REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4928 OF 2018

Commissioner of Central Excise, Raipur …Appellant

Versus

M/s Sepco Electric Power Construction Corporation …Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.12.2015 passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, West Block No.2, R.K. Puram, New Delhi (hereinafter referred to as the 'CESTAT) in Appeal No. ST/136/2007, by which the learned CESTAT has allowed the said appeal preferred by the respondent herein and has set aside the demand towards the service tax by holding that the services rendered by the

respondent – “Consulting Engineer Service” were not subjected to service tax, the Revenue has preferred the present appeal.

2. That the respondent herein – M/s Sepco Electric Power Construction Corporation is a Government of China company incorporated in the Republic of China, having its office at SPEC Site Office, Balco Nagar, Korba (C.G), entered into a contract dated 26.04.2003 with M/s. Bharat Aluminium Co. Ltd., Korba (for short, “BALCO”) for providing “Design Engineering Services” and “Project Management & Technical Services”. In terms of the said agreement, it rendered “Consulting Engineer Services” to M/s BALCO. As per the Revenue, on the services rendered by the respondent as “Consulting Engineer Services”, the respondent was liable to pay the service tax. According to the Revenue, neither the respondent was registered under the Service Tax Act nor it paid the service tax on receipt of payments for such services. According to the Revenue, under the contract, taxable service valued at Rs. 1,12,90,53,457/- was already rendered and the payments were made to the respondent by M/s. BALCO, on which service tax liability worked out was Rs. 10,42,71,437/- which was not paid by the respondent. According to the Revenue, it also failed to obtain Service Tax Registration from the department.

2.1 A show cause notice dated 26.05.2006 was issued by the Commissioner of Central Excise, Raipur to the respondent under Section 73 read with Sections 65, 66 and 68 of the Finance Act, 1994 demanding the service tax along with interest under Section 75 and for imposition of penalty under Sections 76 & 77 of the Finance Act, 1994.

2.2 The Commissioner of Central Excise, Raipur vide Order-in-Original dated 31.01.2007 confirmed the demand of service tax amounting to Rs.10,42,71,437/- and ordered for its recovery along with interest. The Commissioner also imposed penalty amounting to the same amount under Section 78 of the Finance Act, 1994, besides imposing penalty of Rs. 150/-per day under Section 76 and Rs.1000/- under Section 77 of the Finance Act, 1994.

2.3 Feeling aggrieved and dissatisfied with the Order-in-Original dated 31.01.2007, the respondent preferred an appeal before the CESTAT, New Delhi bearing Appeal No. ST/136/2007.

2.4 By the impugned judgment and order, the CESTAT has allowed the said appeal setting aside the demand of service tax by holding that during the relevant period of dispute, namely, August, 2003 to November, 2005, the respondent being a body corporate was not covered under the definition of “Consulting Engineer”. Solely on the aforesaid ground, the CESTAT has set aside the demand.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned CESTAT in setting aside the demand by holding that during the relevant period the respondent being a body corporate was not covered under the definition of “Consulting Engineer”, the Revenue has preferred the present appeal.

3. Shri Balbir Singh, learned Additional Solicitor General of India has appeared on behalf of the Revenue and Shri P.K. Sahu, learned Advocate has appeared on behalf of the respondent.

3.1 Shri Balbir Singh, learned ASG appearing on behalf of the Revenue has submitted that the issue involved in the present appeal relates to the scope of the definition of “Consulting Engineer” under Section 65 (31) of the Finance Act, 1994, specifically as to whether a “body corporate” is covered within its sweep prior to the amendment in 2005. It is submitted that the definition of “Consulting Engineers” in Section 65 (31) covers services provided to a client by a professionally qualified engineer or an Engineering firm consisting of professionally qualified engineers. It is submitted that the taxable attribute is that the services must be rendered in a professional capacity.

3.2 It is submitted that it is well settled that while construing taxation statutes, the Courts have to apply the strict rule of construction. It is submitted that strict interpretation does not encompass strict literalism

into its fold. This could result in ignoring an important aspect that is "apparent legislative intent". It is submitted that in the case of ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co., (2018) 9 SCC 1 (para 28)***, this Court has held and observed that 'strict interpretation' does not encompass such literalism, which lead to absurdity and go against the legislative intent. It is submitted that if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then strict interpretation can be implied to accept some form of essential inferences which literal rule may not accept. It is submitted that in the aforesaid decision it is further held and reiterated that essential inferences can be read in while construing a taxing statute.

3.3 It is submitted that the definition of the term "Consulting Engineer" has been tested on this principle in the decision of the Karnataka High Court in ***Tata Consultancy Services v. Union of India, 2001 (130) ELT 726***. It is submitted that the High Court proceeded on the principle that it is fairly well settled that where the language of a statute in its ordinary meaning leads to a manifest anomaly or contradiction, the Court is entitled to put upon it a construction which modifies the meaning of the words used in the same. It is submitted that thereafter in para 11, it is observed and held as under:

> "The position is no different in the instant case. There is, in my opinion, nothing repugnant in the subject or context of the Act, which should prevent the inclusion of a Company for purposes of levy of service tax on any advice, consultancy or technical assistance provided by it to its clients in regard to one or more disciplines of engineering. Indeed, if the argument advanced on behalf of the petitioner is accepted, it would remove all companies providing technical services, advice or consultancy to their clients from the tax net while any such services rendered by an individual or a partnership concern would continue to remain taxable. The Act does not, in my opinion, envisage any such classification let alone create and perpetuate anomalies that would flow from the same. The view taken by the Additional Commissioner of Central Excise that the petitioner-company was liable to pay service tax cannot therefore be found fault with."

3.4 It is submitted that the aforesaid decision of the Karnataka High Court in the case of ***Tata Consultancy Services (supra)*** was followed by the Calcutta High Court in the case of ***M.N. Dastur Limited v. Union of India, 2006 (2) STR 532 CAL.*** It is further submitted that the aforesaid two decisions have been subsequently affirmed by the Division Benches of the respective High Courts.

3.5 It is submitted that in the case of ***TCS v. Union of India 2016 (44) STR 33 (KAR)***, it was held that the intention of the legislature is to bring within the ambit of the service tax, the "consulting engineer" and so long as the person is a consulting engineer, whether it be an individual, firm or even a company, they come under the ambit of "consulting engineer".

3.6 It is submitted that in the case of ***M.N. Dastur Ltd. v. Union of India 2006 (4) STR (3) CAL,*** it was inter alia held that it is inconceivable that a "consulting engineer" as an individual or constituting a partnership

firm or a proprietorship firm would be liable to pay tax under the service tax laws, but the same persons forming a company, a different juristic person, a distinct legal entity apart from the shareholders, would be outside the tax net. It is submitted that it is further held that there is no reason as to why a company providing "taxable service" as defined under Section 65 (48)(g) would not be a taxable service, when it would be so when provided by an individual qualified engineer or a proprietorship or partnership firm of engineers. It seems to be little absurd. It is submitted that in the aforesaid two decisions, the respective High Courts have considered in detail the entire scheme of the statute and the context.

3.7 It is submitted that while passing the impugned order, the learned CESTAT has relied upon the decision of the Delhi High Court in the case of ***CCE v. Simplex Infrastructure & Laundry Works 2014 (34) STR 191 (DEL)*** which followed an earlier decision of the Karnataka High Court in the case of ***CST Bangalore v. Turbotech Precision 2010 (18) STR 545***. It is submitted that in the case of ***Turbotech Precision (supra)***, the High Court followed its earlier decision in the case of ***Commissioner of Service Tax, Bangalore v. ARACO Corporation, Japan 2010 SCC OnLine KAR 5448***. It is submitted that both these decisions contain no reasoning or any reference to the earlier binding decisions of a Co-ordinate Bench in the cases of ***TCS (supra) and M.N.***

Dastur (supra). It is submitted that in fact the department had filed appeals to this Court against the decisions in ***Turbotech Precision (supra) and Simplex Infrastructure (supra)*** being Civil Appeal Nos. 6429/2015 and 6430/2015 respectively. However, the same have been dismissed on separate issue of taxability of works contract in ***Commissioner, Central Excise & Customs, Kerala v. Larsen & Toubro Limited, (2016) 1 SCC 170.***

3.8 It is further submitted that in the present dispute, the learned Tribunal has not at all applied its mind though it noted that it would require consideration of the contracts, to the aspect of works contract. Therefore, the said decision has no application to the present case.

3.9 It is further submitted that the amendment of 2005 was purely clarificatory in intent and purpose and the substitution of the words “engineering firm” with the words “any body corporate or any other firm” is only a clarification. The amendment did not aim at inclusion of the term “body corporate” simpliciter.

3.10 Relying upon the decision of this Court in the case of ***Motipur Zamindari Co. Ltd. v. State of Bihar, AIR 1953 SC 320***, it is further submitted by Shri Balbir Singh, learned ASG that it is observed and held by this Court that there is no reason to differentiate between an individual proprietor and a company which owns estates or tenures.

3.11 Relying upon the decision of this Court in the case of ***Vanguard Fire & General Insurance Co. Ltd., Madras v. Fraser and Ross, AIR 1960 SC 971***, it is submitted by Shri Balbir Singh, learned ASG that it is observed and held by this Court that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context.

3.12 It is further submitted that in the case of ***K.P. Varghese v. Income Tax Officer, Ernakulam (1981) 4 SCC 173***, this Court has emphasised that the statutory provisions must be so construed, if possible, that absurdity and mischief may be avoided. It is submitted that following the aforesaid decision in the case of ***Bhag Mal v. Ch. Prabhu Ram, AIR 1985 SC 150 = (1985) 1 SCC 61***, it is observed and held by this Court that the plain and literal interpretation of a statutory provision produces a manifestly absurd and unjust result, the Court might modify the language used by the Legislature or even do some violence to it so as to achieve the obvious intention of the Legislature and produce a rational construction.

3.13 Making the above submissions and relying upon the aforesaid decisions of the High Courts in the cases of ***TCS and M.N. Dastur (supra)***, it is prayed to allow the present appeal.

4. The present appeal is vehemently opposed by Shri P.K. Sahu, learned Advocate appearing on behalf of the respondent.

4.1 It is vehemently submitted that considering the provisions which was prevailing before the amendment on 01.05.2006 on interpretation of Section 65 (31) of the Finance Act, 1994 and considering the fact that the definition of “consulting engineer” has been subsequently amended from 01.05.2006 to specifically include such services of “any body corporate or any other firm”, the learned Tribunal has not committed any error in holding that prior to 01.05.2006, the company/body corporate was not included within the meaning of ”consulting engineer”.

4.2 It is submitted that in the cases of ***Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P, Lucknow (1998) 7 SCC 228 and Gem Granites v. CIT, T.N., (2005) 1 SCC 289***, this Court has held that subsequent legislation may be looked into to fix the proper interpretation of the statutory provision that stood earlier.

4.3 It is submitted that the amendment to Section 65(31) was prospective and not by way of clarification/removal of any doubt. It is submitted that the Government in Part-III of the Explanatory

Memorandum to Finance Bill, 2006, relating to service tax at Para (III) (10) and in Letter F. No. 334/2006-TRU dated 28.02.2006, explaining the changes in Budget 2006-07 at para 3.12(10) explained specifically that "consulting engineer service" has been amended to include "engineering consulting services provided by any firm or body corporate". It is submitted that thus the intention was to bring in for the first time "engineering consulting services by body corporate". It is submitted that therefore "body corporate" was not within the meaning of "consulting engineer" during the disputed period.

4.4 Now so far as the reliance placed upon the decisions of the Karnataka High Court and Calcutta High Court in the cases of ***TCS & M.N. Dastur (supra)*** by the learned ASG is concerned, it is submitted that the said decisions/rulings of the High Courts on "consulting engineer" were before the amendment of 2006. It is submitted that after the amendment, the High Courts of Delhi and Karnataka have relied upon the subsequent legislation to interpret the earlier language and held that "body corporate" was not within the meaning of "consulting engineer". It is submitted that there is no High Court ruling after the amendment which has taken a different view. It is submitted that the learned CESTAT has been following consistently the view that "body corporate" became taxable from 01.05.2006.

4.5 It is submitted that the most appropriate meaning of “engineering firm” can be had by applying the principle of *noscitur a sociis.* Taking colour from the expression “professionally qualified engineer”, an engineering firm should mean a partnership firm of professionally qualified engineers. After the amendment, all other kinds of firms and body corporates were included within the expression “consulting engineer”.

4.6 It is further submitted that in India, in common parlance as well as in legal circles, “firm” is understood as partnership firm and not as company. Service tax was introduced in 1994, twenty-seven years back. It is submitted that Black’s Law Dictionary, 6th Edition (1990), defines “firm” as “Business entity or enterprise. An unincorporated business. Partnership of two or more persons.” 8th Edition (2004) of this dictionary states that traditionally this term has referred to a partnership, but today it frequently refers to a company.

4.7 It is further submitted that Indian legislatures and courts have been using “firm” and “company” as different expressions. In most of the enactments, including Finance Act, 1994, Income Tax Act, 1961, CGST Act, 2017, Companies Act, 2013, the word “person” has been defined in the definitions clause to include “company” and “firm” separately. The

service tax law (Finance Act, 1994) has considered firm and company/body corporate as separate entities in several provisions:

> 65(19b) "business entity" include an association of persons, body of individuals, company or firm but does not include an individual.
>
> 65(105)(zzzl) …to a banking company or a financial institution including a non-banking financial company or ay other body corporate or a firm, by any person, in relation to recovery of any sums due to such banking company or financial institution, including a non-banking financial company, or any other body corporate or a firm, in any manner

It is submitted that there are other such separate mention of "firm" and "company" in sections 65(105) (zzzl) and 73D Explanation. CGST Act, 2017, mentions these terms separately in sections 90, 94, 137 Explanation and 159. In Companies Act, 2013, sections 2(49(, 7, 25, 215 and 341, the expressions firm and company/body corporate have been used side by side. In other enactments, company has been defined to include firm for specific purposes, implying that both are not the same.

4.8 Shri Sahu, learned counsel for the respondent has further submitted that it is held by this Court in the cases of ***CIT v. Century Spinning and Manufacturing Co. Ltd. (1953) 24 ITR 499 and Vazir Sultan Tobacco Co. Ltd. v. CIT, A.P., Hyderabad, (1981) 4 SCC 435 = (1981) 132 ITR 559 (SC)*** that where an expression has not been defined,

the Court shall resort to the ordinary natural meaning as understood in common parlance. It is submitted that in common parlance, Court rulings and legislations, “firm” has been always understood as partnership firm. Therefore, in the present case, “consulting engineer” before its amendment in 2006 should include only individual and partnership firm and not “body corporate”.

4.9 It is further submitted that as observed and held by this Court in the case of ***CIT v. Vatika Township Private Limited, (2015) 1 SCC 1*** that if the provision is ambiguous and is susceptible to two interpretations, the interpretation which favours the assessee, as against the Revenue, has to be preferred.

4.10 Making the above submissions, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel for the respective parties at length.

The short question which is posed for the consideration of this Court is, the scope of definition of “consulting engineer” under Section 65(31) of the Finance Act, 1994, specifically as to whether a “body corporate” is covered within its sweep prior to the amendment in 2005.

5.1 At this stage, it is required to be noted that post 2005, the definition of “consulting engineer” under Section 65(31) has been amended and now it specifically includes a “body corporate”. Therefore, as such, with respect to the proceedings post amendment 2005, there will be no difficulty. After the amendment, any “body corporate”, a service provider providing the services as “consulting engineer” is liable to pay the service tax. The only question which remains is, whether under the erstwhile definition of “consulting engineer” under Section 65(31) of the Finance Act, 1994, a “body corporate” providing services as “consulting engineer” was liable to pay the service tax or not?

6. While considering the present issue, the relevant statutory provisions under the Finance Act, 1994 are required to be referred to, which are as under:

> “**Section 65. Definitions** – In this Chapter, unless the context otherwise requires: -
>
> xxx xxx xxx xxx xxx
>
> (31) “consulting engineer” means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering;
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> xxx xxx xxx xxx xxx
>
> (105) “taxable service” means any service provided {or to be provided)
>
> xxx xxx xxx xxx xxx
>
> (g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer

hardware engineering but excluding the discipline of computer software engineering;

xxx xxx xxx xxx xxx

Explanation – For the purposes of this section, taxable service includes any taxable service provided or to be provided by an unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration.

Charge of service tax.

Section 66. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent of the value of taxable services referred to in sub-clauses ……of clause (105) of section 65 and collected in such manner as may be prescribed.

xxx xxx xxx xxx xxx

Payment of service tax

Section 68 (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Registration.

Section 69 (1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.

(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

Furnishing of returns.

Section 70 (1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise a return in such form and in such manner and at such frequency and with such late fee not exceeding two thousand rupees, for delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a

return in such form and in such manner and at such frequency as may be prescribed."

6.1 Definition of "consulting engineer" under Section 65(31), post amendment 2005, reads as under:

> "Section 65(31) "consulting engineer" means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any service, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering"

6.2 Before it is considered, the effect of the amendment incorporating the words "any body corporate", post 2005, we have to consider whether the original definition of "consulting engineer" under the Finance Act, 1994 may include "any body corporate" or not.

7. Under the Finance Act, 1994, the definition of "consulting engineer" in Section 65(31) covers services provided to a client by a professionally qualified engineer or an engineering firm consisting of professionally qualified engineers. The taxable attribute is that the services must be rendered in a professional capacity.

7.1 From the relevant provisions under the Finance Act, 1994, referred to hereinabove, "taxable service" means any service provided or to be provided. Under the relevant provisions of Finance Act, 1994, at many places, the word used is "person". For example, as per Section 68, every "person" providing taxable service to any "person"

shall pay service tax. Section 69 provides that every “person” liable to pay the service tax….may make an application for registration. In Section 70 also, the words used are “every person liable to pay the service tax…”

8. If the submission on behalf of the respondent is accepted, in that case, it would remove all companies providing technical services, advice or consultancy to their clients from the service tax net, while any such services rendered by an individual or a partnership firm would continue to remain taxable. That does not seem to be an intention on the part of the legislature to exclude the “body corporate” from the definition of “consulting engineer”. There does not seem to be any logic to exclude “body corporate” from the definition of “consulting engineer”. If the submission on behalf of the respondent is accepted and the “body corporate” is excluded from the service tax, in that case, it would not only lead to absurdity but also would create two different classes providing the same services. That cannot be the intention of the legislature to create two separate classes providing the same services and to exclude one class.

8.1 In the case of ***K.P. Varghese (supra)***, it is observed and held by this Court that the statutory provision must be so construed, if possible, that absurdity and mischief may be avoided.

8.2 In the case of ***Commissioner of Income Tax, Bangalore v. J.H. Gotla, Yadagiri, (1985) 4 SCC 343***, this Court has observed and held in paragraph 46 as under:

> **"46.** Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning."

8.3 In the case of ***Dilip Kumar and Company (supra)***, a Constitution Bench of this Court observed and held as under:

"i) In interpreting a taxing statute, equitable considerations are entirely out of place;

ii) a taxing statute cannot be interpreted on any presumption or assumption;

iii) a taxing statute has to be interpreted in the light of what is clearly expressed;

iv) it cannot imply anything which is not expressed;

It is further observed and held that:

v) the "plain meaning rule" suggests that when the language in the statute is plain and unambiguous, the court has to read and understand the plain language as such, and there is no scope for any interpretation;

vi) the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably, however, this principle, may not be sustainable in all contexts and situations;

vii) though all cases of literal interpretation would involve strict rule of interpretation, but the strict rule may not necessarily involve the former, especially in the area of taxation;

viii) while interpreting a statutory law, if any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on the General Clauses Act;

ix) An Act of Parliament/Legislature cannot foresee all types of situations and all types of consequences. It is for the court to see whether a particular case falls within the broad principles of law enacted by the Legislature;

x) In all the Acts and Regulations, made either by Parliament or Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in the General Clauses Act are to be necessarily kept in view;

xi) the purpose of interpretation is essentially to know the intention of the Legislature. Whether the Legislature intended to apply the law in a given case; whether the Legislature intended to exclude operation of law in a given case; whether the Legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation;

xii) a statute must be construed according to the intention of the Legislature and the courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature;

xiii) if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation; and

xiv) the principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State."

9. Applying the law laid down by this Court in the aforesaid decisions on law of interpretation of a taxing statute, it is required to be

considered, whether a “body corporate” was excluded from the service tax net under the Finance Act, 1994.

10. At this stage, it is required to be noted that prior to amendment 2005, by Circular/Trade Notice dated 4.7.1997, the definition of “consulting engineer” under the Finance Act, 1994 was specifically explained and as per the said Trade Notice, “consulting engineer” means any professionally qualified engineer or engineering firm who, either directly or indirectly, venders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering. It also further clarified that “consulting engineer” shall include self-employed professionally qualified engineer who may or may not have employed others to assist him or it could an engineering firm – whether organised as a sole proprietorship – partnership, a private or a Public Ltd. company.

From the aforesaid, it can be seen that it was never the intention of the legislation to exclude a “body corporate” from the definition of “consulting engineer” and from the “service tax net”.

10.1 At this stage, it is required to be noted that during the Finance Act, 1994 regime and prior to amendment 2005, the definition of “consulting engineer” applicable under the Finance Act, 1994 fell for consideration before the High Courts of Karnataka and Calcutta in the cases of ***TCS***

(supra) and ***M.N. Dastur (supra)***. In both the aforesaid cases, the respective High Courts had an occasion to consider in detail the definition of the term “consulting engineer”.

10.2 In the case of ***TCS (supra)***, it was the case on behalf of the TCS that it was not liable to either recover or deposit any tax as it was not providing a taxable service within the meaning of Section 65(41) of Chapter V of the Finance Act, as amended from time to time. It was contended that service provided by a consulting engineer in relation to advice, consultancy or technical assistance in any discipline of engineering was taxable only if such services were provided by a consulting engineer as defined in Section 65(31) of the Finance Act. According to the TCS, service provided by a company even when it may have engaged qualified engineers to carry on or promote its business would not tantamount to a taxable service within the meaning of the Finance Act so as to justify any demand on the basis thereof. After analysing the entire scheme of the service tax liability imposed by the Finance Act, 1994, it is observed and held in paragraphs 6 to 11 as under:

> “6. It is evident from a conspectus of the provisions referred to above that the taxable event is the providing of service with the levy falling on the provider. It is also evident that the liability to pay is not confined to only individuals. The levy falls on ‘every person’ providing the service. The expression ‘every person’ in turn is wide enough to include a Company incorporated under the Companies Act. Suffice it to say that the Scheme of the Act envisages a tax on such services as have for

purposes of the levy been described as taxable. It is for purposes of levy and collection of the tax immaterial whether the provider of the service is an individual or a juristic person like an incorporated Company. Thus far there is no difficulty. What according to the petitioner makes the all important difference is the definition of the expressions “consulting engineer” and “taxable service” as provided by Section 65(13) and Section 65(48) of the Act. The same may at this stage be extracted for ready reference.

> “Section 65(13): “consulting engineer” means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering.”
>
> “Section 65(48): “taxable service” means any service provided-
>
> (g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering.”

7. The argument is that a service provided by a technically qualified person in regard to advice, consultancy or technical assistance in one or more disciplines of engineering is taxable only if the same is provided either by an individual, who is a professionally qualified engineer or by an engineering firm. Any service provided by a Company even when based on the advice of professionally qualified engineers is not a taxable service so as to attract the levy under the Act. Since the petitioner-Company is neither an individual nor a partnership concern, any service provided by it even when the same may relate to any discipline of engineering and be based on the opinion of qualified engineers engaged by it cannot be regarded as a taxable service. The argument is no doubt attractive though not equally sound. The reasons are not far to seek. The question in essence is whether the Scheme of the Act makes any distinction between services rendered or provided by individuals and partnership concerns on the one hand and incorporated companies on the other. The answer has to be in the negative. As noticed earlier, the Act aims at levying a tax on the services declared taxable regardless whether the same are provided by a natural or a juristic person. There is no distinction under the Act between the provider of a service, who is an individual, a partnership concern or an incorporated company. The liability to pay tax on the service provided falls uniformly on all the three, provided the service is of a kind that has been declared taxable under Section 65(48) of the Act. Viewed thus, what is taxed by the Act in the case of service provided by consultant engineers is the service provided directly or indirectly in the nature of advice, consultancy or technical assistance in any manner and relating to any disciplines of engineering. The fact that the service is provided by an individual or a partnership or by a Company is wholly inconsequential. It is true that inclusion of in the definition of the expression “consulting engineer” could include a Company to set the entire controversy at rest, but the very fact that a Company providing a technical assistance in any engineering discipline

is not specifically included in the definition of the expression “consulting engineer” would not ipso facto mean that service rendered by any such Company cannot be considered to be taxable. It is fairly well settled that where the language of a statute in its ordinary meaning leads to a manifest anomaly or contradiction, the Court is entitled to put upon it a construction which modifies the meaning of the words used in the same. The decision of the Supreme Court in *Tirath Singh* v. *Bachittar Singh (AIR 1955 SC 830),* where the Court made the following observations is apposite: —

> “Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumable not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.”

8. Reference may also be made to the decision of the Supreme Court in *Commissioner of Income Tax, Bangalore* v. *J.H. Gotla (AIR 1985 SC 1698)*, wherein their lordships declared that a plain interpretation
of the statutory provision produces a manifestly unjust result, which could never have been intended by the legislature, the Court may modify the language: —

> “Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. Section 16(3) of the Act has to be read in conjunction with Section 24(2) for the purpose in question. If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract, the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, the intention must be found out from the language used by the Legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation then if other construction is possible apart form strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.”

9. Reference may also be made to the decision of the Supreme Court in *Nagpur Electric Light and Power Company Limited* v. *K.*

Shreepathirao (AIR 1958 SC 658), where the Court declared that even a definition clause in an enactment must derive its meaning from the context or subject.

10. In *Motipur Zamindari Company Limited* v. *State of Bihar and Another (AIR 1953 SC 320)*, the Court held that there was no justification to differentiate between a company and an individual and that there was nothing in the statute being interpreted Court in that case, which would prevent the inclusion of the Company. The Court was in that case interpreting the term "proprietor" as defined by Section 2(O) of Bihar Land Reforms Act. It held that in view of the object of the Bihar Land Reforms Act, there was no reason to differentiate between an individual proprietor and a company which owns estates or tenures.

11. The position is no different in the instant case. There is, in my opinion, nothing repugnant in the subject or context of the Act, which should prevent the inclusion of a Company for purposes of levy of service tax on any advice, consultancy or technical assistance provided by it to its clients in regard to one or more disciplines of engineering. Indeed, if the argument advanced on behalf of the petitioner is accepted, it would remove all companies providing technical services, advice or consultancy to their clients from the tax net while any such services rendered by an individual or a partnership concern would continue to remain taxable. The Act does not, in my opinion, envisages any such classification let alone create and perpetuate anomalies that would flow from the same. The view taken by the Additional Commissioner of Central Excise that the petitioner-Company was liable to pay service tax cannot therefore be found fault with."

10.3 A similar controversy arose before the Calcutta High Court in the case of ***M.N. Dastur (supra)***. The Calcutta High Court in the said case was also considering the service tax law under the Finance Act, 1994 regime. The question before the Calcutta High Court was as to whether the expression "engineering firm" used in the definition of "consulting

engineer" in Section 65(31) of the Finance Act, 1994, Chapter V, relating to service tax includes a company.

The aforesaid issue had been considered in detail by the High Court after considering the entire scheme of the service tax and the object of the Act including the taxable even etc. and ultimately held against the petitioner and it was held that the petitioner in that case being a "company" was subjected to service tax law under the Finance Act, 1994. The relevant discussion, observations and the findings recorded by the High Court in paragraphs 8 to 30 are as under:

> ***"Consulting engineer: Whether includes a company:***
> **8.** The definition of "consulting engineer" admittedly has not used identical expression used in defining the other assessees liable to pay service tax. Apart from the definition of "consulting engineer" in section 65(13), in all other cases, the expression "person" or "concern" or "commercial concern" has been used. Admittedly, a different expression has been used in defining "consulting engineer"[7]. It could not have been contended, and rightly, that the Legislature had made a distinction consciously and by reason of such distinction, it had intended differently. A fiscal statute has to be construed strictly, if something is not subject to levy of tax clearly expressed in the statute, the same cannot be brought within the tax net by way of interpretation as was held in *A.V. Fernandez*, [1957] 8 STC 561 (SC). It is a settled proposition that it is the clear words of law and not the intention of the Legislature, which is to be examined to find out what the taxing statute has clearly said. There is no room for intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. Only the language used is to be looked at fairly as was laid down in *Orissa State Warehousing Corporation*, [1999] 237 ITR 589 (SC) quoting from *Cape Brandy Syndicate* v. *IRC*, [1921] 1 KB 64 and also in *CIT* v. *Ajax Products Ltd.*, [1965] 55 ITR 741 (SC). At the same time, as held in *C.A. Abraham*, [1961] 41 ITR 425 (SC), the court cannot proceed to make good the deficiency, if there be any. The court must interpret

the statute as it stands. In the case of doubt, the interpretation favourable to the taxpayer is to be adopted. At the same time, in the case of absurdity the court can make good the deficiency, remove the absurdity and interpret the statute according to its objects and purposes.

9. The word “firm” cannot include a company. The name of a partnership firm is a compendious method of describing the partners in a partnership firm as was laid down in Mrs. *Bacha F. Guzdar*, [1955] 27 ITR 1 (SC), *Dulichand Laxminarayan*, [1956] 29 ITR 535 (SC) and *Malabar Fisheries Co.*, [1979] 120 ITR 49 (SC). It is distinct from a company, a juristic person distinct from its shareholders; whereas a partnership firm comprises the partners and has no separate entity or existence without the partners. According to section 4 of the Partnership Act, 1932, a “firm” means persons entering into partnership with another collectively called a firm, a compendious method of describing the partners in a partnership. The partners own absolute interest in the partnership firm and its assets and properties. The partners and the partnership firm are not distinct and separate entities and are identified with each other. Whereas a company is a juristic person, a distinct and separate entity other than its shareholders. The shareholders by reason of their holding of shares do not hold any interest in the assets and properties of the company. The shareholders' interest is confined to the profits and gains of the company; it does not extend beyond the interest to receive dividends or liability to the proportion of his shareholding. A shareholder cannot claim any interest in the property of the company. It was so held in *Mrs. Bacha F. Guzdar*, [1955] 27 ITR 1 (SC).

10. In *Vazir Sultan Tobacco Co Ltd.*, [1981] 132 ITR 559, the Supreme Court had made a distinction between the company and a firm, which is to be understood in the light of the definition given in section 4 of the Indian Partnership Act. There is no doubt about the legal proposition. But each case has to be considered according to its own merits having, regard to the facts and circumstances of the case. So far as the decision in *Vazir Sultan Tobacco Co. Ltd.*, [1981] 132 ITR 559 (SC) is concerned, it was dealing with the expression “reserve” as defined in the Companies (Profits) Surtax Act, 1964. The provisions contained therein were distinct and different from the provisions with which we are concerned. In the context of the said 1964 Act, the Supreme Court was considering the expression with reference to the Companies Act holding that the expression not defined in the 1964 Act is to be understood by reference to the expression used under the Companies Act, 1956. Therefore, this decision will not help us in order to interpret the expression “firm” used in the definition of “consulting engineer” in the Finance Act, 1994.

11. Keeping the above settled principles of law in mind, we may now proceed to find out as to whether the expression “firm” used in section 65(13) is to be understood differently.

Section 65: The definitions: Scheme and context:

12. In order to ascertain the Situation/the principles of interpretation have to be followed. The court in order to construe the definition comprehensively may apply the golden rule of interpretation according to the ordinary grammatical meaning having regard to the scheme of the definitions and in the context of the provisions contained in the statute and the object and purpose for which it was enacted. It is apparent that the expressions “person”, “concern” or “commercial concern” have been used to define all other assessees liable to pay service tax except section 65(13) defining “consulting engineer”. The word “person” as defined in section 3(42) of the General Clauses Act includes an individual, a company or an association of persons. A “person” includes a juristic person. A company is a juristic person and there would be no difficulty to include a company when the definition uses the expression “person”. Similarly, a “concern” without any qualification can include any business or professional establishment and the “commercial concern” would include all concerns connected with commerce carrying on trade or profession or any kind of commercial activities and includes a company.

13. In the present case, section 65(13) includes an individual professionally qualified as an engineer. This does not seem to be disputed. The definition also includes an engineering firm. According to Dr. Pal, though qualified by the word “engineering”, a “firm” is to be understood something distinct from the company. According to him, it clearly means a partnership firm. It may be proprietorship firm but in any event it would be an association of qualified engineers without losing its entity or identity of being a qualified engineer either as an individual or as a partner in the partnership firm or as a person in an association of persons without losing its identity other than a compendious mode of describing themselves without resulting into an entity different from the firm as it would be in the case of a company in relation to its shareholders.

14. Therefore, if the definition does not clearly include a company in view of the principles on which the fiscal statute is interpreted, a company cannot be brought within the taxing net and when there is some doubt, the benefit would be available to the assessee, the taxpayer. Admittedly, the court while interpreting the provision cannot make good the deficiency; therefore, it is to be understood as it is.

15. But, it appears that there is a fallacy hidden in the definition under section 65(13). The expression “firm” has not

been used independent of its qualification. The engineers are definitely individuals or persons, but are not ordinary individuals or persons. They are qualified engineers. Therefore, an individual qualified engineer may be a person and means a person as well and include a person, who is a qualified engineer. But the expression “person” may include a qualified engineer but the said expression is insufficient to identify a particular class of persons who are qualified engineers. Therefore, the expression “person” could not be used to define a “consulting engineer” when he is an individual or an association of persons or otherwise.

16. The expressions “person”, “concern” or “commercial concern” appear to have been used freely in its common and ordinary meaning apposite to the particular class of assessee subject to service tax. It does not seem to give any particular or specified meaning. These expressions have been used to identify a class of assessee. It does not make any distinction inter se within the particular class. The definition is intended to embrace the class of assessee subject to service tax. In none of the definitions, it appears that any class within the class had ever been intended to be identified. Neither it appears that a class within the class was made liable or was intended to be excluded from the liability to pay service tax The context in which these definitions were given was intended to identify a particular class of assessee liable to pay service tax.

17. Therefore, when in none of the definitions there was any attempt to identify a class within the class in order to make liable or exempt from the liability, that particular class within the class from being subjected to service tax, it cannot be conceived that the Legislature had attempted to make such a distinction in the definition of “consulting engineer” by creating a class within the class for the purpose of exemption from the liability to pay service tax. When in all classes of assessees as defined in section 65, the whole of the particular class falling within the definition have been made liable, it would be wholly against the scheme, object and purpose of the legislation to exempt a particular class coming within the definition of “consulting engineer”. The definitions have been intended to identify a particular class liable to pay service tax. There cannot be any earthly reason to tax all coming within the particular class except one within that class. Nothing seems to appear from the scheme and the context in which the legislation was enacted to make a rational or intelligible differentia to exempt one class within the class.

18. It is inconceivable that a consulting engineer as an individual or constituting a partnership firm or a proprietorship firm would be liable to pay tax under the service tax laws, but the same persons forming a company, a different juristic person, a distinct legal entity apart from the shareholders, would be outside the tax net. We do not find any reason

as to why a company providing “taxable service” as defined under section 65(48)(g) would not be a taxable service, when it would be so when provided by an individual qualified engineer or a proprietorship or partnership firm of engineers. This seems to be little absurd.

Sections 66 and 68 : The chargeability : The taxable event:

19. Section 66 is the charging section. Under sub-section (3), service tax is levied at the rate of 5 per cent, of the value of the taxable service referred to in sub-clause (g) among others enumerated in section 65(48) and collected in such manner as prescribed. Section 68 provides that every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed. That apart, by reason of sub-section (2) of section 68, any other taxable service on being notified by the Central Government may also be liable to service tax in the same manner as may be prescribed and the rate specified in section 66 subject to the provisions of Chapter V may apply to such person as if he is the person liable to pay the service tax in relation to such taxable service.

20. Therefore, section 65 cannot be read out of the context and the scheme of the Act. It has to be read in consonance with sections 66 and 68, namely, the charging section and the liability to pay. Rule 6 in sub-rule (1) provides that service tax on the value of the taxable service received during the calendar month shall be paid to the credit of the Central Government by 25th day of the month immediately following. The proviso, however, carves out an exception in respect of the assessee, who is an individual or a proprietary firm or a partnership firm, who are supposed to pay on the 25th day of the month immediately following the quarter in which service tax in the value of taxable service is received.

21. Admittedly, the word “firm” has not been defined in the Act. We are to give the ordinary grammatical meaning of the word “firm” in order to interpret the provisions of section 65(13). While ascertaining the meaning of the word “firm” intended to be given by the Legislature, we may first look into the word if used elsewhere in the statute in consonance with the taxing event apparent from the scheme and gather the meaning therefrom. In *Nagpur Electric Light and Power Co. Ltd.* v. *K. Shreepathirao*, [1958-59] 14 FJR 199; AIR 1958 SC 658, the apex court declared that a definition clause in an enactment must derive its meaning from the context or subject. We find that the word “firm” has been used in section 81 where it was explained in relation to imposition of penalty. It has been used in rule 6 to make a distinction with regard to the manner of payment. This use of the word “firm” in the statute and the rules indicates how it is to be interpreted. It is the responsibility of the court to interpret the word in a manner consonance with the scheme and the object and its purpose as well as the different expressions used in the statute unless a different intention of the Legislature is apparent to impute a different meaning. While fixing the liability on account of breach of the provisions of the statute, a company has been explained to include a partnership firm. According to the scheme of the Act, the tax

is leviable on the provider of taxable service. The providing of the taxable service is taxable event. Under section 68, every person providing taxable service is made liable to pay the tax. Thus, it appears that the Legislature had never intended to make any distinction between a firm and a company for the purpose of defining “consulting engineer”. If for the purpose of penalty, it can be so, then it would also be so in relation to chargeability.

22. Any other interpretation would lead to absurdity, a deficiency supposed to be made good by the court while interpreting. If two views are possible, and one leads to absurdity, the other possible view is to be accepted. The principle of beneficial interpretation in favour of the assessee cannot come into play on the face of absurdity. The use of the word “firm” qualified by the word “engineering” was intended to denote a conglomeration of engineers providing taxable service in its ordinary, common and natural sense. The words “engineering firm” denote an establishment of engineers providing taxable service defined under section 65(48)(g). The Legislature had never used nor intended to use the word “firm” in its legal or technical sense.

23. Words used in a statute dealing with matters relating to the general public are presumed to have been used in their popular rather than narrow, legal or technical sense. The doctrine of loquitur ut vulgus, i.e., according to the common understanding and acceptance of the terms, is to be applied in construing the words used in the statute dealing with matters relating to the public in general. If an Act is directed to dealings with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. It was so observed by Lord Esher M.R. at page 119 in *Unwin* v. *Hanson*, [1891] 2 QB 115 (CA). That the Income-tax Act and for that matter the Finance Act is of general application is beyond dispute. It is all the more so because the Finance Act is one consolidating and amending the law relating to income-tax, super tax, service tax, etc. To support this proposition, we may derive inspiration from *Rao Bahadur Ravulu Subba Rao* v. *CIT*, [1956] 30 ITR 163 (SC) at page 169. Therefore, the natural not the legal or technical meaning of the word “firm” is to be given.

Section 65(13): Firm: Natural meaning:

24. Having read the provisions in the context it is used and the scheme in which it is intended to be used and the object and purpose of enacting the statute and the absence of any intelligible differentia or a rational classification, it has to be interpreted to include all kinds of firm, i.e., a business establishment. This again we must note that the Legislature had used the expression “engineering firm”. The firm has been qualified by the word “engineering”. Therefore, the word “firm” has been used in this particular class of assessee to include all classes of firms dealing with engineering. The word “firm” was not used for the purpose of indicating the constitution of the firm, namely, a proprietorship or partnership, but in order to identify a class of firm providing taxable service within the meaning of section 65(48)(g).

25. In these circumstances, we do not think that there is any deficiency in the definition of “consulting engineer”, which could be presumed to have excluded a company providing taxable service defined under section 65(48)(g) when its counterparts comprising an individual or a proprietorship or partnership firm or an association of person are included. From the scheme of the Act, we have not been able to find out any intelligible differentia or rational classification for excluding a company providing taxable service under section 65(48)(g) when its counterparts being individuals or proprietorship or partnership or association of persons are coming within the taxing net providing the same service. This is further supported from the scheme of the 1994 Act. The Act aims at levying tax on service. It is the taxable service, which makes the provider liable. Thus, the taxable event is the providing of service and the levy falls on the provider. It would be inconceivable that the Legislature had intended that the levy would fall on a provider when an individual or a proprietorship or partnership firm but not when a company. The distinction seems to be unintelligible and without any rationale, thus absurd. Under section 68 the liability is of every person. In support of this proposition, we may gainfully refer to the decision in *Motipur Zamindari Co. Ltd.* v. *State of Bihar*, AIR 1953 SC 320, where the court held that there was no justification to differentiate between a company and an individual and that there was nothing in the statute being interpreted by the court in that case, which would prevent the inclusion of the company. The court was in that case interpreting the term “proprietor” as defined by section 2(o) of the Bihar Land Reforms Act. It held that in view of the object of the Bihar Land Reforms Act, there was no reason to differentiate between an individual proprietor and a company, which owns estates or tenures.

26. The object of the Act is of general application, and not intended to confer any special benefit to a company. The definition of all other assessees includes company, then it is not known why the Legislature would intend to exclude a company providing a particular class of taxable service falling within section 65(48)(g). Though eloquently argued by Dr. Pal, the rationale between the differentiation having regard to the expression “firm” imposing liability to the whole class to exempt a class within the class is not intelligible and does not at all make out a case of rational classification to interpret the said definition otherwise than in consonance with the definition given to all other class read together with sections 66 and 68 having regard to the object and purpose of the enactment. When the statute is not a statute aimed at conferring certain special treatment for protecting the interest of a company, such an interpretation is not possible. Therefore, though for different reason, we are in agreement with the decision of the learned single judge since appealed against.

27. To support our view, we may borrow the reasoning from the decision of the Karnataka High Court in *Tata Consultancy Services*, [2002] 257 ITR 710, relying on the decisions in *Tirath Singh* v. *Bachittar Singh*, AIR 1955 SC 830 and *CIT* v. *J.H. Gotla*, [1985] 156 ITR 323; (1985) 4 SCC 343 : AIR 1985 SC 1698 to support its view, as quoted hereafter (page 715):

> "There is no distinction under the Ad between the provider of a service, who is an individual, a partnership concern or an incorporated company. The liability to pay tax on the service provided falls uniformly on all the three, provided the service is of a kind that has been declared taxable under section 65(48) of the Ad. Viewed thus, what is taxed by the Act in the case of service provided by consultant engineers is the service provided directly or indirectly in the nature of advice, consultancy or technical assistance in any manner and relating to any disciplines of engineering. The fad that the service is provided by an individual or a partnership or by a company is wholly inconsequential. It is true that inclusion in the definition of the expression 'consulting engineer' could indude a company to set the entire controversy at rest, but the very fad that a company providing a technical assistance in any engineering discipline is not specifically included in the definition of the expression 'consulting engineer' would not, ipso facto, mean that service rendered by any such company cannot be considered to be taxable. It is fairly well-settled that where the language of a statute in its ordinary meaning leads to a manifest anomaly or contradiction, the court is entitled to put upon it a construction which modifies the meaning of the words used in the same.

28. The decision in *Dr. V. Shanmughavel*, [2001] 131 ELT 14 (Mad) may not help us much since in that case the distinction was sought to be made as to whether the services rendered by a valuer or by an engineer would come within the definition of "consulting engineer" or not. Though some other decisions have since been cited by Dr. Pal, but we do not find any reason to discuss the same, since, in our view, any further discussion would be superfluous.

Conclusion:

29. Thus, the circular dated July 2, 1997, issued by the Ministry of Finance and the said circular dated July 3, 1997, cannot be held to be contrary to the provisions of the statute or inconsistent with the scheme and the context of the service tax law or repugnant to the clear legislative provisions defining "consulting engineer" under section 65(13). Having regard to the discussion made above, it cannot be said that the said circular was issued in excess of the parameters limited by the legislation delegating the power. It is well within the parameters and, therefore, can never be ultra vires the parent Act or void. Therefore, the ratio decided in *G.S. Dali and Flour Mills*, [1991] 187 ITR 478 (SC) cannot be attracted. Since it is well within the enactment, it is not a case that a tax is being imposed by reason of the said two circulars on the company though not liable through subordinate legislation without being authorised by the parent Act as was held in *Gopal Narain*, AIR 1964 SC 370.

30. From the discussion above, we are of the view that the word "firm" used in the definition of "consulting engineer" interpreted in the context

> and the scheme of section 65 in consonance with section 66 and section 68 and the meaning conferred to the word "firm" elsewhere in the statute includes a company as explained in section 81 since there is nothing to support an intelligible differentia or a rational classification between a company and a firm providing taxable service defined under section 65(48)(g) to exclude a company from the tax net when both providing the same taxable service being the taxable event in a statute, which is not meant for providing special provisions for or benefit to a company."

10.4 At this stage, it is required to be noted that all the decisions of some of the High Courts relied upon on behalf of the respondent are of post amendment 2005. In none of the cases, the respective High Courts had an occasion to consider the actual meaning and definition of "consulting engineer" contained in Finance Act, 1994, which directly fell for consideration before the Karnataka and Calcutta High Courts in the cases of ***TCS (supra)*** and ***M.N. Dastur (supra)***.

11. As observed hereinabove, in many places under the Finance Act, 1994, the Parliament/Legislature has used the word "person" (Sections 68, 69 and 70). At this stage, Section 3(42) of the General Clauses Act, 1897 is also required to be referred to, considered and applied. The word "person" includes any company or association or body of individuals, whether incorporated or not. Therefore, there is no logic and/or reason to exclude a" body corporate" from the definition of "consulting engineer" and to exclude the services of a "consulting engineer" rendered by a "body corporate" to exclude and/or exempt from

the service tax net. Such an interpretation would lead to anomaly and absurdity. As observed hereinabove, it will create two different classes providing the same services which could not be the intention of the Parliament/Legislature. Therefore, we are in complete agreement with the view taken by the High Court of Karnataka in the case of ***TCS (supra)*** and the Calcutta High Court in the case of ***M.N. Dastur (supra)***, taking the view that a "firm" and a" company" can be said to be a "consulting engineer" as defined under the Finance Act, 1994 and liable to pay the service tax as a service provider.

12. In view of our above finding that under the Finance Act, 1994, in the definition of "consulting engineer", a "body corporate" is included and/or to be read into so as to bring a "body corporate" being a service provider providing the consultancy engineering services within the service tax net, as such, it is not necessary to consider whether the subsequent amendment amending the definition of "consulting engineer" by way of 2005 amendment adding a "body corporate" within the definition of "consulting engineer" would be retrospective and/or whether it can be said to be a clarificatory in nature or not and the said issue would become academic now.

13. In view of our discussion and for the reasons stated above, the impugned judgment and order dated 04.12.2015 passed by the CESTAT

is unsustainable. It is held that the respondent, being a service provider providing consultancy engineering services, was/is liable to pay the service tax for such services being “consulting engineer” within the definition of Section 65(31) of the Finance Act, 1994 and therefore and thereby liable to pay the service tax under Section 66 r/w Section 68 of the Finance Act, 1994. The impugned judgment and order dated 04.12.2015 passed by the CESTAT in Appeal No. ST/136/2007 is hereby quashed and set aside. However, from the impugned judgment and order passed by the CESTAT, it appears that the CESTAT has considered only one issue namely whether for the period pre 01.05.2006 – the Finance Bill, 2006 whether “body corporate” was covered within the definition of “consulting engineer” under Section 65 (31) of the Finance Act, 1994 and had not considered any other issues/grounds raised in the Memo of Appeal before the CESTAT. Therefore, the matter is remanded to the CESTAT to examine and decide the appeal on other grounds, if any, raised in the Appeal Memo before it afresh in accordance with law and on its own merits and in light of the observations made hereinabove and the law laid down by this Court in the present judgment and order. The aforesaid exercise shall be completed by the learned CESTAT within a period of three months from the date of receipt of the present order, which shall be produced by the Revenue before the learned CESTAT within a period of four weeks from today without fail.

14. The present appeal is accordingly allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

……J.
[M.R. SHAH]

NEW DELHI;
JULY 11, 2022.

……J.
[SANJIV KHANNA]