SUPREME COURT OF INDIA

Union of India

Vs.

Intercontinental Consultants and Technocrats Pvt. Ltd.

C.A.No.2013 of 2014

(A.K.Sikri and Ashok Bhushan,JJ.,)

07.03.2018

JUDGMENT

A.K. Sikri,J.,

1. In all these appeals, legal issue that needs determination is almost identical, though there may be little variation on facts. This difference pertains to the nature of services provided by the respondents/assessees who are all covered by the service tax. The fringe diferences in the nature of services, however, nature of differences, however, has no impact on the final outcome.

2. All the assessees are paying service tax. The services which these assessees are rendering broadly fall in the following four categories:

(a) Consulting engineering services.

(b) Share transfer agency services.

(c) Custom house agent services covered by the head 'clearing and forwarding agent'.

(d) The site formation and clearances, excavation and earth moving and demolition services.

3. While rendering the aforesaid services, the assessees are also getting reimbursement in respect of certain activities undertaken by them which according to them is not includable to arrive at 'gross value' charged from their clients. As per Rule 5 of the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as the 'Rules'), the value of the said reimbursable activities is also to be included as part of services provided by these respondents. Writ petitions were filed by the assessees challenging the vires of Rule 5 of the Rules as unconstitutional as well as ultra vires the provisions of Sections 66 and 67 of Chapter V of the Finance Act, 1994 (hereinafter referred to as the 'Act'). The High Court of Delhi has, by the judgment dated November 30, 2012, accepted the said challenge and

declared Rule 5 to be ultra vires these provisions. Other cases have met similar results by riding on the judgment dated November 30, 2012. This necessitates examining the the correctness of the judgment of the Delhi High Court and outocme thereof would determine the fate of all these appeals/transfer petitions.

4. This judgment was rendered by the High court in the writ petition filed by M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. out of which Civil Appeal No. 2013 of 2014 arises. Therefore, for our purpose, it would suffice to advert to the facts of this appeal and take note of the reasons which have prevailed with the High Court in arriving at this conclusion.

5. The assessee M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. is a provider of consulting engineering services. It specialises in highways, structures, airports, urban and rural infrastructural projects and is engaged in various road projects outside and inside India. In the course of the carrying on of its business, the petitioner rendered consultancy services in respect of highway projects to the National Highway Authority of India (NHAI). The petitioner receives payments not only for its service but is also reimbursed expenses incurred by it such as air travel, hotel stay, etc. It was paying service tax in respect of amounts received by it for services rendered to its clients. It was not paying any service tax in respect of the expenses incurred by it, which was reimbursed by the clients. On 19.10.2007, the Superintendent (Audit) Group II (Service Tax), New Delhi issued a letter to the petitioner on the subject "service tax audit for the financial year 2002-03 to 2006-07. In this letter, it was mentioned by the appellant that service tax was liable to be charged on the gross value including reimbursable and out of pocket expenses like travelling, lodging and boarding etc. and the respondent was directed to deposit the due service tax along with interest @13% under Sections 73 and 75 respectively of the Act. In response, the respondent provided month-wise detail of the professional income as well as reimbursable out of pocket expenses for the period mentioned in the aforesaid letter. Thereafter, a show cause notice dated March 17, 2008 was issued by the Commissioner, Service Tax, Commissionerate vide which the respondent was asked to show cause as to why the service tax should not be recovered by including the amounts of reimbursable which were received by the respondent, pointing out these were to be included while arriving at the gross value as per provisions of Rule 5(1) of the Rules.

6. Rule 5 was brought into existence w.e.f. June 01, 2007. The demand which was made in the show cause notice was covered by the period from October, 2002 to March, 2007. Against this show cause notice, the respondent preferred Writ Petition No. 6370 of 2008 in the High Court of Delhi challenging the vires thereof with three prayers, namely:

> (i) for quashing Rule 5 in its entirety of the Service Tax (Determination of Value) Rules, 2006 to the extent it includes the reimbursement of expenses in the value of taxable service for the purpose of charging service tax; and
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> (ii) for declaring the rule to be unconstitutional and ultra vires Sections 66 and 67 of the Finance Act, 1994; and

(iii) for quashing the impugned show-cause notice-cum-demand dated 17.03.2008 holding that it is illegal, arbitrary, without jurisdiction and unconstitutional.

7. Rule 5, which provides for 'inclusion in or exclusion from the value of certain expenditure or costs', is reproduced below in order to understand its full implication:

"5. Inclusion in or exclusion from value of certain expenditure or costs.

(1)Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.
(2)Subject to the provisions of sub rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:

• the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

• the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

• the recipient of service is liable to make payment to the third party;

• the recipient of service authorities the service provider to make payment on his behalf;

• the recipient of service knows that the goods And services for which payment has been made by the service provider shall be provided by the third party;

• the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

• the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

• the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1 : For the purposes of sub rule (2), "pure agent" means a person who -

• enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

• neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

• does not use such goods or services so procured; and

• receives only the actual amount incurred to procure such goods or services.

Explanation 2 : For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

Illustration 1 : X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent.

Illustration 2 : In the course of providing a taxable service, a service provider incurs costs such as traveling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

Illustration 3 : A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.

Illustration 4 : Company X provides a taxable service of rent cab by providing chauffeur driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the company X.”

8. The case set up by the respondent in the writ petition was that Rule 5(1) of the Rules, which provides that all expenditure or cost incurred by the service provider in the course of providing the taxable services shall be treated as consideration for the taxable services and shall be included in the value for the purpose of charging service tax, goes beyond the mandate of Section 67. It was argued that Section 67 which deals with valuation of taxable services for charging service tax does not provide for inclusion of the aforesaid expenditure or cost incurred while providing the services as they cannot be treated as element/components of service. Section 67 was amended by Finance Act, 2006 w.e.f. May 01, 2006. Since the cases before us involve period prior to the aforesaid amendment as well as post amendment period, it would apt to take note of both unamended and amended provisions. Unamended Section 67 was in the following form:

> ""67. Valuation of taxable services for charging service tax. For the purposes of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider for such provided or to be provided by him.
> Explanation 1. For the removal of doubts, it is hereby declared that the value of a taxable service, as the case may be, includes,
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> (a) the aggregate of commission or brokerage charges by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock broker to any sub broker.
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> (b) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
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> (c)the amount of premium charged by the insurer from the policy holder;
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> (d) the commission received by the air travel agent from the airline;
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> (e) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
>
> (f) the reimbursement received by the authorized service station from manufacturer for carrying out any service of nay motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer; and
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> (g) the commission or any amount received by the rail travel agent from the Railways or the customer.
> But does not include -
>
> (i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telephone or telex or for leased circuit;

(ii) the cost of unexposed photography film, unrecorded magnetic tape or such other storage devices, if any, sold to the client during the course of providing the service;

(iii) the cost of parts or accessories, or consumable such as lubricants and coolants, if any, sold to the customer during the course of service or repair of motor cars, light motor vehicle or two wheeled motor vehicles;

(iv) the airfare collected by air travel agent in respect of service provided by him;

(v) the rail fare collected by rail travel agent in respect of service provided by him;

(vi) the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service;

(vii) the cost of parts or other material, if any, sold to the customer during the course of providing erection, commissioning or installation service; and

(viii) interest on loan.

Explanation 2 - Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.

Explanation 3. For the removal of doubts, it is hereby declared that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service."

9. After its amendment w.e.f. May 01, 2006, a much shorter version was introduced which reads as under:

"67. Valuation of taxable services for charging service tax.

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,

(1) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as ay be determined in the prescribed manner.

(2)Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.
Explanation: For the purpose of this section,

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

(b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of accounts of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."

10. The High Court, after taking note of the aforesaid provisions, noted that the provisions both amended and unamended Section 67 authorised the determination of value of taxable services for the purpose of charging service tax under Section 66 (which is a charging section) as the gross amount charged by the service provider for such services provided or to be provided by him, in a case where the consideration for the service is money. Emphasising on the words 'for such service', the High Court took the view that the charge of service tax under Section 66 has to be on the value of taxable service i.e. the value of service rendered by the assessee to the NHAI, which is that of a consulting engineer, that can be brought to charge and nothing more. The quantification of the value of the service can, therefore, never exceed the gross amount charged by the service provider for the service provided by him. On that analogy, the High Court has opined that scope of Rule 5 goes beyond the Section which was impermissible as the Rules which have been made under Section 94 of the Act can only be made 'for carrying out the provisions of this Chapter' (Chapter V of the Act) which provides for levy quantification and collection of the service tax. In the process, the High Court observed that the expenditure or cost incurred by the service provider in the course of providing the taxable service can never be considered as the gross amount charged by the service provider 'for such service' provided by him, and illustration 3 given below the Rule which included the value of such services was a clear example of breaching the boundaries

of Section 67. The High Court even went on to hold further pointed out that it may even result in double taxation inasmuch as expenses on air travel tickets are already subject to service tax and are included in the bill. No doubt, double taxation was permissible in law but it could only be done if it was categorically provided for and intended; and could not be enforced by implication as held in *Jain Brothers v. Union of India*[1]. The High Court has also referred to many judgments of this Court for the proposition that Rules cannot be over-ride or over-reach the provisions of the main *enactment*[2]. The High Court also referred to the judgment of Queens Bench of England in the case of *Commissioner of Customs and Excise v. Cure and Deeley Ltd*[3].

11. Mr. K. Radhakrishnan, learned senior counsel argued for the appellant, ably assisted by Ms. Nisha Bagchi, advocate who also made significant contribution by arguing some of the nuances of the issue involved. Submission of the learned counsel appearing for the appellant/Department was that prior to April 19, 2006 i.e. in the absence of Rule 5 of the Rules, the value of taxable services was covered by Section 67 of the Act. As per this Section, the value of taxable services in relation to consulting engineering services provided or to be provided by a consulting engineer to the client shall be the gross amount charged for a consideration or in money from the client in respect of engineering services. The expression 'gross amount charged' would clearly include all the amounts which were charged by the service provider and would not be limited to the remuneration received from the customer. The very connotation 'gross amount charged' denotes the total amount which is received in rendering those services and would include the other amounts like transportation, office rent, office appliances, furniture and equipments etc. It was submitted that this expenditure or cost would be part of consideration for taxable services. It was, thus, argued that essential input cost had to be included in arriving at gross amount charged by a service provider.

12. It was further submitted that Section 67 of the Act was amended w.e.f. May 01, 2006 and this also retained the concept of 'the gross amount charged' for the purpose of arriving at valuation on which the service tax is to be paid. The learned counsel pointed out that sub-section (4) of amended Section 67 categorically provides that the value has to be determined in such a manner as may be prescribed and in pursuant thereto, Rule 5 of the Rules which came into effect from June 01, 2007, provided for 'inclusion in or exclusion from value of certain expenditure or costs'. It was submitted that there was no dispute that as per this Rule, all such expenditure or costs which are incurred by the service provider in the course of providing taxable services are to be treated as consideration for the taxable services provided or to be provided for arriving at valuation for the purpose of charging service tax, except those costs which were specifically excluded under sub¬rule (2) of Rule 5. Submission was that since Section 67 specifically lays down the principle of gross amount charged by a service provider for the services provided or to be provided, Rule 5 did not go contrary to Section 67 as it only mentions what would be the meaning of gross amount charged.

13. In the aid of this submission, the learned counsel sought to take help from principle laid down in excise law and submitted that it is held by this Court in *Union of India & Ors. v. Bengal Shrachi Housing Development Limited & Anr*[4]. that same principles as applicable in

excise law are applicable while examining service tax matters. Reliance was placed on paragraph 22 of the said judgment to support this proposition. However, we may point out at this stage itself that the context in which the observations were made were entirely different. The issue was as to whether service tax, which is an indirect tax, can be passed on by the service provider to the recepient of the service and, in this hue, the matter was discussed, as can be seen from the combined reading of paragraphs 21 and 22 which are to the following effect:

> "21. It is thus clear that the judgments of this Court which referred to service tax being an indirect tax have reference only to service tax being an indirect tax in economic theory and not constitutional law. The fact that service tax may not, in given circumstances, be passed on by the service provider to the recipient of the service would not, therefore, make such tax any the less a service tax. It is important to bear this in mind, as the main prop of Shri Jaideep Gupta's argument is that service tax being an indirect tax which must be passed on by virtue of the judgments of this Court, would make the recipient of the service the person on whom the tax is primarily leviable.
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> 22. Let us now examine some of the judgments relating to another indirect tax, namely, excise duty. Like service tax, excise duty is also in the economic sense, an indirect tax. The levy is on manufacture of goods; and the taxable person is usually the manufacturer of those goods. InCentral Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, In re, the Federal Court decided, through Maurice Gwyer, C.J., that excise duty under the Government of India Act, 1935 is a power to impose duty of excise upon the manufacturer of excisable articles at the stage of or in connection with manufacture or production. In a separate judgment, Jayakar, J. held that all duties of excise are levied on manufacture of excisable goods and can be levied and collected at any subsequent stage up to consumption."

14. It was also submitted that while dealing with the valuation of a taxable service, the provision which deals with valuation has to be taken into consideration and no assistance can be taken from charging section, as held in *Union of India & Ors. v. Bombay Tyre International Limited & Ors*[5]. :

> "8. Mr N.A. Palkhivala, learned counsel for the assessees, has propounded three principles which, he contends, form the essential characteristics of a duty of excise. Firstly, he says, excise is a tax on manufacture or production and not on anything else. Secondly, uniformity of incidence is a basic characteristic of excise. And thirdly, the exclusion of post-manufacturing expenses and post-manufacturing profits is necessarily involved in the first principle and helps to achieve the second. Learned counsel urges that where excise duty is levied on an ad valorem basis the value on which such duty is levied is a "conceptual value", and that the conceptual nature is borne out by the circumstance that the identity of the manufacturer and the identity of the goods as well as the actual wholesale price charged by the manufacturer are not the determining factors. It is urged that the old Section 4(a) clearly indicates that a

conceptual value forms the basis of the levy, and that the actual wholesale price charged by the particular assessee cannot be the basis of the excise levy. It is said that the criterion adopted in clause (a) succeeds in producing uniform taxation, whether the assessees are manufacturers who sell their goods in wholesale, semi-wholesale or in retail, whether they have a vast selling and marketing network or have none, whether they sell at depots and branches or sell at the factory gate, and whether they load the ex-factory price with post-manufacturing expenses and profits or do not do so. Because the value of the article rests on a conceptual base, it is urged, the result of the assessment under Section 4(a) cannot be different from the result of an assessment under Section 4(6). The contention is that the principle of uniformity of taxation requires the exclusion of post-manufacturing expenses and profits, a factor which would vary from one manufacturer to another. It is pointed out that such exclusion is necessary to create a direct and immediate nexus between the levy and the manufacturing activity, and to bring about a uniformity in the incidence of the levy. Learned counsel contends that the position is the same under the new Section 4 which, he says, must need be so because of the fundamental nature of the principles propounded earlier. Referring to the actual language of the new Section 4(1)(a), it is pointed out that the expression "normal price" therein means "normal for the purposes of excise", that is to say, that the price must exclude post-manufacturing expenses and post-manufacturing profit and must not be loaded with any extraneous element. It is conceded, however, that under the new Section 4(1)(a) there is no attempt to preserve uniformity as regards the amount of duty between one manufacturer and another, but it is urged that the basis on which the value is determined is constituted by the same conceptual criterion, that post¬manufacturing expenses and post-manufacturing profit must be excluded. Considerable emphasis has been laid on the submission that as excise duty is a tax on the manufacture or production of goods it must be a tax intimately linked with the manufacture or production of the excisable article and, therefore, it can be imposed only on the assessable value determined with reference to the excisable article at the stage of completed manufacture and to no point beyond. To preserve this intimate link or nexus between the nature of the tax and the assessment of the tax, it is urged that all extraneous elements included in the "value" in the nature of post¬manufacturing expenses and post-manufacturing profits have to be off-loaded. It is pointed out that factors such as volume, quantity and weight, which enter into the measure of the tax, are intimately linked with the manufacturing activity, and that the power of Parliament under Entry 84 of List I of the Seventh Schedule to the Constitution to legislate in respect of "value" is restricted by the conceptual need to link the basis for determining the measure of the tax with the very nature of the tax.

10. Besides this fundamental issue, there are other points of dispute, principally in respect of the connotation of the expression "related person" in the new Section 4 as well as the nature of the deductions which can be claimed by the assessee as post¬manufacturing expenses and post-manufacturing profit from the price for the purpose of determining the "value".

11. The submissions made by learned counsel for the parties in support of their respective contentions cover a wide area, and several questions of a fundamental nature have been raised. We consider it necessary to deal with them because they enter into and determine the conclusions reached by us.

12. We think it appropriate that at the very beginning we should briefly indicate the concept of a duty of excise. Both Entry 45 of List I of the Seventh Schedule to the Government of India Act, 1935, under which the original Central Excises and Salt Act was enacted, and Entry 84 of List I of the Seventh Schedule to the Constitution under which the Amendment Act of 1973 was enacted, refer to "Duties of excise on... goods manufactured or produced in India". A duty of excise, according to the Federal Court in The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 [AIR 1939 FC 1, 6 : 1939 FCR 18] is a duty ordinarily levied on the manufacturer or producer in respect of the manufacture or production of the commodity taxed. A distinction was drawn between the nature of the tax and the point at which it was collected, and Gwyer, C.J. observed that theoretically ". . .there can be no reason in theory why an excise duty should not be imposed even on the retail sale of an article, if the taxing Act so provides. Subject always to the legislative competence of the taxing authority, a duty on home-produced goods will obviously be imposed at the stage which the authority finds to be the most convenient and the most lucrative, wherever it may be; but that is a matter of the machinery of collection, and does not affect the essential nature of the tax. The ultimate incidence of an excise duty, a typical indirect tax, must always be on the consumer, who pays as he consumes or expends; and it continues to be an excise duty, that is, a duty on home-produced or home-manufactured goods, no matter at what stage it is collected...." (emphasis supplied). The position was explained further in Province of Madras v. Boddu Paidanna and Sons [1942 FCR 90, 101 : AIR 1942 FC 33] where the Federal Court observed:

"... There is in theory nothing to prevent the Central Legislature from imposing a duty of excise on a commodity as soon as it comes into existence, no matter what happens to it afterwards, whether it be sold, consumed, destroyed, or given away. A taxing authority will not ordinarily impose such a duty, because it is much more convenient administratively to collect the duty (as in the case of most of the Indian Excise Acts) when the commodity leaves the factory for the first time, and also because the duty is intended to be an indirect duty which the manufacturer or producer is to pass on to the ultimate consumer, which he could not do if the commodity had, for example, been destroyed in the factory itself. It is the fact of manufacture which attracts the duty, even though it may be collected later;...."

The observations show that while the nature of an excise is indicated by the fact that it is imposed in respect of the manufacture or production of an article, the point at which it is collected is not determined by the point of time when its manufacture is completed but will rest on considerations of administrative convenience, and that generally it is collected when the article leaves the factory for the first time. In other

words, the circumstance that the article becomes the object of assessment when it is sold by the manufacturer does not detract from its true nature, that it is a levy on the fact of manufacture. In a subsequent case, Governor-General-in- Council v. Province of Madras [1945 FCR 179 : AIR 1945 FC 98] , the Privy Council referred to both Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 [AIR 1939 FC 1, 6 : 1939 FCR 18] and Province of Madras v. Boddu Paidanna and Sons [1942 FCR 90, 101 : AIR 1942 FC 33] and affirmed that when excise was levied on a manufacturer at the point of the first sale by him "that may be because the taxation authority imposing a duty of excise finds it convenient to impose that duty at the moment when the excisable article leaves the factory or workshop for the first time on the occasion of its sale. But that method of collecting the tax is an accident of administration; it is not of the essence of the duty of excise, which is attracted by the manufacture itself. This Court had occasion to consider a similar question in R.C. Jall v. Union of India [AIR 1962 SC 1281 : 1962 Supp (3) SCR 436, 451] . In that case, the Central Government was authorised by an Ordinance to levy and collect as a cess on coal and coke despatched from collieries in British India a duty of excise at a specified rate. Rule 3 made under the Ordinance empowered the Government to impose a duty of excise on coal and coke when such coal and coke was despatched by rail from the collieries of the coke plants, and the duty was to be collected by the Railway Administration by means of a surcharge on freight either from the consignor or consignee. It was contended by the assessee that the excise duty could not legally be levied on the consignee who had nothing to do with the manufacture or production of coal. The Court remarked:

"The argument confuses the incidence of taxation with the machinery provided for the collection thereof," and reference was made to In re the Central Provinces and Berar Act 14 of 1938[AIR 1939 FC 1, 6 : 1939 FCR 18] , Province of Madras v. Boddu Paidanna and Sons [1942 FCR 90, 101 : AIR 1942 FC 33] and Governor-General in Council v. Province of Madras [1945 FCR 179 : AIR 1945 FC 98] . This Court then summarised the law as follows:

"... Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, its ultimate incidence will always be on the consumer. Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, that is, it is a duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience."
Other cases followed where the nature of excise duty was reaffirmed in the terms set out earlier, and reference may be made to In re Bill to Amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises And Salt Act, 1944 [AIR 1963 SC 1760 : (1964) 3 SCR 787] ; Union of India v. Delhi Cloth & General Mills [AIR 1963 SC 791 : 1963 Supp (1) SCR 586] ; Guruswamy & Co. v. State of

Mysore [AIR 1967 SC 1512 : (1967) 1 SCR 548] and South Bihar Sugar Mills Ltd. v. Union of India [AIR 1968 SC 922 : (1968) 3 SCR 21] .

17. A contention was raised for some of the assessees, that the measure was to be found by reading Section 3 with Section 4, thus drawing the ingredients of Section 3 into the exercise. We are unable to agree. We are concerned with Section 3(1), and we find nothing there which clothes the provision with a dual character, a charging provision as well as a provision defining the measure of the charge.

35. We have examined the principles of an excise levy and have considered the statutory construction of the Act, before and after its amendment, in view of the three propositions formulated, on behalf of the assessees, as principles constituting the essential characteristics of a duty of excise. It is apparent that the first proposition, that excise is a tax on the manufacture or production of goods, and not on anything else, is indisputable and is supported by a catena of cases beginning with The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 [AIR 1939 FC 1, 6 : 1939 FCR 18] . As regards the second proposition. that uniformity of incidence is a basic characteristic of excise, we are inclined to think that the accuracy of the proposition depends on the level at which the statute rests it. We shall discuss that presently. As to the third proposition, that the exclusion of post-manufacturing expenses and post-manufacturing profit is necessarily involved in the first principle does not inevitably follow. The exclusion of post-manufacturing expenses and post-manufacturing profits is a matter pertaining to the ascertainment of the "value" of the excisable article, and not to the nature of the excise duty, and as we have explained, the standard adopted by the Legislature for determining the "value" may possess a broader base than that on which the charging provision proceeds. The acceptance of the further statement contained in the formulation of the third proposition, that the exclusion of post-manufacturing expenses and post-manufacturing profits helps to achieve uniformity of incidence in the levy of excise duty, depends on what is the point at which such uniformity of incidence is contemplated. It is not necessarily involved at the stage of sale of the article by the manufacturer because we find, for example, that under the amended Section 3(3) of the Central Excises and Salt Act, different tariff values may be fixed not only (a) for different classes or descriptions of the same excisable goods, but also (b) for excisable goods of the same class or description (i) produced or manufactured by different classes of producers or manufacturers, or (ii) sold to different classes of buyers. That the "value" of excisable goods determined under the new Section 4(1)(a) may also vary according to certain circumstances is evident from the three clauses of the proviso to that clause. Clause (i) recognises that in the normal practice of wholesale trade the same class of goods may be sold by the assessee at different prices to different classes of buyers; in that event, each such price shall, subject to the other conditions of clause (a), be deemed to be the normal price of such goods in relation to each class of buyers. Clause (ii) provides that where the goods are sold in wholesale at a price fixed under any law or at a price being the maximum, fixed under any such law, then the price or the maximum price, as the case may be, so fixed, shall in relation to the goods be deemed

to be the normal price thereof. Under clause (i/i), where the goods are sold in the course of wholesale trade by the assessee to or through a related person, the normal price shall be the price at which the goods are sold by the related person in the course of wholesale trade at the time of removal to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail. The verity of the three principles propounded by learned counsel for the assessees has been, as indeed it had to be, examined in the context of the Act before and after its amendment. For the case of the assessees is that the amendment has made no material change in the basic scheme of the levy and the provisions for determining the value of the excisable article."

15. It was, thus, argued that the High Court had committed serious error in relying upon Section 66 of the Act (which is a charging section) while interpreting Section 67 of the Act, or for that matter, while examining the validity of Rule 5 of the Rules. The learned counsel also relied upon the dictionary meaning that is given to the word 'gross amount'. At the end, it was submitted that Section 67 which uses the term 'any amount' would include quantum as well as the nature of the amount and, therefore, cost for providing services was rightly included in Rule 5, which was not ultra vires Section 67 of the Act.

16. Mr. J.K. Mittal, Advocate, appeared for M/s. Intercontinental Consultants and Technocrats Pvt. Ltd. He argued with emphasis that the impugned judgment of the High Court was perfectly in tune with legal position and did not call for any interference. At the outset, he pointed out that the Parliament has again amended Section 67 of the Act by the Finance Act, 2015 w.e.f. May 14, 2015. By this amendment, explanation has been added which now lays down that consideration includes the reimbursement of expenditure or cost incurred by the service provider. Taking clue therefrom, he developed the argument that for the first time, w.e.f. May 14, 2015, reimbursement of expenditure or cost incurred by the service provider gets included under the expression 'consideration', which legal regime did not prevail prior to May 14, 2015. Therefore, for the period in question, the 'consideration' was having limited sphere, viz. It was only in respect of taxable services provided or to be provided. On that basis, submission was that for the period in question that is covered by these appeals, there could not be any service tax on reimbursed expenses as Section 67 of the Act did not provide for such an inclusion. Mr. Mittal also referred to para 2.4 of Circular/Instructions F. No. B-43/5/97-TRU dated June 6, 1997 wherein it is clarified that '...various other reimbursable expenses incurred are not to be included for computing the service tax".

17. Coming to the main arguments revolving around Sections 66 and 67, he submitted that the High Court was right in holding that as per Section 66 which was a charging section, service tax is to be charged only on the 'value of taxable services'. Likewise, Section 67 which deals with valuation of taxable service categorically mentions that it was only on the gross amount charged for providing 'such' a taxable service. Therefore, any amount collected which is not for providing such taxable service could not be brought within the tax net. Further, w.e.f. April 18, 2006, as per Explanation (c) to Section 67, "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of

payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of accounts of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise." Whereas prior to April 18, 2006, as per Explanation 3 to Section 67, - "For the removal of doubts, it is hereby declared that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service." Thus, levy on taxable services were not levied at once, but tax was levied at different point of time, tax was levied on difference person and also values in many taxable services was substantially exempted. He demonstrated it from the following table:

Sl.No.	Taxable Services	Sub-ckayse if 65 (105)	Date of levy	Tax Rate
1.	Consulting Engineer Service	(G)	7-7-1997	
2	Rent-a-Cab services by a person engage in business of renting of cabs	(o)	16-07-1997	
3	Transport of passenger by Air by an aircraft operator (a) International (b) Domestic	(zzzo)	1-5-2006 1-7-2010	
4	Renting of immovable Property	(zzzz)	1-7-2007	
5	Restaurant services	(zzzzy)	1-5-2011	
6	Accommodation services by Hotel	(zzzzw)	1-5-2011	
7	Telephone Services/ Telecommunication services by Telegraph Authority.	(b)(zzzx)	1-7-1994, 1-6-2007	

Notes :

* Service Tax was leviable only on 40% of value, 60% value was exempted.
** Service Tax was leviable only on 40% of value, 60% value was exempted, but prior to 01-04-2012, tax was only on 10% of value of tickets.
*** Service Tax was leviable only on 30% of value, 70% value was exempted.
**** Service Tax was leviable only on 50% of value, 50% value was exempted.

18. Following judgments were referred to and relied upon by Mr. Mittal for placating the aforesaid submissions:

(a) In the first instance, reference was made to the Constitution Bench judgment in the case of *Mathuram Agrawal v. State of Madhya Pradesh*[6] wherein this Court held:

"12. ... The statute should clearly and unambiguously
convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."
(b) The learned counsel also relied upon the following observations in case of Govind Saran Ganga Saran v. Commissioner of Sales Tax & Ors. :

"6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity."

19. The learned counsel reiterated that such an ambiguity in law is now cured by amendment to Section 67 only w.e.f. May 14, 2015.

20. We have duly considered the aforesaid submissions made by the learned counsel for the Department as well as the counsel for the assessees. As can be seen, these submissions are noted in respect of Civil Appeal No. 2013 of 2014 where the assessee is providing 'consulting engineering services'. In other appeals, though the nature of services is somewhat different, it doesn't alter the colour of legal issue, in any manner. In the course of providing those services, the assessees had incurred certain expenses which were reimbursed by the service recepient. These expenses were not included for the purpose of valuation, while paying the service tax. Thus, the question for determination which is posed in Civil Appeal No. 2013 of 2014, answer to that would govern the outcome of the other appeals as well. Still, for the sake of completeness, we may give a brief resume of all these cases.

"A. "Consulting Engineering Services" - Assessee were providing consulting services to M/s. NHAI for highway projects. They were paying Service Tax on remuneration only instead of the gross value charged from the client.

Sl. No.	Civil Appeal details	Facts	Reimbursable claimed as not includible
1.	2013/2014 UOI v.	Period: Oct'2002 – March' 2007 (prior to	Transportation, office rent, office supplies

	Intercontinental Consultants	coming into effect of impugned Rule 5 on 01.06.2007] Demand:Rs.3,55,80,38/- Assessee filed W.P. No. 6370/2008 directly against Show Cause Notice dated 17.03.2008 resulting in the impugned judgment	and utilities, testing charges, document printing charges, travelling, lodging, boarding etc. (post 19.04.2006) Transportation, office rent, office supplies, office furniture and equipment, reports and documents
	6090/2017 CST v. Intercontinental Consultants	Period: 2007-2008 [post coming into effect of impugned Rule 5 on 01.06.2007] Demand: Rs. 1,50,62,017/- Show Cause Notice dated 24.10.2008 was issued on the basis of the earlier SCN dated 17.03.2008 for the subsequent period. O-I-O dated 02.03.2010 covered both SCNs dated 17.03.2008 & 24.10.2008.	Transportation, office rent, office supplies & utilities, testing charges, document printing charges, travelling, lodging, boarding etc. [page 157]

B. Share Transfer Agency Service:

Sl.No.	Civil Appeal details	Facts	Reimbursable claimed as not includible
1	6866/2014 CST v. Through its Secretary	Period: 01.04.2008-31.03.2010 Demand:Rs.13,83,479	Reimbursable claimed as not includible expenses, stationery charges
2	3360/2015 CST v. Pinnacle Share Registry Pvt. Ltd.	Period: 01.05.2006-31.03.2008 Demand: Rs. 13,83,479	Reimbursement of Expenses, out of pocket expenses, Postage expenses

C. Custom House Agent covered by head "Clearing and Forwarding Agent" prior to 18.04.2006. Procedure of raising two sets of invoices for reimbursement of various expenses

and for service/agency charged separately started after introduction of Service Tax on CHA's (wef 15.06.1997) in view of Circular dated 06.09.1997. Invoice issued for services/agency charges alone is used for payment of Service Tax.

Sl.No.	Civil Appeal details	Facts	Reimbursable claimed as not includible
1.	295-299/2014 CST v. Asshita International	Period: 01.10.2003-31.03.2008 ([pre and post coming into effect of the impugned Rule 5] Demand: 4,66,607/- SCN dated 21.04.2009. O-I-A dated 30.11.2010 [pages 238-259] set aside demand prior to 18.04.2006 in view of circular dated 06.06.1997.	Customs Examination Chages, Misc. Expenses, Sundry expenses, strapping and re-strapping charges, documentation charges.
2	2021/2014 CST v. Sunder Balan	Period: Apr.08 to Aug'08 [post coming into effect of impugned rule 5 on 01.06.2007] Demand:Rs.2,26,659/- SCN dated 24.07.2009.	Customs Examination Charges, Misc. Expenses, Sundry expenses, strapping and re-strapping charges, documentation charges.
3	4340-4341/2014 CST v. Suraj Forwarders	Period: 01.04.2004 to 31.03.2008 Demand: Rs. 6,35,071/- as confirmed in the O-IO. The Commissioner(Appeals) set aside the demand on the reimbursable expenses received under the category "Clearing & Forwarding Agent" Service relation to 1.04.2004-17.04.2006 and confirmed the remaining demand.	Customs Examination Charges, Misc. Expenses, Sundry expenses, strapping and re-strapping charges, documentation charges.
4	8056/2015 CST v. Suraj Forwarders	Not Available	

	T.P.(C) No. 10431045/2017 UOI v. Sri Chidambaram & Ors.	A Transfer Petition for transferring W.P. Nos. 20832, 14521 and 20590 of 2016 pending before Hon'ble High Court at Madras. SCNs raised demands for Rs. 37.13 lacs and Rs. 53.30 lacs which were dropped by the OI-O. However on appeals the O-I-O was set aside, hence W.P's were filed.	CFS charges, steamer agent charges, delivery order charges, Airport/Customs charges [page 25-26/para C] Airline/steamer charges, storage and handling charges, packing charges, transport charges, fumigation charges, insurance survey charges, original certificate charges [pages 62-62] Charges paid to: Steamer agent, Custom Freight Station, Airport Authority of India and Transporters [page 106-107]
5	7688/2014 CST v. Shree Gayatri Clearing Agency	Period: 01.10.2003 to 31.03.2008 [pre and post coming into effect of impugned Rule 5 on 01.06.2007] Demand: Rs. 9,65,652/- SCN issued on 21.04.2009. O-I-A dated 31.07.2013 set aside demand for the period 18.04.2006-31.03.2008 in view of circular dated 06.06.1997.	Customs Examination Charges, Misc. Expenses, Sundry expenses, strapping and re-strapping charges, documentation charges.
6	7685/2014 Comm. of Customs v. Ramdas Pragji Forwarders Pvt. Ltd.	Period:2004-05 & 2007-08 The Adjudicating Authority held that no Service Tax was payable on reimbursable amount prior to 18.04.2006. the Circular dated 06.06.1997 lost its validity after introduction of Rule 5. Hence the ST was recoverable thereafter.	CMC charges, CONCOR, GSEC, Transportation charges, Air and sea freight, Custom Duty, Custom Cess, fumigation charges, bottom paper, wooden etc. handling charges, labour expenses, sundry charges, airport charges, documentation charges, photocopying charges etc. [page 181-182]
7	T.P.(C) 1932-1934/2017 CST v. Green	Period: April 2006-March 2009	Harbour/Airport Authority of India/CFS/CCTL and delivery order charges, harbour dues, seal

	Channel Cargo Care		verification, warehouse/godown charges.

D. Site Formation and clearance, excavation and earth moving and demolition services: Assessees conduct drilling, blasting, excavation, loading, transport etc. of overburdened at open cast Mines. Issue is whether value of Goods/material service u/s. 65(97a), is to be included in 'Gross Amount' u/s 67 of Finance Act for the purpose of S.T. The impugned orders follow the decisions in Bhayana Builder Intercontinental.

Sl.No.	Civil Appeal details	Facts	Reimbursable claimed as not includible
1.	6864/2014 CCE & ST v. S.V. Engineering	Period: 01.02.2005-31.03.2009 Demand: Rs. 74,14,396/- and Rs. 12,26,38,376/-	Value of Diesel and explosives supplied free of cost by service recipient.
2	6865/2014 CCE & ST v. S.V. Engineering	Period: 01.04.2009-31.03.2010 Demand: Rs. 87,63,595/-	Value of Diesel and explosives supplied free of cost by service recipient.
3	4356-4537/2016 CCE&ST v. S.V. Engineering		Value of diesel oil and explosives supplied free of cost by service recipient.
4	5130/2016 CCE & ST v. Sushree Infra	Demand of Rs. 18,85,88,959/- relating to period 01.06.2008 to 31.03.2012 SCN dated 01.10.2012 confirmed by O-I-O dated 04.05.2011	Value of explosives and diesel oil supplied free of cost by service recipient.
5	4975/2016 CCE & ST v. Gulf Oil	Period: October 2008 to November 2008 Demand: Rs. 50,54,746/-	Value of explosives and diesel oil supplied free of cost by service recipient.
6	5453/2016 CCE & ST v. AMR India	Period: Mar'08 to Mar' 2012 Demand: Rs.57,74,30,683/-	Value of explosives and diesel oil supplied free of cost
7	10223-10224/2017 CCE & ST v. Mehrotra Buildcon	Period: Apr'09 to Jan'10 & February 2010 to September 2010 Demand:Rs.21,48,835/- + Rs. 18,06,655/-	Value of diesel oil supplied free of cost
8	5444/2017	Not available	Value of diesel oil

	CCE & ST v. Mehrotra Buildcon		supplied free of cost

E.

Sl.No.	Civil Appeal details	Facts	Reimbursable claimed as not includible
1.	10626-10627/2017	Period:Apr'04 to Mar'06 [prior to coming into effect of impugned Rule 5 on 01.06.2007] Demand:Rs.24,70,790/- SCN dated 22.10.2008 Non-payment of Service Tax on the amount received as reimbursement by way of debit notes in addition to amount charged through invoices for providing 'Event Management Service', Section 65(40) and Section 65(90)(zu) [page 83]	Hiring of venue, merchandise, artists, travel, courier, food and beverages, administrative expenses, [page 76 @78]

21. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessees. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.

22. Section 66 of the Act is the charging Section which reads as under:

> "there shall be levy of tax (hereinafter referred to as the service tax) @ 12% of the value of taxable services referred to in sub-clauses of Section 65 and collected in such manner as may be prescribed."

23. Obviously, this Section refers to service tax, i.e., in respect of those services which are taxable and specifically referred to in various sub-clauses of Section 65. Further, it also specifically mentions that the service tax will be @ 12% of the 'value of taxable services'. Thus, service tax is reference to the value of service. As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 01, 2006) or after its amendment, with effect from, May 01, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 01, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub¬section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider.

26. It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad, this rule was enunciated in the following manner:

> "Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye- law, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision ahs precedence and must be complied with."

27. The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act.

28. It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in Taj Mahal Hotel: 'the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."

29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by

the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the learned counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of *Commissioner of Income Tax (Central)-/, New Delhi v. Vatika Township Private Limited*[8] wherein it was observed as under:

> "27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.
>
> 28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.
>
> 29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available

on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

30. As a result, we do not find any merit in any of those appeals which are accordingly dismissed.

CIVIL APPEAL NO. 6865 OF 2014, CIVIL APPEAL NO. 6864 OF 2014, CIVIL APPEAL NO. 4975 OF 2016, CIVIL APPEAL NO. 5130 OF 2016 AND CIVIL APPEAL NOS. 4536-4537 OF 2016

31. In the aforesaid appeals, the issue is as to whether the value of free supplies of diesel and explosives in respect of the service of 'Site Formation and Clearance Service' can be included for the purpose of assessment to service tax under Section 67 of the Act. These assessees had not availed the benefit of aforesaid Notifications Nos. 15/2004 and 4/2005. Therefore, the issue has to be adjudged simply by referring to Section 67 of the Act. We have already held above that the value of such material which is supplied free by the service recipient cannot be treated as 'gross amount charged' and that is not the 'consideration' for rendering the services. Therefore, value of free supplies of diesel and explosives would not warrant inclusion while arriving at the gross amount charged on its service tax is to be paid. Therefore, all these appeals are also dismissed.

TRANSFER PETITION (CIVIL) NOS. 1043-1045 OF 2017
TRANSFER PETITION (CIVIL) NOS. 1932-1934 OF 2017

32. These transfer petitions are allowed and the writ petitions mentioned in the prayer clause, which are pending before the High Court of Madras, are transferred to this Court.

33. The transferred writs are also disposed of in terms of the judgment rendered above in Civil Appeal No. 2013 of 2014 and other connected matters.

Judgment Referred.

[1]*(1970) 77 ITR 0107*
[2]*(1960) 1 SCR 0200*
[3]*(1961) 3 WLR 0788 (QB)*
[4]*(2018) 1 SCC 0311*
[5]*(1984) 1 SCC 0467*
[6]*(1999) 8 SCC 0667*
[7]*(1985) Suppl. SCC 0205*
[8]*(2015) 1 SCC 0001*