

EY Tax Alert

Supreme Court interprets the definition of
“Governmental authority” under Service tax

Executive summary

This tax alert summarizes a recent decision of the Supreme Court (SC)¹ interpreting the term “governmental authority” as defined in clause 2(s) of Notification No. 25/2012 dated 20 June 2012 under Service tax. The said term was defined as follows:

“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.

The question involved was whether or not the long line after sub-clause (ii) i.e. “with 90% or more ...of the Constitution” should be read with sub-clause (i).

The key findings of the SC are:

- ▶ There is no need to resort to rules of interpretation when the language of the statute is clear and unambiguous. Harmonious construction is required only when a provision is ambiguous or lacks clarity.
- ▶ A statute should be interpreted in a manner to achieve their ordinary, natural and grammatical meaning.
- ▶ The word “or” between sub-clauses (i) and (ii) indicates the independent and disjunctive nature of sub-clause (i). The use of semicolon in sub-clause (i) and comma in sub-clause (ii) indicates that the long line must be read only with sub-clause (ii).
- ▶ Interpretative tools should be employed to make a statute workable and not to reach to a particular outcome.

SC dismissed the appeal filed by the revenue and upheld the orders passed by the High Courts in favour of taxpayer.

¹ TS-523-SC-2023

Background

- ▶ Indian Institute of Technology (IIT) and National Institute of Technology (NIT) awarded works contract to the assessee for carrying out construction activity at its campus.
- ▶ Clause 12(c) of Notification No. 25/2012 dated 20 June 2012 (Exemption Notification) exempted levy of service tax on construction services provided to "governmental authority" in specified cases.
- ▶ The term "governmental authority" was defined under clause 2(s) of the Exemption Notification.
- ▶ The said definition underwent an amendment on 30 January 2014 as follows:

Pre-amendment	Post-amendment
"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.	"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.

- ▶ Two writ petitions were filed by the assessee before High Court (HC) of Patna and Orissa to determine whether IIT and NIT are "governmental authority" and thereby the exemption would apply.
- ▶ Patna HC held that IIT would be covered within the definition of "governmental authority" stipulated under amended clause 2(s) and hence eligible for aforesaid exemption.²
- ▶ It interpreted that the condition of "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 only related to sub-clause (ii).
- ▶ The same condition cannot be subjected to sub-clause (i) as it separated by "semicolon" and by a conjunction "or".
- ▶ The same view was maintained by Orissa HC for NIT.³
- ▶ Agreed, Revenue filed appeal before the Supreme Court (SC).

Revenue's contentions

- ▶ The amendment carried out in the definition of "governmental authority" aims to broaden its applicability beyond statutory bodies by extending the benefits to government established entities as well.
- ▶ However, 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.
- ▶ HCs erred in laying the 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.
- ▶ 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.
- ▶ Further, punctuation marks may convey different impressions, and their interpretation should not be isolated but considered in conjunction with other clauses to discern legislative intent.⁴
- ▶ The terms "or" and "and" can be interchangeably interpreted to fulfil the legislative intent.⁵
- ▶ A lenient interpretation of the term "governmental authority" could unfairly burden the exchequer.
- ▶ Notification or a clause granting exemption must be interpreted strictly and literally. If any ambiguity arises, it should be resolved in favour of the Revenue.⁶
- ▶ IIT and NIT do not carry out any duties or responsibilities akin to Schedule XII of the Constitution.
- ▶ Thus, two educational institutions do not fall under the classification of "governmental authority".

Assessee's contentions

- ▶ IIT and NIT were established by the Parliament under Article 248 of the Constitution through 1961 Act and 2007 Act respectively.
- ▶ Consequently, IIT and NIT should be considered as governmental authorities as per the amended clause 2(s)(i) of the Exemption Notification.
- ▶ The provisions contained in sub-clause (i) and sub-clause (ii) of clause 2(s) are independent disjunctive provisions.
- ▶ The expression "90% or more participation by way of equity or control" is related to sub-clause (ii) alone.

² CWJC No. 16965 of 2015

³ W.P. (C) No. 17188 of 2015

⁴ Barun Kumar vs. State of Jharkhand, Bihar State Electricity Board vs. Pulak Enterprises, ONGC Ltd vs. Afcons Gunanusa JV

⁵ Jindal Stainless Ltd. v. State of Haryana, Barun Kumar vs. State of Jharkhand and Akshaibar Lal (Dr.) v. Vice-Chancellor, Banaras Hindu University

⁶ Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company

SC ruling

- The pre-amended definition of clause 2(s) extended exemption only to those entities, viz. board or authority or body who fulfilled the three requisite conditions namely:
 - Having been established with 90% or more participation by way of equity or control by Government,
 - Set up by an Act of the Parliament or a State Legislature, and
 - 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 only to few entities.
- The unworkability of the scheme due to restriction was the trigger to expand the scope of the exemption to cover a larger section of entities answering the definition of "governmental authority".
- Further, exemption base was widened to provide exemption even to an authority or a board or any other body, set up by an Act of Parliament or a State Legislature without being subjected to 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".
- 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.⁷
- Harmonious construction is not required when the provision is unequivocally clear and unambiguous.⁸
- A provision must be interpreted in the same way it has been stipulated and not in a way it presumes deficiency and radically changes the meaning and context of the provision.⁹
- 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 reflect the ordinary and normal sense, which is to denote an alternative, by giving a choice.
- 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".
- The "or" between sub-clauses (i) and (ii) indicates the independent and disjunctive nature of sub-clause (i).
- The long line of clause 2(s) governs only sub-clause (ii) and not sub-clause (i) because of the simple

reason of semicolon after sub-clause (i), followed by the word "or".

- This establishes sub-clause (i) as an independent category, making it distinct from sub-clause (ii).
- The intention of re-defining would be defeated if the word "or" is read as "and", thereby making the portion "with 90% ... Constitution" to be read for both sub-clauses (i) and (ii).
- There is no ambiguity insofar as the interpretation of clause 2(s) is concerned.
- Interpretation of relevant provision resulting in expanded scope of its operation cannot be in itself sufficient to attribute ambiguity to the provision.
- Interpretative tools should be employed to make a statute workable and not to reach to a particular outcome.
- Accordingly, SC upheld the judgements of Patna HC and Orissa HC and dismissed the Revenue appeal.

Comments

- a. It is relevant to note that the definition of "governmental authority" under GST is akin to the one under service tax. Thus, the principles laid down by the SC in interpreting such term may apply under GST as well. Businesses may need to take decision on exemptions under GST in accordance with SC's interpretation.
- b. Since the term "Government entity" is also defined under GST law in similar manner, one may need to analyse the implication in light of the Apex court ruling.
- c. This judgement may have impact on few advance rulings under GST where the authority held that the condition of 90% participation etc. is applicable to both the sub-clauses (i) and (ii).
- d. For the purpose of obligation to deduct tax at source under GST, while clarifying on the Notification specifying certain category of persons, Circular dated 31 December 2018 on similar definition elucidated that long line was applicable to both the sub-clauses (i) and (ii).

⁷ (1967) 2 SCR 170

⁸ (2011) 4 SCC 635

⁹ (1961) 2 SCR 189

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