[2023] 15 S.C.R. 421 : 2023 INSC 910

CASE DETAILS

COMMISSIONER, CUSTOMS CENTRAL EXCISE AND SERVICE TAX, PATNA

v.

M/S SHAPOORJI PALLONJI AND COMPANY PVT. LTD. & ORS.

(Civil Appeal No. 3991 of 2023 Etc.)

OCTOBER 13, 2023

[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]

HEADNOTES

Issue for consideration: Whether the educational institutions-Indian Institute of Technology, Patna and the National Institute of Technology, Rourkela are covered by the definition of "governmental authority" in Mega Service Tax Exemption Notification inter alia exempting various services from the tax network rendered to government, governmental, or local authorities.

Tax/Taxation – Service tax – Exemption from – Eligibility – Educational institutions-IIT Patna and NIT Rourkela if covered by the definition of 'Government authority' in Mega Service Tax Exemption Notification No. 25/2012, G.S.R 467(E) dated 20th June, 2012, exempting various service from service tax:

Held: Educational institutions-IIT Patna and NIT Rourkela fall under the amended definition of 'Government authority' under clause 2(s) and are eligible for the benefit in the Exemption Notification to the educational institutions and exempted from service tax – Amended definition of 'government authority' in clause 2(s) by way of Clarification Notification, has 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 u/Art. 243W – Clarification Notification introduced an amended version of clause 2(s), which re-defined

"governmental authority" with a purpose to make the clause workable in contra-distinction to the earlier definition – Decisions of the Patna High Court and the Orissa High Court rightly extending the benefit of the Exemption Notification to the educational institutions, and a fortiori, to SPCL, is upheld – Thus, the impugned judgments and orders are upheld – Constitution of India – Art. 243W. [Paras 30, 34]

Circular/Government order/Notification – Mega Service Tax Exemption Notification – Clause 2(s)(as amended by clarification Notification), defining 'Government Authority' – Interpretation of word 'or' employed in clause 2(s):

Held: 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 have been used to reflect the ordinary and normal sense, that is to denote an alternative, giving a choice; and, a different meaning cannot be assigned unless it leads to vagueness or makes clause 2(s) absolutely unworkable – 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) – 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 – First part is by itself complete and capable of operating independently – While the Clarification Notification introduced an amended version of clause 2(s), "governmental authority" was re-defined with a purpose to make the clause workable in contra-distinction to the earlier definition – Thus, this Court cannot overstep and interpret "or" as "and" so as to allow the alternative outlined in clause 2(s) to vanish – There exists no ambiguity insofar as the interpretation of clause 2(s) is concerned – Notification No. 25/2012, G.S.R 467(E) dated 20th June, 2012. [Paras 23, 24, 28].

Circular/Government order/Notification – Mega Service Tax Exemption Notification – Clause 2(s)(as amended by clarification Notification) – Punctuation in clause 2(s) of the Clarification Notification defining 'Government Authority' – Interpretation of:

Held: Punctuation, though a minor element, may be resorted to for the purpose of construction – Use of a semicolon is not a trivial matter but a deliberate inclusion with a clear intention to differentiate it from sub-clause (ii) – 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 – Thus, the long line of clause 2(s) governs only sub-clause (ii) and not sub-clause (i) because 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 – Clarification Notification amended clause 2(s), and redefined "governmental authority" with a purpose to make the clause workable in contra-distinction to the earlier definition – Interpretation of statutes – Notification No. 25/2012, G.S.R 467(E) dt 20.06.2012. [Paras 26, 27]

Interpretation of statutes – Interpretation of the relevant provision – Rules of interpretation:

Held: Plain and ambiguous provision 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 – Interpretation of the relevant provision resulting in the expanded scope of its operation cannot in itself be sufficient to attribute ambiguity to the provision – 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 to overstep and cross the line 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. [Paras 20, 32, 33]

Maxims - Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est – Meaning of:

Held: When there is no ambiguity in the words, then no exposition contrary to the words is to be made. [Para 30]

LIST OF CITATIONS AND OTHER REFERENCES

Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Ors. (2018) 9 SCC 1 : [2018] 7 SCR 1191 – held inapplicable.

Barun Kumar & Ors. v. State of Jharkhand & Ors. (2022) SCC OnLine SC 1093; *Bihar State Electricity Board v. Pulak Enterprises & Ors.* (2009) 5 SCC 641; *ONGC Ltd v. Afcons Gunanusa* JV (2022) SCC OnLine SC 1122; *Jindal Stainless Ltd. v. State of Haryana* (2017) 12 SCC 1 : [2016] 10 SCR 1; *Akshaibar Lal (Dr.) v. Vice-Chancellor, Banaras Hindu University* (1961) 3 SCR 386; *ITC Limited v. Commissioner of Central Excise, Kolkata* (2019) 17 SCC 46 : [2019] 13 SCR 357; *Superintendent & Legal Remembrancer, State of West Bengal v. Corporation of Calcutta* (1967) 2 SCR 170; *Union of India & Ors. v. Ind-Swift Laboratories Ltd.* (2011) 4 SCC 635 : [2011] 2 SCR 1087; *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd* (1961) 2 SCR 189; *Utkal Contractors & Joinery (P) Ltd. v. State of Orissa* (1987) 3 SCC 279 : [1987] 3 SCR 317; *Green v. Premier Glynrhonwy Slate Co* (1928) 1 K.B. 561, page 56; *Sri Jeyaram Educational Trust v. A.G. Syed Mohideen* (2010) 2 SCC 513 : [2010] 1 SCR 1127; *Kantaru Rajeevaru v. Indian Young Lawyers Association & Ors.* (2020) 9 SCC 121; *Girdhari Lal & Sons v. Balbir Nath Mathur* (1986) 2 SCC 237 : [1986] 1 SCR 383 – referred to.

Green vs. Premier Glynrhonwy Slate Co (1928) 1 K.B. 561 - referred to.

Principles of Statutory Interpretation by Justice GP Singh's - referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3991 of 2023.

From the Judgment and Order dated 03.03.2016 of the High Court of Patna in CWJC No.16965 of 2015.

With

Civil Appeal No. 3992 of 2023.

Appearances:

Balbir Singh, A.S.G., Gopal Sankar Narayanan, Sr. Adv., Mukesh Kumar Maroria, Ms. Nisha Bagchi, Rupesh Kumar, Veer Vikrant Singh,

Ms. Rukmini Bobde, Vikrant Singh, Rakesh Karela, Jaiyesh Bakhshi, Ravi Tyagi, Gaurav Mishra, Chirag Sharma, Daman Popli, Ms. Ria Chanda, Ms. Neetu Devrani, Ms. Sakshi Tibrewal, Ms. Saksha Jha, Ms. Aditi Gupta, P. V. Yogeswaran, Raj Bahadur Yadav, Mrs. Alka Agarwal, Prashant Singh II, Shantnu Sharma, Ms. Vibhooti Malhotra, Bhuvnesh Satija, Udit Sharma, Advs. for the appearing parties.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

DIPANKAR DATTA, J.

PREFACE

1. We are tasked to decide two civil appeals that centre around a common question: whether the educational institutions in question, viz. (i) the Indian Institute of Technology, Patna ("IIT Patna", hereafter) and (ii) the National Institute of Technology, Rourkela ("NIT Rourkela", hereafter), are covered by the definition of "governmental authority" in Mega Service Tax Exemption Notification[1] ("Exemption Notification", hereafter) *inter alia* exempting various services from the tax network rendered to government, governmental, or local authorities. If "governmental authority" as defined in the Exemption Notification takes within its embrace IIT Patna and NIT Rourkela, they would be eligible for an exemption from the service tax that otherwise applies to construction services provided by service providers or subcontractors within their premises.

THE APPEALS

2. In Civil Appeal No. 3991 of 2023 ("CA-I", hereafter), the appellant assails the judgment and order dated 03rd March, 2016 of the High Court of Judicature at Patna ("Patna High Court", hereafter) whereby a writ petition[2] preferred by the first respondent, i.e., M/s Shapoorji Pallonji & Company Pvt Ltd ("SPCL", hereafter) was allowed and the service tax collected by the appellant was directed to be refunded.

1 No. 25/2012, G.S.R 467(E) dated 20th June, 2012
2 CWJC No. 16965 of 2015

3. Civil Appeal No. 3992 of 2023 ("CA-II" hereafter) challenges the judgment and order dated 05th February, 2018 of the High Court of Orissa at Cuttack ("Orissa High Court", hereafter). The Orissa High Court while relying on the aforesaid decision of the Patna High Court in favour of SPCL, on a similar question of law, allowed a writ petition[3] preferred by SPCL for refund of service tax.

THE RELEVANT NOTIFICATIONS

4. The Exemption Notification, under consideration, was issued by the Department of Revenue under section 93 of the Finance Act, 1994 ("the 1994 Act", hereafter) *inter alia* exempting various taxable services from the levy of whole of the service tax under section 66B thereof. Clause 12(c) of the Exemption Notification, which is relevant for the purpose of the present adjudication, reads as follows:

> "12. 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) ***
>
> (b) ***
>
> (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
>
> (d) ***
>
> (e) ***
>
> (f) ***"

5. Since we are concerned with the interpretation of "governmental authority", clause 2(s) of the Exemption Notification defining "governmental authority" is reproduced hereunder:

> "(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity

3 W.P. (C) No. 17188 of 2015

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."

6. It may also be noticed that section 66D of the 1994 Act, inserted by the Finance Act, 2012 with effect from 1st July, 2012, specifies the negative list of services, i.e., the services on which service tax is not leviable.

7. Clause 2(s) of the Exemption Notification underwent an amendment *vide* a Notification dated 30th January, 2014 ("Clarification Notification", hereafter). This amendment, re-defining "governmental authority", sought to broaden the scope of the exemption. The amended definition is set out hereinbelow:

"(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."

8. Having outlined the relevant legal framework under consideration, we consider it proper to delve into the facts that formed the genesis of the writ petitions before the Patna High Court and the Orissa High Court.

FACTS

9. The material facts, leading to the presentation of CA-I, are as follows:

a) IIT Patna, the fourth respondent, appointed NBCC India Limited ("NBCC", hereafter), the third respondent, as a Project Management Consultant to oversee the construction of building/ facilities/services for its academic complex. *Vide* Letter of Award dated 20th December, 2012, NBCC awarded the contract for construction works to SPCL at a total contract price of Rs.167,70,09,043.00 (Rupees One hundred Sixty-Seven Crore Seventy Lakh Nine Thousand Forty-Three only). Clause 4.2.4 of

the Letter of Award specified that the aforementioned rates did not include service tax and that SPCL would be reimbursed for this tax by IIT Patna upon providing receipts.

b) SPCL, in accordance with the Letter of Award, duly registered itself with the Central Excise and Service Tax ("CEST", hereafter) and discharged its service tax obligations amounting to Rs.9,73,25,398.23 (Rupees Nine Crore Seventy-Three Lakh Twenty-Five Thousand Three Hundred Ninety-Eight and Twenty-Three paisa) for the period spanning from March 2013 to April 2015. It is important to note that these service tax amounts were integrated into the monthly running bills for the aforementioned months, which were submitted by SPCL and subsequently approved and paid by IIT Patna. This meant that IIT Patna was ultimately responsible for settling the service tax dues.

c) The Indian Audit and Account Department raised an audit objection on 30th June, 2015 to the effect that service providers engaged in construction activities for educational institutions meeting the criteria of a "government, local authority, or governmental authority" according to clause 12(c) of the Exemption Notification were not obligated to remit service tax. Consequently, because IIT Patna was classified as a governmental authority, the payment of service tax by them was objected as such payment contravened the exemption provision specified in the Exemption Notification. Additionally, IIT Patna was directed to immediately undertake actions for the recovery or adjustment of the service tax previously paid to SPCL.

d) Following receipt of the audit objection, IIT Patna notified NBCC *vide* a letter dated 27th August, 2015 and conveyed that the Joint Secretary (Tax Research Unit) at the Government of India's Ministry of Finance, Department of Revenue, had clarified the definition of auxiliary educational services. This clarification included an enumeration of various services eligible educational institutions could receive and which would be exempted from service tax. Notably, this clarification did not specifically mention construction activity. Additionally, IIT Patna expressed its

intention to establish a methodology for the recovery of service tax reimbursement.

e) Apprehensive of the initiation of recovery proceedings for the service tax already paid, SPCL approached the Patna High Court seeking the following relief:

> "(i) the instructions of the respondent no.2 dated 30.06.2015 (as contained in Annexure-6) directing immediate recovery adjustment of service tax reimbursed by the respondent no.4 be quashed.
>
> (ii) for a declaration that [IIT Patna] is obliged to reimburse service tax paid by the [SPCL] on the service of construction of its building premises.
>
> (iii) alternatively for a direction to the [Commissioner, Customs Central Excise and Service Tax] to refund the amount of service tax paid by [SPCL] on the service of construction of building premises of [IIT Patna] in pursuance of the contract."

f) *Vide* the impugned judgment, the Patna High Court allowed the writ petition of SPCL and held that IIT Patna would indeed be covered within the definition of a "governmental authority" under clause 2(s). In its interpretation of clause 2(s), the Court observed that provisions contained in sub-clauses (i) and (ii) of clause 2(s) are independent disjunctive provisions and the expression "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" is related to sub-clause (ii) alone because sub-clause (i) is followed by the punctuation ";" and then by the conjunction "or". According to the Court, any authority set up by an Act of Parliament or by an Act of the State Legislature as envisaged in sub-clause (i), therefore, cannot be made subject to the condition of "90% or more participation by way of equity or control" and it is only an authority or a board or any other body established by the Government as envisaged under sub-clause (ii) of clause 2(s) that has to meet the requirement of governmental participation of 90% or more by way of equity or control. It was, accordingly, ruled that

the construction activity undertaken by SPCL is exempt from payment of service tax in terms of the Exemption Notification read with the Clarification Notification, followed by a direction that the service tax collected by the Revenue shall be refunded to SPCL or IIT Patna, as the case may be.

10. The relevant facts, leading to the presentation of CA-II, are as follows:

a) SPCL was awarded a works contract *vide* Work Order dated 22nd February, 2013 by NIT Rourkela to carry out construction projects at its campus. The total value of the contract was Rs.302,82,39,866.00 (Rupees Three Hundred Two Crore Eighty-Two Lakh Thirty-Nine Thousand Eight Hundred Sixty-Six only). Clause 12 of the Work Order stated that the aforesaid price shall be inclusive of all taxes except service tax which may be reimbursed as applicable.

b) SPCL sought clarifications from the Service Tax Commissionerate regarding the applicability of service tax on services rendered to NIT, Rourkela.

c) SPCL, however, discharged its service tax liability amounting to Rs 5,79,17,168.00 (Rupees Five Crore Seventy-Nine Lakh Seventeen Thousand One Hundred Sixty-Eight only) to the Service Tax Department and raised all the bills to NIT, Rourkela charging service tax. However, no service tax was paid by NIT, Rourkela claiming that the work executed is exempt from the payment of service tax.

d) Aggrieved, SPCL approached the Orissa High Court for reimbursement of such service tax payment.

e) The Orissa High Court, *vide* the impugned judgment, allowed the writ petition of SPCL by relying upon the judgment and order of the Patna High Court, as aforesaid. The Deputy Commissioner of Service Tax was directed to dispose of SPCL's pending application for refund of service tax within two months.

SUBMISSIONS

11. Ms. Bagchi, learned counsel representing the appellants in both the appeals, contended that IIT Patna and NIT Rourkela were not eligible for the benefits outlined in the Exemption Notification due to its exclusion from the definition of "governmental authority". In contesting the impugned judgment and order of the Patna High Court, she advanced the following submissions:

a) The Amendment to the Exemption Notification carried out *vide* the Clarification Notification aimed to broaden its applicability beyond statutory bodies, extending its benefits to government-established entities as well. The Clarification Notification further clarified this expansion by encompassing government-established bodies within the definition of "governmental authorities". However, it is important to note that the requirement of 90% or more government equity or control still applies to both types of governmental bodies, whether they are statutory or non-statutory.

b) The High Court's error lay in its interpretation of the sub-clauses as independent and disjunctive. The deliberate separation of the condition of "90% or more participation" from sub-clause (ii) serves the specific intent of making it applicable to both sub-clauses.

c) It is firmly established that punctuation marks alone should not dictate the interpretation of a statute, especially when meaning of the statute is clear without them. The general principle is that punctuation marks carry less weight in the interpretation of statutes, especially when dealing with subordinate legislation. Furthermore, punctuation marks may convey different impressions, and their interpretation should not be isolated but considered in conjunction with other clauses to discern legislative intent. To support this argument, reference was made to the decisions of this Court in ***Barun Kumar & Ors. vs. State of Jharkhand & Ors.***[4], ***Bihar State***

4 (2022) SCC OnLine SC 1093

Electricity Board vs. Pulak Enterprises & Ors.[5], and ***ONGC Ltd vs. Afcons Gunanusa JV***[6].

d) The terms 'or' and 'and' can be interchangeably interpreted to fulfil the legislative intent. In this context, reference was made to the rulings of this Court in ***Jindal Stainless Ltd. v. State of Haryana***[7], ***Barun Kumar*** *(supra)* and ***Akshaibar Lal (Dr.) v. Vice-Chancellor, Banaras Hindu University***[8].

e) The impugned judgment of the Patna High Court carries the risk of unconditionally broadening the coverage and scope of the exemption to include various public bodies, such as Telecom Regulatory Authority of India, Airports Authority of India, and public sector banks. These entities could potentially claim exemptions under different clauses of the Exemption Notification, covering various services provided by a "governmental authority". A lenient interpretation of the term "governmental authority" could unfairly burden the exchequer. Reliance was placed on the decision of a Constitution Bench of this Court in ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company & Ors.***[9] wherein it was held that any notification or a clause granting an exemption must be interpreted strictly and literally, with any ambiguity resolved in favour of the revenue.

f) IIT Patna and NIT Rourkela are institutions incorporated under central statutes, i.e., the Indian Institute of Technology Act, 1961 ("the 1961 Act", hereafter) and the National Institutes of Technology Act, 2007 ("the 2007 Act", hereafter), respectively, and they do not carry out any duties or responsibilities akin to Schedule XII of the Constitution; the two educational institutions, therefore, do not fall under the classification of "governmental authority" nor are exempted under the negative list.

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5 (2009) 5 SCC 641
6 (2022) SCC OnLine SC 1122
7 (2017) 12 SCC 1
8 (1961) 3 SCR 386
9 (2018) 9 SCC 1

g) SPCL has paid service tax through self-assessment. Reliance was placed on ***ITC Limited vs. Commissioner of Central Excise, Kolkata***[10] in support of the contention that the order of self-assessment being an assessment order under the Customs Act, 1962 is appealable and a refund claim is not sustainable unless the assessment itself is set aside.

h) Classification of IIT Patna as a "governmental authority" has no bearing on the applicability of service tax to the transaction between SPCL and NBCC. The crux of the argument lies in the specific nature of this case: SPCL has delivered its services to NBCC, not directly to IIT Patna. IIT Patna has engaged NBCC as a Project Management Consultant, making SPCL the service provider and NBCC the service recipient in this particular transaction. Consequently, it cannot be contended that SPCL provided services directly to IIT Patna. NBCC lacks the status of a "government, local authority, or governmental authority" under the Exemption Notification, and it has not asserted such a claim. Therefore, the activities and transactions between SPCL and NBCC are subject to service tax and do not qualify for exemption under the Exemption Notification.

12. Learned counsel representing SPCL, supported the impugned judgment and order of the Patna High Court and contended that while construction services are classified as taxable under section 65 of the 1994 Act, the Exemption Notification provides an exemption for services rendered to the Government, local authorities, or governmental authorities. IIT Patna, as an institution of national importance, was established by the Parliament under Article 248 of the Constitution, through the 1961 Act. Similarly, NIT Rourkela was established under the 2007 Act. Consequently, IIT Patna and NIT Rourkela should be considered governmental authorities in accordance with clause 2(s)(i) of the Exemption Notification, read in conjunction with the Clarification Notification. In reply to the submission of the appellants that the classification of IIT Patna as a "governmental authority" would not have any bearing on the applicability of service tax to

10 (2019) 17 SCC 46

the transaction between SPCL and NBCC as service provider and service recipient respectively, learned counsel drew support from clause 29(h) of the Exemption Notification which exempts services provided by sub-contractors by way of works contract to another contractor providing works contract services which are already exempted under the Exemption Notification. Accordingly, it was submitted that there was no merit in the appeals and the same deserved outright dismissal.

13. Learned counsel appearing for IIT Patna supported the impugned judgment and order of the Patna High Court. According to him, IIT Patna qualifies as a "governmental authority" under the Exemption Notification as amended by the Clarification Notification. It was further submitted that the provisions contained in sub-clause (i) and sub-clause (ii) of clause 2(s) are independent disjunctive provisions and the expression "90% or more participation by way of equity or control" is related to sub-clause (ii) alone, meaning thereby that an authority established by Government should have 90% or more participation in order to be exempted from service tax. The authority set up by an Act of Parliament or State Legislature is not subject to this condition. No case for interference having been set up, the counsel prayed for dismissal of CA-I.

ANALYSIS

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 therefor 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 vs. Corporation of Calcutta***[11], 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. vs. Ind-Swift Laboratories Ltd.***[12], 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. vs. Modi Sugar Mills Ltd.***[13]. 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

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11 (1967) 2 SCR 170
12 (2011) 4 SCC 635
13 (1961) 2 SCR 189

unnecessary or pointless legislation. This Court, in ***Utkal Contractors & Joinery (P) Ltd. vs State of Orissa***[14], 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 GP 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 vs. Premier Glynrhonwy Slate Co.***[15], 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,

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14 (1987) 3 SCC 279

15 (1928) 1 K.B. 561, page 569

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 vs. A.G. Syed Mohideen***[16], 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 vs. Indian Young Lawyers Association & Ors.***[17] that when a provision is

16 (2010) 2 SCC 513
17 (2020) 9 SCC 121, para 18.

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 re-defining "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***[18]. 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,

18 (1986) 2 SCC 237

> 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.

Headnotes prepared by:
Nidhi Jain

Appeals dismissed.