CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Cross Application No.70083 of 2021
(On behalf of appellant) **IN**
Service Tax Appeal No.70572 of 2020

(Arising out of Order-in-Appeal No.97-ST/APPL/LKO/2020 dated 11.05.2020 of Commissioner (Appeal) Customs, GST & Central Excise, Lucknow)

Commissioner of Central Excise & CGST, Lucknow .....**Appellant**
(7A Ashok Marg, Lucknow)

VERSUS

M/s Shalimar Corp Ltd., ...**Respondent**
(11th Floor, Shalimar Titanium Building, Lucknow)

APPEARANCE:

Shri A.K. Choudhary, Authorised Representative for the Appellant
Shri Dharmendra Srivastava, Chartered Accountant for the Respondent

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

FINAL ORDER NO.70945/2024

DATE OF HEARING : 26 November, 2024
DATE OF DECISION : 26 November, 2024

SANJIV SRIVASTAVA:

This appeal filed by revenue is directed against order in appeal No. 97-ST/APPL/LKO/2020 dated 11.05.2020 of Commissioner (Appeal) Customs, GST & Central Excise Lucknow. By the impugned order, the order in original No 58 (R) /JC/Shalimar Corp/2019 dated 17.05.2019 holding as follows has been set aside.

Order

I reject the refund claim of Service Tax amounting to Rs. 80,64,728/- (Rupees Eighty Lakh Sixty Four Thousand Seven Hundred Twenty Eight only) filed by M/s Shalimar

Corp. Limited, 11th Floor, Shalimar Titanium Building, Vibhuti Khand, Gomti Nagar Lucknow in light of amendment made vide Notification No 09/2016 dated 01.03.2016.

2.1 The respondent is engaged in providing Work Contract services.

2.2 Respondent filed refund claim received by the jurisdictional officer on 11.11.2016 for Rs 80,64,728/- under section 102 of the Finance Act, 1994.

2.3 After scrutiny of the refund claim a show cause notice dated 23.01.2017 was issued to the respondent asking them to show cause as to why their refund claim should not be rejected.

2.4 The show cause notice was adjudicated as per order in original referred in para 1 above. The refund claim was rejected on the following grounds.

(i) The respondent had not provided any documentary evidence showing that the amount of Service Tax paid was in relation to the amount received by them against specific G.O.

(ii) The respondent had submitted copies of work contracts made between them and Ghaziabad Development Authority which shows that Ghaziabad Development Authority is a body corporate. In Notification No. 25/2012-ST dated 20.06.2012, entry no.-12, word "body corporate has nowhere been mentioned for exemption from service tax, therefore refund in respect of service tax paid by the respondent for rendering services to Ghaziabad Development Authority is not admissible in light of Notification No. 09/2016- ST dated 01.03.2016

(iii) The respondent had not provided any supporting documents such as invoices/bills etc., issued by them to different department along with their refund claim which could confirm that they had not charged/realized Service Tax from any other person.

Therefore, the refund claim was also liable for rejection on grounds of unjust enrichment.

(iv) The respondent had also stated that stamp duty of Rs.100/-has been paid by them upon entering such contract with the Ghaziabad Development authority, but had not provided any documentary evidence in this regard and on the basis of documents submitted by the respondents, it was not clear whether they had paid appropriate stamp duty prior to 1st March 2015, where applicable, in respect of contracts entered into prior to 1st March 2015.

2.5 Aggrieved respondent filed an appeal before the Commissioner (Appeal) which has been allowed as per the impugned order.

2.6 Aggrieved revenue has filed this appeal on following grounds:

- *As regard constitution of Ghaziabad Development Authority, it works as a body corporate which had been constituted under Section (4) of the Uttar Pradesh Urban Planning & Development Act, 1973. Hence, in the light of said provisions Ghaziabad Development Authority is a body corporate entity*

- *vide Notification No.09/2016-ST dated 01.03.2016, Govt. of India had made further amendment in the Notification No.25/2012-ST dated 20.06.2012 and stated that after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely-*

  "12A. Services provided to the Government, a local authority or a govemmental authority by way of construction, erection, commissioning installation, completion, fitting out, repair, maintenance, renovation, or alteration of

  (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(ii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

Provided that nothing contained in this entry shall apply on or after the 1st April,2020."

Further, the essential condition of the above mentioned exemption notification, is that the service was to be provided to the Government, a local authority or a governmental authority, but in the instant case the Ghaziabad Development Authority was not either the Government, a local authority or a governmental authority rather it is a body corporate. Hence, the respondent is not eligible for exemption from Service Tax in terms of Notification No.09/2016-ST dated 01.03.2016, vide which the Govt. of India had made further amendment in the Notification No.25/2012-ST dated 20.06.2012

- *The Commissioner (Appeals) has erred while admitting the submission made by the party regarding allegation not made in Show Cause Notice, as the Show Cause Notice has been issued to the party for rejection of refund claim only on the basis of available documents / defence reply submitted by the party. Further in Show Cause Notice it is mentioned that the party has not provided any supporting documents. Therefore, in absence of any documentary evidence, the SCN was issued for rejection of whole amount of refund claimed of service tax amounting to Rs. 80,64,728/-. However, during the time of adjudication the party vide their defence reply had submitted a chart* *showing details of payment of Service Tax amounting to Rs. 80,64,728/- regarding construction of multi-level parking at Vaishali, Ghaziabad. In the said detailed chart four running bill/bill date were mentioned, but the party had attached only one copy of such running bill having gross amount of Rs. 3,22,63,295/-*

- *Further, as per detailed chart and copy of a running bill it is confirmed that the work performed by the party was construction of multi-level parking at Vaishali Metro Station for Ghaziabad Development Authority. The said work cannot be treated as "for use other than for commerce, industry, or any other business or profession" which is also a vital condition for entry no. 12A of mega exemption Notification No. 25/2012-ST dated 20.06.2012, as amended vide Notification No 09/2016-ST dated 01.03.2016. Hence, the party is not eligible for exemption from Service Tax in terms of Notification No. 09/2016-ST dated 01.03.2016, vide which the Govt. of India had made further amendment in the Notification No 25/2012-ST dated 20.06.2012.*

- *The Commissioner (Appeal) erred while admitting the decision by the Hon'ble CESTAT vide Final Order No.70039/2019 dated 08.01.2019 where the Tribunal has ruled that construction of multistorey parking for Lucknow Development Authority cannot be held to be commercial activity. The department has not accepted the said Final order and preferred appeal before Hon'ble High Court on 14.05.2019. However, the said order was accepted by the department under revised monetary limit as the amount involved in the Case is Rs 79,20,957/- which is below monetary limit prescribed for filing Appeal in the High Court. Here reference is made to Sub-section 3 of Section 35R of Central Excise Act 1994, which provides that if an appeal has not been filed by the Department following instructions issued for not filing appeal below the monetary limit, o person, being a party in appeal, shall contend that* *the Department has acquiesced in the decision on the disputed issue by not fling appeal. In effect the decisions / judgments accepted for reasons of monetary limit do not have precedent value."*

3.1 We have heard Shri A K Choudhary, Authorized Representative for the revenue and Shri Dharmendra Srivastava for the respondent.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"5. I have gone through the case record. From the record it is apparent that the GDA has been established under UP Urban Planning and Development Act 1973. Hence, the same is fully owned and controlled by the UP Government. Further, it carries out functions entrusted to a municipality under Article 243W of the Constitution. Creating public amenities like parking lot is one such function. Hence GDA satisfies all the conditions of 'governmental authority' as defined under para 2 of the Notification No. 25/2012-ST.

6. Regarding commercial nature of the multi-level parking, it has rightly been argued that the said allegation was not made in the SCN and, therefore, the adjudicating authority could not have invoked the said issue in the impugned order. Moreover, Hon'ble CESTAT Allahabad vide Final Order No. 70039/2019 dated 08.01.2019, in the appellant's own case, has held that construction of multistory parking for Lucknow Development Authority cannot be held to be commercial activity.

7. Regarding unjust enrichment, it is found that the contract for the impugned service was finalized before March 2015 when the service was exempt Therefore, there was no provision for payment of service tax and no service tax was collected by the respondent from the service recipient. The respondent has claimed that burden of the said service tax *has not been passed on to any other person. A certificate dated 27.4.2020 has also been issued by their Chartered Accountant viz. AGARWAL ALOK & ASSOCIATES, to the effect that incidence of the said Service tax has not been passed on by the respondent to any other person."*

4.3 From the facts as noted above it is evident that the respondent had filed refund claim as per Section 102 of the Finance Act, 1994 (as inserted by Finance Act, 2016). The said section is reproduced below:

102. "(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the 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) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as–– (i) an educational establishment; (ii) a clinical establishment; or (iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President."

4.4 J S TRU has vide his D.O.F. No.334/8/2016-TRU dated 29.02.2016 clarified in respect of the same by stating as follows:

"L. Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption.

(a) Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of –

(i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(iii) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

was withdrawn with effect from 1.4.2015. The same is being restored for the services provided under a contract which had been entered into Page 8 of 38 prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is being restored till 31.03.2020. [Notification No. 25/2012-ST as amended by notification No. 09/2016-ST dated 1st March, 2016 refers] The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax. [New section 102 is being inserted in the Finance Act, 1994] (Clauses 156 of the Bill refers)"

4.5 From the above it is evident that exemption which was provided by the Exemption Notification No 25/2012-ST vide Sl No 12 of the said notification but was withdrawn by the amendments made in the said with effect from 01.04.2015 has been restored. Notification No 09/2016-ST which has been issued with effect from o1.03.2016 has not been given retrospective effect. The appeal filed by the revenue by relying on the Notification No 09/2016-ST thus does not have any merits. The word Government Authority has been defined by the Notification No 25/2012-ST as follows:

> *"(s) "governmental 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;"*

Impugned order on interpretation of the above definition has concluded that Ghaziabad Development Authority (GDA), who is service recipient in the present case qualifies as "government authority" under the said definition. Revenue has in their appeal not challenged the said interpretation but has referred to the Notification No 09/2016-ST for challenging the order. Undisputedly GDA has been constituted under U P Urban Planning and Development Act, 1963 and is engaged is entrusted the function of town planning etc which are specified under Article 243W of the Constitution. The findings recorded in the impugned order in this respect cannot be disputed.

4.6 In case of Shapoorji Pallonji & Company Pvt. Ltd [2023 (79) G.S.T.L. 145 (S.C.)] Hon'ble Supreme Court has interpreted the phrase "governmental authority" used in the said Notification 25/2012-ST and observed as follows:

> *"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) "governmental 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) "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 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 therefrom 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.*

4.7 In view of the above decision of the Hon'ble Supreme Court we do not find any submissions made by the revenue in their appeal in this respect.

4.8 In respect of the second submission to the effect that construction of multi level parking at Vaishali Metro Station, cannot be said to be for use other than commerce industry or any other business, we find that impugned order records the finding that this was not even an allegation in the show cause notice issued to the appellant. Revenue have in appeal stated that the show cause notice was issued on the basis of the documents and information provided by the appellant along with the refund claim. We do not find any merits in the said submission of the appellant revenue for the very reason that the on receipt of the refund claim it was duty of the jurisdictional officer to scrutinize and determine correctness of the submissions made in the refund claim. In case the refund claim was deficient in any respect the same should have been returned to the claimant for being filed with all the relevant documents. In chapter on Refund in Central Excise Manual issued by the Board, it has been clarified that the refund claim which are not complete in all respect should be returned to the claimant for being filed after providing for the short comings. The submission made in the appeal goes contrary to the said clarification. Be that as it is we do not find any merits in submission made by the appellant revenue for the reason that no evidence has been adduced even at the stage of appeal that the said multi level parking constructed at Vaishali Metro Station has been used for the purpose other than specified in the Section 102 or Notification No 25/2012-ST. Commissioner has relied upon the decision in the case of Respondent [Final Order No 70039/2019 dated 08.01.2019] to conclude that the such parking facilities fall within the exempted category. The relevant text of the CESTAT order is reproduced below:-

> *"2. …... Secondly, he has observed that construction of the multi story parking for Lucknow Development Authority cannot be held to be commercial activity. Lucknow Development Authority was established under the Uttar Pradesh Urban Planning and Development Act, 1973 and is responsible for planned development of Lucknow city. It is entrusted with the responsibility of providing facilities for public amenity and providing multilevel parking is one of the duties of the said authorities. Merely because a small fee is being collected from the users will not make the said activity as a commercial activity, inasmuch as, providing of public amenity cannot be for generating profit. Accordingly, he has held that the activity is not covered under the category of any commercial or profit making activity. He has also observed that government parks or public travels constructed in many parts of the country are welfare measure for public convenience and availability. Even though some nominal fee is being charged, the same primarily remains public facility programs and cannot be considered to be commercial or industrial uses.*
>
> *3. We find no infirmity in the above findings of the original adjudicating authority. There is no dispute that such multilevel parking stands constructed by the respondents for Lucknow Development Authority, whose main function is to provide public facilities. The multilevel parking are made for reducing traffic conditions and parkings on the road and is for betterment and development of the city. It cannot be said to be a commercial activity so as to tax the same. As such, we find no justifiable reasons to interfere with the impugned order of Commissioner."*

4.9 Just because the order of the appellate authority has been accepted by the revenue authorities on monetary ground will not make the order lose its precedent value. Section 35R of the Central Excise Act, 1944 clearly provides that in case an order is accepted on the monetary ground, revenue is not acquiesced of making submissions against the said decision in subsequent cases or filing the appeal on the same issue in subsequent cases which are well beyond the monetary limit prescribed.

4.10 From the show cause notice itself it is quite evident that the refund claim has been filed in respect of services provided against C A No 762/FC/EE-Zone-5/14 dated 05.02.2014. Revenue have in their appeal raised the ground to effect that no evidence to effect that appropriate stamp duty has been paid before 01.03.2015 has been adduced by the respondent. We do not find any merits in the said submission also. In case of Shanti Constructions Co. [2021 (54) G.S.T.L. 164 (Tri. - Ahmd.)] Ahmedabad Bench has observed as follows:

> ***"5.*** *We find that as per the facts before us there is no dispute that the tender was opened on 28-1-2015 and the appellant was declared successful bidder thereafter no separate contract/agreement was entered into. It is the department's contention that the date of the work order i.e. 16-3-2015 has to be considered as contract. We do not agree with this contention for the reason that work order is only a procedure to begin the work however, since there is no separate contract/agreement after opening of tender and acceptance thereof by the appellant that itself is treated as contract. Therefore, the date of opening of tender i.e. 28-1-2015 has to be taken as a date of contract. Section 102(1)(c) provides exemption only to those residential complex where a contract is entered into before the 1st day of March, 2015 and on which appropriate stamp duty, whenever applicable had been paid before that day.*
>
> ***5.1*** *We find that the Adjudicating Authority while denying the refund of this amount also noted that there is no evidence of payment of stamp duty on the contract. The*

Adjudicating Authority has missed the term "wherever applicable". In the present case payment of stamp duty is not applicable. Therefore, the condition whether stamp duty was paid or otherwise cannot be applied in the present case. Only aspect to be considered is whether the contract is of prior to 1-3-2015 or post that date. As discussed above the date of opening of tender and acceptance thereof is the date of contract which is 28-1-2015. The appellant's claimed is squarely covered by Section 102 and accordingly, they are eligible for the refund for this amount also."

4.11 We do not find any merits in the submissions made in the appeal filed by the revenue.

4.11 Appeal is dismissed. Cross Objection also gets disposed of.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp