the exemption was severely restricted to only a few entities. Although the reason for re-defining "governmental authority" has not been made available by the appellants, we presume that unworkability of the scheme for grant of exemption because of the restricted definition of "governmental authority" was the trigger therefore and hence, the scope of the exemption was expanded to cover a larger section of entities answering the definition of "governmental authority". An amendment by way of the

Clarification Notification was, therefore, introduced which expanded the definition of "governmental authority" and widened the exemption base for service tax to be provided even to an authority or a board or any other body, set up by an Act of Parliament or a State Legislature without the condition of having been established with 90% or more participation by way of equity or control by Government to carry out any function entrusted to a municipality under Article 243W of the Constitution.

16.While the aforesaid interpretation of amended clause 2(s) has been upheld by the Patna High Court, the Appellants have countered the same by submitting that the amended definition of "governmental authority" as in clause 2(s) should be interpreted in a manner so as to make the long line under clause 2(s) applicable to both sub-clause (i) and sub-clause (ii). In other words, as per the Appellants, to qualify as a "governmental authority" under clause 2(s)(i), such authority, board or body must not only be a statutory authority set up by an Act of Parliament or a State Legislature but must also have 90% or more participation of the Government by way of equity or control to carry out any like function that a municipality under Article 243W of the Constitution is entrusted to discharge.

17.We have no hesitation to disagree with the latter interpretation sought to be placed by the appellants, for the reasons that follow.

18.In Superintendent & Legal Remembrancer, State of West Bengal v. Corporation of Calcutta [(1967) 2 SCR 170], a nine-judge Bench of this Court, relying upon Craies' On Statute Law (6th edn.), stated that where the language of a statute is clear, the words are in themselves precise and unambiguous, and a literal reading does not lead to absurd construction, the necessity for employing rules of interpretation disappears and reaches its vanishing point.

19. This Court in *Union of India & Ors. v. Ind-Swift Laboratories Ltd.* [(2011) 4 SCC 635 = [2011 \(265\) E.L.T. 3](#) (S.C.) = [2011] 30 STT 461 (SC)], held that harmonious construction is required to be given to a provision only when it is shrouded in ambiguity and lacks clarity, rather than when it is unequivocally clear and unambiguous.

20. What is plain and ambiguous from a bare reading of a provision under consideration must be interpreted in the same way as it has been stipulated and not in a way that it presumes deficiency and radically changes the meaning and context of the provision. This is the view expressed in the decision of a five-judge Bench of this Court in *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.* [(1961) 2 SCR 189]. The relevant passage there from reads as under :

"10. [...] In interpreting a taxing statute equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

21. It is a well-established principle of statutory interpretation that any authority, entrusted with the function of legislating, legislates for a purpose; it can, thus, safely be assumed that it will not indulge in unnecessary or pointless legislation. This Court, in *Utkal Contractors & Joinery (P.) Ltd. v. State of Orissa* [(1987) 3 SCC 279], lucidly explained thus :

"9. [...] It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it

be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily."

22. Having noticed some of the precedents in the field of interpretation of statutes, we now move on to a little bit of English grammar. The word "or" as well as the word "and" is a conjunction; and it is well known that a conjunction is used to join words, phrases, or clauses. On how the conjunctions "or" and "and" are to be read, guidance could be drawn from authoritative texts and judicial decisions. As per Justice G.P. Singh's Principles of Statutory Interpretation, the word "or" is normally disjunctive while the word "and" is normally conjunctive. In English law, the position is clear as crystal, as explained by Lord Scrutton in Green v. Premier Glynrhonwy Slate Co. [(1928) 1 K.B. 561, page 569] that one does not read "or" as "and" in a statute unless one is obliged, because "or" does not generally mean "and" and "and" does not generally mean "or".

23. When the meaning of the provision in question is clear and unambiguous by the usage of "or" in clause 2(s), there remains no force in the submission of Ms. Bagchi that "or" should be interpreted as "and". In our opinion, the word "or" employed in clause 2(s) manifests the legislative intent of prescribing an alternative. Going by the golden rule of interpretation that words should be read in their ordinary, natural, and grammatical meaning, the word "or" in clause 2(s) clearly appears to us to have been used to reflect the ordinary and normal sense, that is to denote an alternative, giving a choice; and, we cannot assign it a different meaning unless it leads to vagueness or makes clause 2(s) absolutely unworkable. We are fortified in our view by the decision of this Court in Sri Jeyaram Educational Trust v. A.G. Syed Mohideen [(2010) 2 SCC 513], where it was held thus:

"11. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the legislature or the lawmaker, a court should open its interpretation toolkit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

24. In the present case, the word "or" between sub-clauses (i) and (ii) indicates the independent and disjunctive nature of sub-clause (i), meaning thereby that "or" used after sub-clause (i) cannot be interpreted as "and" so as to tie it with the condition enumerated in the long line of clause 2(s) which is applicable only to sub-clause (ii).

25. Applying a different lens, let us test the worth of Ms. Bagchi's submission in the light of the punctuations in clause 2(s). It has been held by a Bench of nine Hon'ble Judges of this Court in Kantaru Rajeevaru v. Indian Young Lawyers Association & Ors. [(2020) 9 SCC 121, para 18] that when a provision is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to the punctuation; however, though a punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning. While so observing, this Court considered several decisions as well as the punctuation

comma in the relevant provision of the Supreme Court Rules, 2013.

26.What follows is that punctuation, though a minor element, may be resorted to for the purpose of construction.

27.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 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 re-defined with a purpose to make the clause workable in contra-distinction 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.

28.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 re-defined 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 243W 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 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.

29. We need not draw guidance from any of the decisions cited by Ms. Bagchi, except one, on the question of construction of the relevant clause because none of those decisions had the occasion to deal with the issue emanating from the Exemption Notification and the Clarification Notification that we are tasked to consider.

30. Ms. Bagchi heavily relied on the decision of a five-judge Bench of this Court in Dilip Kumar (supra) to urge that in case of any ambiguity in interpreting an exemption notification, the interpretation that favours the revenue must be adopted; also, the burden of proving applicability of the exemption notification would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. At the outset, we record that there is absolutely no quarrel with the proposition laid down therein. We, however, reject the contention of Ms. Bagchi based on Dilip Kumar (supra) because the ratio is not applicable to the facts and circumstances of this case. This, for the simple reason, that there exists no ambiguity insofar as the interpretation of clause 2(s) is concerned. We are endorsed in our opinion by the Latin maxim quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est, which means that when there is no ambiguity in the words, then no exposition contrary to the words is to be made. It is, therefore, clear as a sunny day that there arises only one plausible construction of clause 2(s) which is the one the Patna High Court adopted, and which we are inclined to uphold.

31. Ms. Bagchi had submitted that the impugned judgment broadens the scope of the exemption to include vast number of statutory bodies; therefore, unfairly burdening the exchequer. We observe that the authority having the competence to issue a notification completed its job by re-defining "governmental authority" and now it is a task entrusted to the courts to

interpret the law. It is, at this juncture, important to notice the law laid down by this Court, speaking through Hon'ble O. Chinnappa Reddy, J. in Girdhari Lal & Sons v. Balbir Nath Mathur [(1986) 2 SCC 237]. The position of law was affirmed in the following terms :

"6. Where different interpretations are likely to be put on words and a question arises what an individual meant when he used certain words, he may be asked to explain himself and he may do so and say that he meant one thing and not the other. But if it is the legislature that has expressed itself by making the laws and difficulties arise in interpreting what the legislature has said, a legislature cannot be asked to sit to resolve those difficulties. The legislatures, unlike individuals, cannot come forward to explain themselves as often as difficulties of interpretation arise. So the task of interpreting the laws by finding out what the legislature meant is allotted to the courts. Of course, where words are clear and unambiguous no question of construction may arise. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. This is the real basis of the so-called golden rule of construction that where the words of statutes are plain and unambiguous effect must be given to them. A court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the legislature to others as well as judges."

32.Keeping the above-said ratio in mind, an interpretation of the relevant provision resulting in the expanded scope of its operation cannot in itself be sufficient to attribute ambiguity to the provision.

33.To make a statute workable by employing interpretative tools and to venture into a kind of judicial legislation are two different things. Merely because the statute does not yield intended or desired results, that cannot be reason for us to overstep and cross the Lakshman Rekha by employing tools of interpretation to interpret a provision keeping in mind its outcome.

Interpretative tools should be employed to make a statute workable and not to reach to a particular outcome.

Conclusion

34. For the reasons aforesaid, we find no merit in these appeals. The impugned judgments and orders are upheld and the appeals are dismissed, without any order for costs.”

9. By respectfully following the judgment of the Hon'ble Supreme Court as above stated, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, as per law.

(Order pronounced in open court on – **15th March, 2024**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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