

SC upholds HC's decision that the educational institutions are 'governmental authority' eligible for service tax exemption

26 October 2023



Summary

The Supreme Court (SC) has upheld the decisions of the Patna and Orissa High Courts (HCs), holding that the Indian Institute of Technology (IIT) Patna and the National Institute of Technology (NIT) Rourkela are governmental authorities and are eligible for exemption under the erstwhile service tax laws. The SC has interpreted the second clause of the definition of governmental authority, i.e., 'the condition of 90% equity or control to carry out a function entrusted to a municipality under Article 234W of the constitution' and opined that this clause is not applicable to the entire definition. Therefore, the SC held that service tax is not leviable on the services provided to IIT Patna and NIT Rourkela and dismissed the appeals filed by the department.

Facts of the case

- M/s. Shapoorji Pallonji and Company Pvt. Ltd. (the respondent/SPCL) are registered under the Central Excise and Service tax and are engaged in the business of construction services.
- They were awarded the contract for construction works from NBCC India Ltd (NBCC), which was appointed as a Project Management Consultant by IIT Patna, and it was agreed that the respondent would be reimbursed for the service tax paid by IIT Patna.
- On a similar term, NIT Rourkela also awarded a works contract for the construction project.
- The respondent discharged the service tax liability for the period of FY 2013 to 2015. However, no service tax was reimbursed by NIT Rourkela.
- Subsequently, the Indian Audit and Account department carried out an audit and expressed its concern that the service providers engaged in construction activities for educational institutions that fulfil the criteria of a 'governmental authority' are not leviable to service tax.
- The respondent filed a writ petition before the Patna HC requesting a refund of the amount of service tax paid.

- Aggrieved by the non-reimbursement of taxes by NIT, the respondent filed an appeal before the Orissa HC.
- Aggrieved by the HC's decision, the appellant filed an appeal before the SC, requesting to set aside the HC's orders.

HC's observations and judgement

- The Patna and Orissa HC allowed the writ petition and held that IIT Patna and NIT Rourkela are covered within the scope of governmental authority and are not obliged to fulfil the condition of '90% or more participation by way of equity or control'.
- Therefore, the respondent is exempt from payment of service tax, and the service tax collected by the appellant shall be refunded.

Appellant's contentions:

- The appellant submitted that the respondent was not eligible for service tax exemption and emphasised that IIT and NIT are excluded from the definition of governmental authority as they do not carry any duties as per Schedule XII of the Constitution.
- The requirement of 90% or more government equity or control applies to

both types of governmental bodies (statutory or non-statutory).

- The appellant contended that the HC had wrongly interpreted the sub-clauses of the term 'governmental authority' as independent and disjunctive.
- The respondent referred to various decisions and emphasised that 'punctuation marks alone should not dictate the interpretation of a statute, especially when the meaning of the statute is clear without them' and the terms 'or' and 'and' can be interchangeably interpreted to fulfil the legislative intent.
- The appellant placed its reliance on the decision in the case of ITC Limited, wherein it was held 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.
- The appellant submitted that the SPCL has delivered its services to NBCC, not directly to IIT Patna, and NBCC is not a governmental authority. Therefore, these transactions are leviable to service tax.

Respondent's contentions:

- The respondent contended that IIT Patna and NIT Rourkela should be considered governmental authorities because both are established by the Parliament.
- The respondent submitted that services provided by sub-contractors (works contract) to another contractor that is also providing works contract services are exempted vide clause 29(h) of the exemption notification.

Issue before the SC:

Whether the educational institutions can be classified as 'governmental authority' in order to avail of exemption from service tax as per the mega exemption notification?

SC observations and judgement [Civil Appeal No. 3991-3992/2023, Order dated 13 October 2023]:

- **Analysis of the exemption notification before amendment:** The SC observed that before the amendment, the exemption was extended only to those entities that fulfil three conditions, i.e., if they are established with 90% or more participation by way of equity or control by government, set up by an Act of Parliament or State Legislature and were engaged in functions under Article 243W of the Constitution of India.
- **Objective of the government to redefine the term governmental authority:** The SC opined that the earlier definition of governmental authority was restrictive in nature, due to which later, the government widened the scope of exemption and notified that any authority or board or any other body, set up by an Act of Parliament or State Legislature would be eligible for exemption without the condition of having been established with 90% or more participation by way of equity or control by the government to carry out any function entrusted to a municipality under Article 243W of the Constitution.
- **Interpretation of the definition of governmental authority:** The SC noted that the conjunction 'or' between sub-clauses (i) and (ii) divides the two clauses into parts, wherein the first part is independent of the second part; therefore, it is capable of operating independently. It was further noted that the proviso in

Clause 2(s) of Exemption Notification stating that '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' would be applicable only with respect to sub-clause (ii) of Clause 2(s), i.e., governmental authority' which is established by the government.

- **HC's interpretation is valid under the law:** The SC relied on its own judgement in the case of Dilip Kumar, wherein it was held that 'the burden of proving the applicability of the exemption notification is on the assessee and when there is ambiguity in interpreting an exemption notification, the interpretation that favours the revenue must be adopted'. The SC held that the above decision is not applicable to the present case because there is no ambiguity present; therefore, the HC's decisions are valid. The SC also observed that the authority had fulfilled its duty by redefining 'governmental authority', and now courts are responsible for interpreting the legislation.
- **HC's orders were upheld, and appeals were dismissed:** The SC observed that the tools of interpretation are intended to make a statute workable, not to achieve a particular outcome. Therefore, the SC upheld the HC's order and dismissed the present appeal.

Our comments

This is a welcome judgment by the SC through which the SC has widened the coverage of the entities that would be covered under the scope of governmental authority under the service tax law.

The ruling will have significant ramifications even under the Goods and Services Tax (GST) regime as a similar definition exists under GST exemption Notification No. 12/2017- Central Tax (Rate).

The ruling will provide more opportunities to the contractors who are providing services to government bodies formed by specific laws to review their exemptions. In addition, the businesses that earlier paid the service tax may explore the option of claiming a refund.

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