Karnataka High Court Tata Consultancy Services vs Union Of India (Uoi) And Anr. on 20 April, 2001 Equivalent citations: 2002 111 CompCas 292 Kar, 2001 (77) ECC 694, 2001 (130) ELT 726 Kar, ILR 2001 KAR 5421, 2002 257 ITR 710 KAR, 2002 257 ITR 710 Karn, 2006 2 S T R 386, 2007 6 STT 258 Author: T S Thakur Bench: T S Thakur JUDGMENT Tirath Singh Thakur, J. 1. In this petition for a writ of certiorari, the petitioner has called in question the validity of an order dated November 18/ 24, 1999, passed by the Additional Commissioner, Central Excise, Bangalore, demanding payment of service tax and imposing penalties for the defaults committed by the former. A declaration to the effect that the petitioner-company is not a "consulting engineer" within the meaning of Section 65 of the Finance Act, 1994, so as to be liable to pay tax on the "service" provided by it has also been prayed for, besides a certiorari quashing circular dated July 22, 1997, issued by the Ministry of Finance and referred to in Trade Notice No. 78 of 1997, dated July 4, 1997, emanating from the office of the Commissioner of Central Excise, Bangalore. 2. The petitioner-company is a division of Tata Sons Limited engaged in the development of computer software. Upon the introduction of service tax under Chapter V of the Finance Act, 1994, it appears to have applied for and secured registration as a consulting engineer in terms of a certificate dated January 9, 1998. The Central excise authorities being of the opinion that the petitioner was engaged in providing "taxable service" as a consulting engineer called upon the company to furnish details of the value of the service rendered for the period July 7, 1997, to September 30, 1998. In reply, the company appears to have argued that in terms of a resolution of the Planning Commission published in Gazette of India, Extraordinary, Part I, dated July 25, 1998, service tax was not applicable to computer software development industries. This was followed by another letter dated January 25, 1999, from the petitioner, in which it was contended that since the petitioner was a division of Tata Sons Limited, it did not fall within the purview of the expression "consulting engineer" as defined in Clause (13) of Section 65 of the Finance Act, 1994. The respondents remained dissatisfied with these explanations resulting in the issue of a summons dated February 7, 1999, by which the petitioner-company was called upon to produce the books of account for verification and determination of the tax liability. While certain books of account appear to have been produced by the petitioner, it stuck to its stand that the company was not liable to pay any service tax. Reliance was also placed by the petitioner upon a notification dated February 28, 1999, in support of the contention that the computer software industries like the petitioner were exempt from payment of service tax and that the exemption granted under the said notification related back to the date the tax was initially levied. The Additional Commissioner of Central Excise was not impressed with the contentions urged on behalf of the petitioner and upon scrutiny of the invoices produced by the petitioner prima facie came to the conclusion that the petitioner had either suppressed or concealed the value of taxable service with an intent to evade payment of the same. The petitioner was accordingly called upon to show cause as to why it should not be held liable to pay service tax as a consulting engineer and an amount of Rs. 9,88,379 recovered from it for the period mentioned earlier

in terms of Section 68 of the Finance Act, 1994. It was also called upon to show cause why interest at the rate of 5 per cent. per month be not demanded in terms of Section 75 of the Act aforementioned and penalties in terms of Sections 76, 77 and 78 thereof be not levied. 3. In response, the petitioner filed a detailed reply reiterating that the liability to pay service tax under the Act arose only if the consulting engineers were providing taxable service in a proprietary capacity or as a partnership concern comprising qualified engineers. Since the petitioner-company did not answer either of the said two descriptions, it was not liable to pay any tax. The explanation set out the distinction between a firm and a company in an attempt to show that what was envisaged under the Act was a tax on services provided by an individual or a firm and not a company like the petitioner. It also pointed out that proceedings initiated on the basis of a similar notice issued by the Commissioner of Central Excise, Chennai, had been dropped by him. The Additional Commissioner has upon consideration of the said objections come to the conclusion that the petitioner-company was liable to pay Rs. 9,88,379 towards tax for the period in question. Besides, the Commissioner has imposed a penalty of Rs. 9,88,379 under Section 76 of the Finance Act and a penalty of Rs. 2,000 in respect of each ST-3 return which the assessee had not filed up to September 30, 1998. Proceedings under Section 78 of the Finance Act were however dropped. Aggrieved by the said order, the petitioner has preferred an appeal before the Commissioner of Central Excise, Appeals. It is during the pendency of the said appeal that the present writ petition has been filed challenging the validity of the order made by the Additional Commissioner and for a declaration as already stated earlier. It is pertinent to mention that the maintainability of this petition on account of the pendency of the appeal filed by the petitioner has not been questioned by the respondents. 4. I have heard counsel for the parties at considerable length. The short question that falls for consideration is whether the petitioner-company is liable to pay service tax under Chapter V of the Finance Act as amended from time to time. According to the petitioner, it is not liable to either recover or deposit any tax as it is not providing a taxable service within the meaning of Section 65(41) of Chapter V of the Finance Act as amended by the Finance Act, 1997 and Finance (No. 2) Act of 1998. 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 service was provided by a consulting engineer as defined in Section 65(13) of the Act. Service provided by a company even when it may have engaged qualified engineers to carry on or promote its business would not be tantamount to a taxable service within the meaning of the Act so as to justify any demand on the basis thereof. 5. In order to appreciate the merits of the contentions urged at the Bar, it is necessary to briefly refer to the provisions of the Act for a clear understanding of the scheme underlying the same. Service tax was for the first time imposed by the Finance Act, 1994. It was initially meant to cover only three types of services, viz., those provided by stock brokers, the telegraph authorities and the insurance companies. By the Finance Act, 1997, Parliament amended certain provisions of the Act and defined “taxable service” under Section 65(48) to include various

kinds of services that were not initially included within the tax net. Service provided by a consulting engineer in relation to advice, consultancy or technical assistance was also one such service brought within the tax net. Suffice it to say that Section 66 of the Act as amended from the year, 1997, envisages charging of service tax in respect of different types of services at the rate stipulated therein. In so far as the service provided by consulting engineers was concerned, it envisages a tax at the rate of 5 per cent. of the "value of taxable service" with effect from the date notified under section 84. Section 67 of the Act provides the basis on which the value of the services has to be determined for purposes of the levy. In so far as consulting engineers are concerned, Section 67(f) provides that the value of taxable service shall be the gross amount charged by such engineer for advice, consultancy or technical assistance in any manner in one or more disciplines of engineering. Section 68 regulates collection and recovery of service tax and, inter alia, provides that every person providing taxable service to any person shall collect the service tax at the rate specified in Section 66. That provision may at this stage be gainfully extracted : "68. Collection and recovery of service tax.–(1) Every person providing taxable service to any person shall collect the service tax at the rate specified in Section 66. (1A) Notwithstanding anything contained in Sub-section (1) of Section 68, in respect of the taxable service referred to in items (g) to (r) of sub-clause (41) of Section 65, the service tax for such service shall be collected from 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 responsible for collecting the service tax in relation to such service. (2) The service tax collected during any calendar month in accordance with the provisions of Sub-section (1) or Sub-section (1A), as the case may be, shall be paid to the credit of the Central Government by the 15th of the month immediately following the said calendar month. (3) Any person, responsible for collecting the service tax, who fails to collect the tax in accordance with the provisions of Sub-section (1) or Sub-section (1A), as the case may be, shall, notwithstanding such failure, be liable to pay such tax to the credit of the Central Government with seventy-five days from the end of the month in which the service was rendered." 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 Sections 65(13) and 65(48) of the Act. The same may at this stage be extracted for ready reference : "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. 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 of 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 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, , where the court made the following observations is apposite (page 833) : "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, presumably 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 CIT v. J. H. Gotla , wherein their Lordships

declared that where 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 (headnote of AIR) : "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 from 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 Co. Ltd. v. K. Shreepathirao, , 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 Co. Ltd. v. State of Bihar, , 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. 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, 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. 12. That leaves me with the only other submission feebly advanced

on behalf of the petitioner. It was contended that since industries engaged in software development had been exempted from the payment of service tax by notification dated February 28, 1999, the said exemption should be held to be available retrospectively from the date the levy was first introduced. The notification does not, in my opinion, admit of any such retrospective exemption. It is, therefore, difficult to appreciate how the same could be made retrospective by a judicial interpretation. In the result, this writ petition fails and is hereby dismissed, but in the circumstances without any orders as to costs. 13. After the pronouncement of the order, counsel for the petitioner made an oral prayer for continuance of the interim order issued earlier for a period of eight weeks to enable the appellant to seek an appropriate relief from the appellate court. 14. I see no reason to decline that prayer. Interim order granted shall, therefore, continue, but only for a period of eight weeks from today.