

Part-115-One Pager Snapshot to Latest Case-Although a Decision in Service Tax Regime but has the potential impact of invalidating the Circular in GST and also highlights that law should be interpreted in the manner it should be rather than to reach a particular outcome as it did not yield intended results
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S.N.	Case	Held
1.	Commissioner, Customs Central Excise and Service Tax, Patna v. Shapoorji Pallonji & Company (P.) Ltd. [2023] 155 taxmann.com 303 (SC) (13-10-2023)	<p>Question before the Apex Court- 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?</p> <p>Relevant Definition in Notification- "(s) "governmental authority" means an authority or a board or any other body;</p> <p>(i) set up by an Act of Parliament or a State Legislature; or</p> <p>(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."</p> <p>Use of "or" and "and" - In the opinion of Court, the word "or" employed in clause 2(s) manifested the legislative intent of prescribing an alternative. The word "or" in clause 2(s) was 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. Thus, word "or" between sub-clauses (i) and (ii) indicate 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).</p> <p>Use of Semi Colon- The Court observed that 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 was also observed on reading of clause 2(s) that while there was a semicolon after sub-clause (i), sub-clause (ii) closes with a comma. In the view of the Court, it essentially supported 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.</p> <p>Held- 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 subclause (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.</p> <p>Cases Referred- Superintendent & Legal Remembrancer, State of West Bengal vs. Corporation of Calcutt- (1967) 2 SCR 170, UOI & Ors. vs. Ind-Swift Laboratories Ltd (2011) 4 SCC 635, Commissioner of Sales Tax, U.P. vs. Modi Sugar Mills Ltd (1961) 2 SCR 189, Utkal Contractors & Joinery (P) Ltd. vs State of Orissa (1987) 3 SCC 279, Green vs. Premier Glynrhonwy Slate Co (1928) 1 K.B. 561, Sri Jeyaram Educational Trust vs. A.G. Syed Mohideen (2010) 2 SCC 513, Kantaru Rajeevaru vs. Indian Young Lawyers Association & Ors (2020) 9 SCC 121, Girdhari Lal & Sons v. Balbir Nath Mathur (1986) 2 SCC 237</p> <p>Interesting Contention by the Revenue- It was contended by the Revenue that the impugned judgment of Patna High Court carried 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.</p> <p>Held by the Court- The Court held that authority having the competence to issue a notification completed its job by re-defining "governmental authority" and now it is a task entrusted to courts to interpret. If legislature has expressed itself by making the laws and difficulties arise in interpreting what it has said, a legislature cannot be asked to sit to resolve those difficulties. 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</p>
2.	Section 51 and N. No. 50/2018-CT Dt. 13.09.2018. & Interpretation in Circular No. 76 Dt. 31-12-2018 contrary to above decision	<p>Relevant Definition- (a) an authority or a board or any other body, -</p> <p>(i) set up by an Act of Parliament or a State Legislature; or</p> <p>(ii) established by any Government,</p> <p>with fifty-one per cent. or more participation by way of equity or control, to carry out any function;</p> <p>How the Circular Interpreted- It is clarified that the long line written in clause (a) in notification No. 50/2018- Central Tax dated 13.09.2018 is applicable to both the items (i) and (ii) of clause (a) of the said notification. Thus, an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with fifty-one per cent. or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source.</p>
3.	Interpretation by AAR of definition of Government Entity in NHPC Ltd [2018] 100 taxmann.com 16 (AAR-UTTARAKHAND) (22-10-2018)	<p>Relevant Definition- "Government Entity" means an authority or a board or any other body including a society, trust, corporation,</p> <p>(i) set up by an Act of Parliament or State Legislature; or</p> <p>(ii) established by any Government,</p> <p>with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</p> <p>How it was Interpreted- AAR observed that the condition of 90% or more participation by way of equity or control to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority is relatable to only sub-clause (ii) of the definition of "Government Entity". This was held based on judgment of High Court of Patna in the case of Shapoorji Paloonji & Company Pvt. v. CCE which has now been confirmed by the Hon'ble Apex Court.</p>