

**(2015) 04 BOM CK 0094**

**In the Bombay High Court**

**Case No : Central Excise Appeal (Lodging) No. 20 of 2015**

Greatship (India) Ltd.

APPELLANT

Vs

Commissioner of Service Tax and Others

RESPONDENT

**Date of Decision : 28-04-2015**

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29(2)  
Civil Procedure Code, 1908 (CPC) — Section 115  
Electricity Act, 2003 — Section 14, 20  
Finance Act, 1994 — Section 20(1), 64(1), 65(105)(zzzzj), 66, 75  
General Clauses Act, 1897 — Section 6  
Gift Tax Act, 1958 — Section 2(xii)  
Income Tax Act, 1961 — Section 113, 119, 17, 171(6), 2(24)  
Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 — Section 3, 6, 7  
Wealth Tax Act, 1957 — Section 2(m)

**Citation : (2015) 39 STR 754 : (2015) 82 VST 1**

**Hon'ble Judges : B.R. Gavai, J;A.S. Gadkari, J**

**Bench : Division Bench**

**Advocate : N. Sridharan, Senior Counsel a/w Prakash Shah, Asish Phillips, Jas Sanghvi and Nyoti Hakani i/b. PDS Legal, for the Appellant; Pradeep S. Jetly a/w Suchitra Kamble, Advocates for the Respondent**

## **Judgement**

B.R. Gavai, J.—An interesting question as to whether the Notification No. 14/2010-ST dated 27.2.2010 is clarificatory/declaratory in nature or as to whether it brings about substantive change in law arises for consideration in the present Appeal. The question to be decided in the present Appeal revolves around the interpretation of Notification No. 1/2002 -Service Tax dated 1.3.2002, as amended by Notification No. 21/2009-ST dated 7.7.2009 and the Notification No. 14/2010-ST dated 27.2.2010.

2. The facts which are not in much dispute are as under:-

(a) The appellant had entered into two contracts with M/s. Oil and Natural Gas Corporation Limited (ONGC) for supply of Cantilever type jack-up rigs named,

Greatdrill Chetna and Greatdrill Chitra. They were required to provide offshore drilling services to ONGC in terms of the contract dated 27.2.2009 and 8.5.2009. These rigs were hired by the appellant from M/s. Greatship Global Energy Services Pte. Ltd., Singapore, on bareboat charter basis. As per the contract, the appellant was required to provide the drilling rig, equipment and crew for drilling operations as specified by ONGC in the Continental Shelf and Exclusive Economic Zone of India. These drilling activities were undertaken in open locations. Though it appears that the appellant in the original proceedings as well as before the learned Tribunal had raised an issue regarding classification of services, however, in the present appeal, the appellant has also not disputed that the services in question are covered by "Supply of Tangible Goods for use" as has been defined under Section 65(105)(zzzzj) of Chapter V of the Finance Act, 1994 (hereinafter referred to as "the said Act"). It is also not in dispute that the appellant has discharged the service tax liability in respect of services rendered by it to the installations, structures and vessels in the continental shelf of India and exclusive economic zone of India for the period between 7.7.2009 and 27.2.2010. The only dispute is as to whether during the aforesaid period, the appellant was also liable to pay the service tax on the services rendered by these vessels for the purpose of prospecting mineral oil and as such for the services consumed by continental shelf of India or exclusive economic zone of India. The recipient of the service, ONGC, had also informed the appellant about the non-applicability of service tax on drilling work undertaken in open locations except the service provided to installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone of India for the period between 7.7.2009 to 27.2.2010.

(b) It came to the notice of the Respondent No. 1 that the noticee was discharging applicable service tax in terms of Section 66 of the Finance Act, 1994 on services received by installation, structure, vessel only in the Exclusive Economic Zone of India, but was not discharging applicable service tax on the services consumed by the sea bed of the Continental Shelf of India and as such a show cause notice came to be issued to the appellant in the month of October 2010, calling upon them to show cause as to why service tax amounting to Rs. 27,24,52,804/- should not be recovered from it along with interest under Section 75 and penalty under Sections 76 and 78 of the said Act. The appellant replied to the said show cause notice. Various contentions were raised by the appellant. However, in view of the questions of law raised on which the appeal was admitted, the only relevant contention would be that, the Notification dated 1.3.2002 as amended on 7.7.2009, made applicable the provisions of the Service Tax only to the installations, structures and vessels in the Continental Shelf of India and the Economic zone of India and that the service tax provisions were not made applicable to services consumed by Continental Shelf of India. It was contended that for the first time, the provisions of the service tax have been made applicable to the areas specified in column 2 of the Table of the Notification dated 27.2.2010 in the Continental Shelf and Exclusive Economic Zone of India, for the purposes mentioned in column 3 of the Table. It was contended that the

service provided by the appellant and which were consumed in the Continental Shelf of India and Exclusive Economic Zone of India have been brought in the tax net for the first time on 27.2.2010 and that thereafter the appellant was discharging the service tax liability in respect of the services rendered on that count. However, the Respondent no. 1 rejected the contentions raised on behalf of the appellant by holding that the services were already covered by the Notification of 2002 as amended on 7.7.2009 and that the Notification dated 27.2.2010 was only a clarificatory in nature and as such confirmed the demand vide order dated 19.6.2004. Being aggrieved thereby, an appeal was carried out to the learned CESTAT. The same is also dismissed vide order dated 29.9.2004, Being aggrieved thereby, the present appeal has been filed by the appellant. The appeal came to be admitted by this Court on the following substantial questions of law:-

"(a) Whether in the facts and circumstances of the case, the Appellate Tribunal was correct in law in holding that the transactions involved in the present case falls under Notification No. 21/2009-ST dated 7.7.2009 (as it stood prior to amendment by Notification No. 14/2010-ST dated 27.2.1010) issued under clause (a) of sub-section (6) of section 6, and clause (a) of sub-section (7) of section 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), read with section 64(1) of Finance Act, 1994?

(b) Whether in the facts and circumstances of the case, the Appellate Tribunal erred in law in upholding the tax demand against Appellant where the vessels in question were not used entirely in India?

(c) Whether in the facts and circumstances of the case, the Appellate Tribunal erred in law in holding that the activity undertaken by the Appellant under contracts entered into prior to 7.7.2009 is taxable?"

3. Heard Shri Sridharan, learned Senior Counsel appearing on behalf of the appellant. The learned Counsel submits that upon a plain reading of the amended Notification dated 7.7.2009, it is clear that the said Notification only makes the provisions of service tax applicable to the installations, structures and vessels in the Continental Shelf of India and the Exclusive Economic Zone of India. The learned counsel submits that since the services which are subject matter of the present appeal were not the services rendered by the appellant to the installations, structures and vessels, in the Continental Shelf of India and Exclusive Economic Zone of India and as such did not come in the tax net vide the Notification of 2002 as amended in 2009. The learned counsel further submits that the plain reading of the Notification dated 27.2.22010 would clearly show that, for the first time, the provisions of Service Tax were extended to the areas specified in column 3 of the Table of the said Notification in the Continental Shelf and Exclusive Economic Zone of India for the purposes mentioned in the column of the said Table. He submits that the services rendered were for the purpose of prospecting mineral oil in the Continental Shelf and Exclusive

Economic Zone of India. The service tax liability accrued to the appellant only from 27.2.2010 and from that date, the appellant has discharged the liability towards the Service Tax.

4. As against this, Shri Jetly, the learned Counsel appearing for the Revenue submits that the Notification as amended on 27.7.2009, itself is clear. He submits that the said Notification squarely covers installations, structures and vessels. He submits that since what has been done by the appellant is providing services of rigs. He submits that rigs would be squarely covered by the term "vessel" and as such, the appellant would clearly come in the tax net on 7.7.2009. The learned counsel submits that the Notification dated 27.2.2010 is, at the most, declaratory and explanatory so as to clear the doubts which were there in the Notification of 2002 which was amended on 7.7.2009. The learned counsel, therefore, submits that if the notification is clarificatory or explanatory in nature, the same will have to be given retrospective effect. The learned counsel, therefore, submits that the appeal is without merit and as such deserves to be dismissed.

5. With the assistance of the learned counsel for the parties, we have scrutinized the material on record.

6. The purpose and scope of territorial waters, Continental Shelf, Exclusive Economic Zone and other Maritime Act, 1976 (for short Maritime Zones Act) fell for consideration before the apex Court in the case of Aban Loyd Chiles Offshore Ltd. and Another Vs. Union of India (UOI) and Others, (2008) 128 ECC 213 : (2008) 154 ECR 213 : (2008) 227 ELT 24 : (2008) 5 JT 256 : (2008) 6 SCALE 128 : (2008) 11 SCC 439 . The question that arose for consideration was as to whether the territorial jurisdiction of India extends to the areas in the Continental Shelf and Economic Zone of India and as to whether mineral oil extracted from these areas can be treated as import liable to customs duty and as to whether goods supplied to these zones can be treated as export liable to duty. Considering the entire provisions of the said Act, the Apex Court observed thus:-

"68. A combined reading of Sections 3, 6 and 7 of the Maritime Zones Act, 1976 shows that territorial waters, the seabed and subsoil underlying therein and the air space over such territorial waters form part of the territory of India. Sovereignty of India extends over the territorial waters but the position is different in the case of continental shelf and exclusive economic zone of India. The continental shelf of India comprises of the seabed beyond the territorial waters to a distance of 200 nautical miles. The exclusive economic zone represents the sea or waters over that continental shelf. From the reading of Sections 6 and 7 of the Maritime Zones Act, 1976, it is clear that in respect of the continental shelf and exclusive economic zone, India has been given only certain limited sovereign rights and such limited sovereign rights conferred on India in respect of continental and exclusive economic zone cannot be equated to extending the sovereignty of India over the continental shelf and exclusive economic zone as in the case of territorial waters. Sub-section (6) of section 6

and sub-section (7) of Section 7 of the Maritime Zones Act, 1976 empower the Central Government by notification to extend any enactment in force in India with such restrictions and modifications which it thinks fit to the continental shelf and the exclusive economic zone and further provides that an enactment so extended shall have effect as if the continental shelf or the exclusive economic zone to which the enactment has been extended is a part of the territory of India. Thus, sub-section (6) of Section 6 and sub-section (7) of Section 7 create a fiction by which the continental shelf and the exclusive economic zone deemed to be a part of India for the purposes of such enactments which are extended to those areas by the Central Government by issuing a notification".

It has been held that sovereignty of India extends over the territorial waters and the seabed and subsoil underlying therein, the air space over such territorial waters, form part of the territory of India. It has been held that however, the position is different in the case of continental shelf and exclusive economic zone of India. The continental shelf of India comprises of the seabed beyond the territorial waters to a distance of 200 nautical miles. The exclusive economic zone represents the sea or waters over the continental shelf. Upon interpreting the provisions of Sections 6 and 7 of the Maritime Zones Act, Their Lordships observed that it is clear that in respect of continental shelf and exclusive economic zone, India has been given only certain limited sovereign rights and as such limited sovereign rights conferred on India in respect of continental and exclusive economic zone cannot be equated to extending the sovereignty of India over the continental shelf and exclusive economic zone, as in the case of territorial waters. It was held that sub-section (6) of Section 6 and sub-section (7) of Section 7 of the Maritime Zones Act, empower the Central Government to issue a notification so as to extend applicability of any enactment in force in India with such restrictions and modifications which it thinks fit to the continental shelf and the exclusive economic zone and further provides that an enactment so extended shall have effect as if the continental shelf or the exclusive economic zone to which the enactment has been extended is a part of the territory of India. It was held that sub-section (6) of Section 6 and sub-section (7) of Section 7 create a fiction by which the continental shelf and the exclusive economic zone are deemed to be a part of India for the purposes of such enactments, which are extended to those areas by the Central Government by issuing a notification. Having held thus, the Apex Court found that the mineral oil extracted and got to mainland from the areas in the continental shelf or exclusive economic zone, to which the Customs Act and Customs Tariff Act have been extended, by issuance of Notification under Sections 6 and 7 cannot be construed to be an import liable to Customs Duty and the goods supplied to these zones cannot be treated as export liable to duty. It was however held that the minerals in these zones are liable to excise duty.

7. It can thus clearly be seen that the Apex Court while construing the provisions of Maritime Zones Act has held that insofar as the territorial waters are concerned, the seabed and subsoil underlying therein and the air space over

such territorial waters form part of the territory of India and the Sovereignty of India extends over the territorial waters. However, it has been held that insofar as continental shelf and exclusive economic zones are concerned if a notification as provided under sub-section (6) of Section 6 and sub-section (7) of Section of the Maritime Zones Act is issued in respect of any area, by a fiction of statute such area in the continental shelf and the exclusive economic zone of India, are deemed to be a part of India for the purpose of such enactments which are extended to those areas by the Central Government by issuing a notification. It can thus be seen that for making an enactment applicable to the area in continental shelf and the exclusive economic zone of India, it is necessary that notification as required under sub-section (6) of Section 6 and sub-section (7) of Section is required to be issued by the Central Government.

8. In this background, we will have to consider the Notification No. 1/2002-Service Tax dated 1.3.2002, the Notification No. 21/2009-ST dated 7.7.2009 and the Notification No. 14/2010 Service Tax dated 27.2.2010. The same are reproduced hereinbelow:-

Notification No. 1/2002-Service Tax dated 1.3.2002 (hereinafter referred to as the 2002 Notification).

"In exercise of the powers conferred by clause (a) of subsection (6) of section 6, and clause (a) of sub-section (7) of section 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby extends the provisions Chapter V of the Finance Act (32 of 1994) to the designated areas in the Continental Shelf and Exclusive Economic zone of India as declared by the Notifications of the government of India in the Ministry of External Affairs Nos. S.O. 429(E) dated the 18th July 1986 and S.O. 643(E), dated the 19th September, 1996 with immediate effect."

Notification No. 21/2009-S.T. Dated 07-Jul-2009 reads thus:

"In exercise of the powers conferred by clause (a) of the sub-section (6) of section 6 and clause (a) of sub-section (7) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby makes the following amendments in the Government of India in the Ministry of Finance (Department of Revenue) Notification No. 1/2002-Service Tax dated the 1st March, 2002, published in the Gazette of India Extraordinary, vide number G.S.R. 153(E), dated the 1st March 2002, namely:-

In the said notification, for the portion beginning with the words "designated areas in the Continental Shelf" and ending with the words "with immediate effect", the words "installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India" shall be substituted".

Notification No. 1/2002 Service Tax after its amendment by Notification of 21 of

2009 dated 7/7/2009 (hereinafter referred to as the 2009 Notification), reads thus:

"Service Tax provision extended to designated area in the continental shelf and exclusive economic zone. In exercise of the powers conferred by clause (a) of the sub-section (6) of section 6, and clause (a) of sub-section (7) of section 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby extends the provisions Chapter V of the Finance Act (32 of 1994) to the [installations, structures and vessels in the continental shelf of India and the exclusive Economic Zone of India]"

The notification dated 27/2/2010 (hereinafter referred to as the 2010 Notification) reads thus:

"In exercise of the powers conferred by clause (a) of the section (6) of section 6, and clause (a) of sub-section (7) of section 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No.1/2002-Service Tax , dated the 1st March, 2002, published in the Gazette of India, Extraordinary, vide number G.S.R. 153(E), dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby extends the provisions of Chapter V of the Finance Act, 1994 (32 of 1994), to the areas specified in column (2) of the Table below, in the continental shelf and exclusive economic zone of India for the purposes as mentioned in column (3 of the said Table:-

9. It can thus be seen from the Notification No. 1/2002-Service Tax , that by exercising the powers conferred by clause (a) of sub-section (6) of Section 6 and clause (a) of sub-section (7) of section 7 of the Territorial waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, the Central Government extended the provisions of Chapter V of the Finance Act to the designated area in the Continental Shelf and Exclusive Economic Zone of India as declared by the Notifications of the Government of India in the Ministry of External Affairs dated 18th July, 1986 and 19th September, 1996 with immediate effect. It is for the first time on 1.3.2002, the provisions of service tax were made applicable to the continental and exclusive economic zone of India. However, the said provisions were made applicable only to such of the areas which were only designated areas as declared by the notification by the Government of India, in the Ministry of External Affairs dated 18.7.1986 and 19.9.1996.

10. Vide the Notification No. 21/2009-ST dated 7.7.2009, the notification No. 1/2002 came to be amended. Portion beginning with the words "designated areas in the Continental Shelf" and ending with the words "with immediate effect" from the 2002 Notification was deleted and substituted with the words

"installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India. It would thus be seen that though the 2002 Notification made applicable the provisions of service tax only to the designated areas as declared by the Notification of the Government of India on 18.7.1986 and 19.9.1996, by way of amendment, the restriction regarding the designated areas was removed and the provisions of service tax were made applicable to the entire continental shelf and exclusive economic zone of India. However, vide the said notification the services which are brought into the tax net were services to the installations, structures and vessels in the continental shelf of India and Exclusive Economic Zone of India.

11. By a Notification No. 14/2010 Service Tax dated 27.2.2010, in supersession of the Notification No. 1/2002-Service Tax dated 1.3.2002 the Central Government extended the provisions of Chapter V of the Finance Act, 1994 to the areas specified in column (2) of the Table, in the continental shelf and exclusive economic zone of India for the purposes as mentioned in column (3) of the said Table. The Table would show that to the whole of areas in the continental shelf and exclusive economic zone of India any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof were brought into service tax net. Similarly, in case of installations, structures and vessels within the continental shelf and exclusive economic zone of India constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity was brought into service net. It would thus be seen that by the 2010 notification, the tax net was widened to a great extent so as to bring within the tax net any services provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof. Similarly, any services provided or to be provided by or to the installations, structures and vessels constructed for the purpose of prospecting or extraction or production of mineral oil and natural gas and for supply of goods connected with the said activity was also brought under the tax net

12. In this background, we propose to consider the question as to whether the 2010 Notification could be said to be declaratory, clarificatory or explanatory in nature and as such can be made applicable retrospectively or as to whether it bring the substantive change in law and cannot be made retrospectively applicable.

13. Their Lordships of the Apex Court in the case of Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., AIR 1997 SC 2523 : (1997) 141 CTR 67 : (1997) 226 ITR 625 : (1997) 5 JT 529 : (1997) 4 SCALE 271 : (1997) 5 SCC 482 : (1997) 1 SCR 394 Supp : (1997) 92 TAXMAN 541 : (1997) AIRSCW 2466 : (1997) 5 Supreme 259 , had an occasion to consider as

to whether the amendment to Section 27 of the Income Tax Act was declaratory or clarificatory in nature or not. Prior to said amendment being brought on Statute Book, there was a divergence of opinion amongst various High Courts, regarding the meaning to be given to the definition of "owner of house property". Some of the High Courts had taken a view that the "owner of house property" would only be such person who has become owner by means of a registered instrument. However, some of the High Courts had taken a view that the definition of "owner of the house property" would also cover such persons who are entitled to enjoy benefits and income from the property in any manner they like. In para 46, Their Lordships have made a reference to a Judgment of the Delhi High Court, in *Sushil Ansal v. CIT*, wherein a suggestion was given to the Central Board for considering various practical aspects and formulating guidelines which would be equitable to the various classes of persons. It will be relevant to refer to the following observations of the Apex Court:-

"47. May be this is one of the reasons for the Parliament to bring in the amendment referred to above to Section 27 of the Act. At any rate the admitted position when the amendment was brought in, was that there was divergence of opinion between the High Courts on the issue at hand.

48. In the Memorandum explaining provisions in Finance Bill 1987 concerning Section 27 reads as follows:

#### SIMPLIFICATION AND RATIONALISATION OF PROVISIONS

Enlarging the meaning of "owner of house property""

27. Under the existing provisions of section 22 of the Income Tax Act, any income from house property is chargeable to tax only in the hands of the legal owner. As per section 27 of the Income Tax Act, certain persons who are not otherwise legal owners are deemed to be the owners for the purposes of these provisions. Under the Transfer of Property Act, the transfer of ownership can be effected only by means of a registered instrument. However, in the recent times various other devices are sought to be employed for transferring one's ownership in property. As a result, there are situations in which the actual owner, say, of an apartment in a multi-storeyed building, or a holder of a power of attorney is not the legal owner of a property. In some cases, pending resolution of disputes, the legal as well as the beneficial owners are assessed to tax in respect of the same income.

As a measure of rationalisation, the Bill seeks to enlarge further the meaning of the expression "owner of house property", given in clause (iii) of section 27 by providing that a person who comes to have control over the property by virtue of such transactions as are referred to in clause (f) of section 269UA will also be deemed to be the owner of the property. The amendment also seeks to enlarge the applicability of this clause to a member of company or other association of persons. Corresponding amendments have also been proposed in regard to the definition of "transfer" in section 2(47) of the Income Tax Act, section 2(m) of

the Wealth Tax Act defining "net wealth" and section 2(xii) of the Gift Tax Act defining "gift". These amendments will take effect from 1st April, 1988, and will, accordingly, apply in relation to the assessment year 1988-89 and subsequent years."

If this much is clear, the next thing to be considered is what is the effect of the amendment.

49. In Crawford's Statutory Construction, at page 107 paragraph 74 reads as follows:

"74. Declaratory Statutes.-Generally speaking, declaratory statutes can be divided into two clauses: (1) those declaratory of the common law, and (2) Those declaring the meaning of an existing statute. Obviously, those declaratory of the common law should be construed according to the common law. Those of the second class are to be construed as intended to lay down a rule for future cases, and to act retrospectively. They closely resemble interpretation clauses, and their paramount purpose is to remove doubt as to the meaning of existing law, or to correct a construction considered erroneous by the legislature."

(Emphasis supplied)

50. In Francis Bennion Statutory Interpretation, (second edition) 1992, page 105, the learned author says "Declaratory Acts-A declaratory Act or enactment declares what the law is on a particular point, often "for the avoidance of doubt".

51. In Justice G.P. Singh's (Sixth Edition 1996) "Principles of Statutory Interpretation" under the heading "declaratory statutes", the learned author has summed up as follows:

"Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted". But the use of the words "it is declared" is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law

retrospective operation is generally intended. The language "shall be deemed always to have meant" is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law."

52. The above summing up is factually based on the judgments of this Court as well as English decisions.

53. A Constitution Bench of this Court in *Keshavlal Jethalal Shah Vs. Mohanlal Bhagwandas and Another*, AIR 1968 SC 1336 : (1968) 3 SCR 623 , while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House

Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows:

"The amending clause does not seek to explain any preexisting legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from s. 115, Code of Civil Procedure, and the legislature has by the amending Act attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act."

(Emphasis supplied)

54. From the circumstances narrated above and from the Memorandum explaining the Finance Bill, 1987 (*supra*), it is crystal clear that the amendment was intended to supply an obvious omission or to clear up doubts as to the meaning of the word "owner" in Section 22 of the Act. We do not think that in the light of the clear exposition of the position of a declaratory/clarificatory Act it is necessary to multiply the authorities on this point. We have, therefore, no hesitation to hold that the amendment introduced by the Finance Bill, 1988 was declaratory/clarificatory in nature so far as it relates to Section 27(iii), (iiia) and (iiib). Consequently, these provisions are retrospective in operation. If so, the view taken by the High Courts of Patna, Rajasthan, and Calcutta, as noticed above, gets added support and consequently the contrary view taken by the Delhi, Bombay and Andhra Pradesh High Courts is not good law."

The Apex Court in the background of various divergent opinions taken by various High Courts with regard to the definition of "owner of house property" as provided in Section 22 of the Act and taking into consideration the Memorandum explaining the Finance Bill 1987 came to the conclusion that the amendment was to clear the doubts as to the meaning of the word "owner" in Section 22 of the

Act and as such held that the amendment was declaratory/clarificatory in nature and therefore having retrospective operation.

14. The Apex Court again had an occasion to consider the amendment to Section 9(1)(ii) of the Income Tax Act in the case of *Sedco Forex International Drill. Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another*, AIR 2006 SC 428 : (2005) 199 CTR 320 : (2005) 279 ITR 310 : (2005) 5 JT 639 : (2005) 12 SCC 717 : (2005) AIRSCW 6082 : (2005) AIRSCW 2939 : (2005) 8 Supreme 174 : (2005) 5 Supreme 775 . In the said case, the appellant who was a foreign company, had entered into a wet lease with Oil Natural Gas Commission under which the appellant had agreed to supply oil rigs and the employees to man the rigs to enable ONGC to carry on offshore drilling in the territorial waters of this country. The appellant had entered into agreements (executed in U.K.) with its employees who were residents of U.K. As per the schedule of work as specified in the agreement it was provided that for 35 days" or 28 days" work in a foreign location (in the said case, India) it would be followed by 35 days" or 28 days" "field break" in U.K. The issue that arose for consideration before the Apex Court was as to whether the salaries of the employees of the appellant payable for field breaks outside India could be subjected to tax under Section 9(1)(ii) read with the Explanation thereto, in the Income Tax Act for the assessment years, prior to the amendment of the said provision by virtue of which explanation to the said provision was added in the year 1999. In this background, the Apex Court observed thus:-

12. In this state of the law, on 27th February, 1999 the Finance Bill, 1999 substituted the Explanation to Section 9(1)(ii) (or what has been referred to by us as the 1999 Explanation). Section 5 of the Bill expressly stated that with effect from 1st April, 2000, the substituted Explanation would read:

"Explanation# For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for#

(a) service rendered in India; and

(b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment, shall be regarded as income earned in India."

The Finance Act 1999 which followed the Bill incorporated the substituted Explanation to Section (9)(1)(ii) without any change.

13. The Explanation as introduced in 1983 was construed by the Kerala High Court in *COMMISSIONER OF Income Tax Vs. 1. S. R. PATTON. (I. T. R. NO. 173 OF 1985) 2. H. BALLENGER AND OTHERS. (I. T. RS. NOS. 52 TO 55 OF 1985),* (1992) 92 CTR 197 : (1992) 193 ITR 49 : (1992) 65 TAXMAN 472 , while following the Gujarat High Court's decision in *S.G. Pgnatale (supra)*, to hold that the Explanation was not declaratory but widened the scope of Section 9(1)(ii). It was further held that even if it were assumed to be clarificatory or that it

removed whatever ambiguity there was in Section 9(1)(ii) of the Act, it did not operate in respect of periods which were prior to 1.4.1979. It was held that since the Explanation came into force from 1.4.1979, it could not be relied on for any purpose for an anterior period.

14. In the appeal preferred from the decision by the Revenue before this Court, the Revenue did not question this reading of the Explanation by the Kerala High Court, but restricted itself to a question of fact viz., whether the Tribunal had correctly found that the salary of the assessee was paid by a foreign company. This Court dismissed the appeal holding it was a question of fact.

[ Commissioner of Income Tax Vs. S.R. Patton, (1999) 151 CTR 235 : (1998) 233 ITR 166 : (1998) 8 SCC 608 .

15. Given this legislative history of Section 9(1)(ii), we can only assume that it was deliberately introduced with effect from 1.4.2000 and therefore intended to apply prospectively. It was also understood as such by the CBDT which issued Circular No. 779 dated 14th September, 1999 containing explanatory notes on the provisions of the Finance Act, 1999 in so far as it related to direct taxes. It said in paragraphs 5.2 and 5.3.5.2 The Act has expanded the existing Explanation which states that salary paid for services rendered in India shall be regarded as income earned in India, so as to specifically provide that any salary payable for rest period or leave period which is both preceded and succeeded by service in India and forms part of the service contract of employment will also be regarded as income earned in India.

5.3 This amendment will take effect from 1st April, 2000, and will accordingly, apply in relation to the assessment year 2000-2001 and subsequent years".

16. The departmental understanding of the effect of the 1999 amendment even if it were assumed not to bind the respondents under Section 119 of the Act, nevertheless affords a reasonable construction of it, and there is no reason why we should not adopt it.

17. As was affirmed by this Court in *Goslino Mario* (supra), a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. [See also: *Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal*, AIR 1980 SC 251 : (1979) 13 CTR 186 : (1979) 120 ITR 921 : (1980) 1 SCC 139 : (1980) 1 SCR 906 : (1980) 12 UJ 255 . An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force. But if it changes the law it is not presumed to be retrospective irrespective of the fact that the phrase used are "it is declared" or "for the removal of doubts".

18. There was and is no ambiguity in the main provision of Section 9(1)(ii). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word "earned" had been judicially defined in *S.G. Pgnatale* (supra) by the High Court of Gujarat, in our view, correctly, to mean as income "arising or accruing in India". The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, "income payable for service rendered in India".

19. When the Explanation seeks to give an artificial meaning "earned in India" and bring about a change effectively in the existing law and in addition is stated to come into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively".

Considering the law on the issue, the Apex Court held that a cardinal principle of tax law is that, the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. An explanation to a statutory provision may fulfill the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force. It has however been held that when such a provision changes the law, it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts." The Apex Court held that there was no ambiguity in the main provision of Section 9(1)(ii). It only provides for taxing income of an assessee if the assessee had earned it in India. It has been held that the expression seeks to give an artificial meaning to the term "earned in India" thereby bringing the income earned for the rest period or leave period which has preceded and succeeded by the service rendered in India, also under the tax net and as such brings about a change effectively in the existing law. In addition is stated to come into force with effect from a future date and as such, the Explanation could not be read to operate retrospectively.

15. In the case of *Commnr. of Income Tax-I, Ahmedabad Vs. Gold Coin Health Food Pvt. Ltd.*, (2008) 218 CTR 359 : (2008) 304 ITR 308 : (2008) 9 JT 312 : (2008) 11 SCALE 492 : (2008) 9 SCC 622 : (2008) 172 TAXMAN 386 : (2008) 2 UJ 1144 , the Apex Court had occasion to consider as to whether the Explanation 4 to Section 271(1)(c) of the Act was clarificatory or substantive. The Apex Court found that the provisions of Section 271(1)(c) was to penalize the assessee for concealing particulars of the income and/or furnishing inaccurate particulars of such income. It was therefore contended that whether income returned was a profit or loss was really of no consequence. By Explanation 4 it was sought to be clarified that the penalty specified in the said section can be levied even if no tax is payable on the total income assessed. In this background, it will be appropriate to refer to the following observations of the Apex Court:-

6. "It would be of some relevance to take note of what this Court said in Virtual's case (supra). Pointing out one of the important tests at para 51 it was observed that even if the statute does contain a statement to the effect that the 6 amendment is classificatory or declaratory, that is not the end of the matter. The Court has to analyse the nature of the amendment to come to a conclusion whether it is in reality a classificatory or declaratory provision. Therefore, the date from which the amendment is made operative does not conclusively decide the question. The Court has to examine the scheme of the statute prior to the amendment and subsequent to the amendment to determine whether amendment is clarificatory or substantive.

7. In *Reliance Jute and Industries Ltd. Vs. Commissioner of Income Tax, West Bengal*, AIR 1980 SC 251 : (1979) 13 CTR 186 : (1979) 120 ITR 921 : (1980) 1 SCC 139 : (1980) 1 SCR 906 : (1980) 12 UJ 255 it was observed by this Court that the law to be applied in income tax assessments is the law in force in the assessment year unless otherwise provided expressly or by necessary implication. Before proceeding further, it will be necessary to focus on the definition of the expression "income" in the statute. Section 2(24) defines "income" which is an inclusive definition, and includes losses i.e. negative profit. The position has been elaborately dealt with by this Court in *Commissioner of Income Tax (Central), Delhi Vs. Harprasad and Co. P. Ltd.*, AIR 1975 SC 1282 : (1975) 99 ITR 118 : (1975) 3 SCC 868 : (1975) 3 SCR 696 . This Court held with reference to the charging provisions of the statute that the expression "income" should be understood to include losses. The expression "profits and gains" refers to positive income whereas losses represent negative profit or in other words minus income. This aspect does not appear to have been noticed by the Bench in Virtual's case (supra). Reference to the order by this Court dismissing the revenue's Civil Appeal No. 7961 of 1996 in *Commissioner of Income Tax v. Prithipal Singh and Co.* is also not very important because that was in relation to the assessment year 1970-71 when Explanation 4 to Section 271(1)(c) was not in existence. The view of this Court in Harprasad's case (supra) leads to the irresistible conclusion that income also includes losses. Explanation 4(a) as it stood during the period 1.4.1976 to 1.4.2003 has to be considered in the background.

8. It appears that what the Finance Act intended was to make the position explicit which otherwise was implied. The recommendations of the Wanchoo Committee pursuant to 8 which Explanation 4(a) was inserted w.e.f. 1.4.1976 needs to be noted. At para 2.74 it was noted as follows:

"2.74 We are not unaware that linking concealment penalty to tax sought to be evaded can, at times, lead to anomalies. We would recommend that, in cases where the concealed income is to be, set off against losses incurred by an assessee under other heads of income or against losses brought forward from earlier years, and the total income thus, gets reduced to a figure smaller than the concealed income or even to a minus figure, the tax sought to be evaded

should be calculated as if the concealed income were the total income."

The Apex Court held that the definition of income as provided in Section 2(24) is an inclusive definition and also includes losses i.e. negative profit. Relying upon the Judgment of the Apex Court it was held that with reference to the charging provisions of the statute that the expression "income" should be understood to include losses inasmuch as losses represent negative profit or minus income. In this background, the Apex Court held that the act was intended to make the position express which otherwise was implied. In this background, it was held by the Apex Court that the Explanation was clarificatory in nature and not substantive and retrospectively applicable. 16. In the case of W.P.I.L. Ltd., Ghaziabad Vs. Commissioner of Central Excise, Meerut, U.P., (2005) 99 ECC 1 : (2005) 181 ELT 359 : (2005) 2 JT 499 : (2005) 3 SCC 73 : (2005) 3 SCR 246 , the appellant was the manufacturer of power-driven pumps and parts thereof. According to the appellant, the notifications were issued right from 1978 exempting levy of excise duty. It was their case that in 1994, in order to consolidate various exemption notifications, the Government had rescinded 389 notifications with effect from 1.3.1994 and reissued a consolidated notification incorporating earlier notifications vide Notification No. 46/94 dated 1.3.1994. It was submitted that the power-driven pumps were shown as an exempted item. However, due to inadvertence, parts of power-driven pumps used in manufacture of pumps within the factory which were all along exempted from 1978 were omitted. It was stated that the said omission was brought to the notice of the Government by the industries. It was further submitted that the Government was satisfied and accordingly amended Notification No. 46/94 vide Notification No. 95/94 dated 25.4.1994 correcting the mistake and clarifying the position that parts of power-driven pumps which were to be utilized for manufacturing power-driven pumps within the factory would also be exempted. However, for the period 1.3.1994 to 25.4.1994, proceedings were initiated against the manufacturers for clearing parts without payment of duty. The Assessing Authority confirmed the demand. The learned CEGAT dismissed the appeal. In this background, while allowing the appeal, the Apex Court observed in para 16:-

"16. In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory premises, it could not be said that while issuing notification No. 46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory notification No. 95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit."

17. In the case of Union of India (UOI) and Others Vs. Martin Lottery Agencies Ltd., (2009) 3 CompLJ 26 : (2009) 223 CTR 321 : (2009) 11 JT 151 : (2009) 7 SCALE 341(1) : (2009) 12 SCC 209 : (2009) 8 SCR 946 : (2009) 14 STR 593 : (2009) 20 STT 203 : (2009) 6 UJ 2739 : (2009) 24 VST 1 a question arose for consideration before Their Lordships as to whether the following expressions in sub-clause (1), which was inserted by the Finance Act 2008 was clarificatory or declaratory in nature so as to have the retrospective effect. "Explanation-For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client. In whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo."

The Apex Court held that merely by use of the words "it is hereby declared" it is clarified "for removal of doubt" it cannot be said that the amendment is clarificatory in nature. It has been held that even by reason of explanation, a substantive law may also be introduced. In this background the Apex Court observed thus: "36. It is, therefore, evident that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect."

The notice issued to the assessee by the appellant has, thus, rightly been held to be liable to be set aside. Subject to the constitutionality of the Act, in view of the explanation appended to this, we are of the opinion that the service tax, if any, would be payable only with effect from May, 2008 and not with retrospective effect.

37. In a case of this nature, the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law. As stated hereinbefore, for the aforementioned purpose, the expressions like "for the removal of doubts" are not conclusive. The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service. We are herein not concerned as to whether it was constitutionally permissible for the Parliament to do so as we are not called upon to determine the said question but for our purpose, it would suffice to hold that the explanation is not clarificatory or declaratory in nature."

18. Recently, the Constitution Bench of the Apex Court in the case of Commissioner of Income Tax Vs. Vatika Township Private Limited, (2014) AIRSCW 5674, had an occasion to consider whether the proviso to Section 113 of the Income Tax Act, 1961 was clarificatory in nature and as such could be made retrospectively applicable or was applicable prospectively. The Constitution Bench observed thus:-

"33 A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas and Anr. 8, while considering the nature of amendment to Section

29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows:

"The amending clause does not seek to explain any preexisting legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from s. 115, Code of Civil Procedure, and the legislature has by the amending Act attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act."

34. It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See *Controller of Estate Duty Gujarat-I v. M.A. Merchant*).

35 We would also like to reproduce hereunder the following observations made by this Court in the case of *Govinddas v. Income-tax Officer 10*, while holding Section 171(6) of the Income-Tax Act to be prospective and inapplicable for any assessment year prior to 1st April, 1962, the date on which the Income Tax Act came into force:

"11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are *prima facie* prospectively and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

36. In the case of *C.I.T., Bombay v. Scindia Steam Navigation Co. Ltd.* 11, this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year.

Answer to the Reference

37. When we examine the insertion of proviso in Section 113 of the Act, keeping in view the aforesaid principles, our irresistible conclusion is that the intention of

the legislature was to make it prospective in nature. This proviso cannot be treated as declaratory/statutory or curative in nature."

It can thus be seen that taking into consideration that the law brought about a substantive change, the Constitution Bench refused to consider it clarificatory or declaratory in nature.

19. From the analysis of the aforesaid Judgments of the Apex Court, it would be clear that if the statute uses the words "it is declared" or "it is clarified for removal of doubts", then it will be presumed that the amending law is declaratory or clarificatory. However, merely using the said words would not be sufficient to conclusively hold that the Act is declaratory. Even by use of such words, a statute may introduce new rules of law and that in such case, it would amount to substantial change in the law and will not be necessarily retrospective. It has been held that for determining the nature of the Act regard must be had to the substance rather than the form. It has been held that if a new Act is to explain an earlier Act, it would be without object unless construed retrospectively. It has been further held that an explanatory act is generally passed to supply an omission or to clear up doubts as to meaning of previous Act. However, in the absence of clear words indicating that the meaning of the Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous.

20. In the case of Poddar Cement Ltd. and Ors. (cited supra), the Apex Court found that there was divergence of opinions with regard to the interpretation of definition of "owner of house property" as provided in Section 27. Some of the High Courts had held that owner is only a person who is owner by virtue of registered conveyance, whereas some of the High Courts held that definition of owner includes any person who has a right to enjoy the said property and income derived therefrom. Taking into consideration this background and the memorandum explaining the Finance Bill 1987, it was held that the amendment was clarificatory in nature, so as to clarify the doubts as to who would come within the ambit of definition of "owner of house property".

21. In the case of Gold Coin, it was held that the provisions of Section 271 penalize the assessee for concealing particulars of the income and/or furnishing inaccurate particulars of such income. It was further held that by earlier judicial pronouncement the definition of "income" was also interpreted to include loss as it was negative profit. It was found that since the provision was to penalize a person for concealing particulars of income and/or furnishing inaccurate particulars of such income, a person who had concealed such particulars or furnished inaccurate particulars and resultantly shown the loss would very much come under the purview of the said penal provision and as such it was found that the amendment was clarificatory or declaratory in nature. It was held that the amendment made the position express which was otherwise implied.

22. In the case of WPIL Ltd. Ghaziabad (cited supra), it was found that right from

1978, various notifications were issued exempting the payment of duty on the manufacture of power-driven pumps and parts thereof. However, when various notifications granting exemptions were consolidated and fresh notification was issued on 1.3.1994, though the power-driven pumps were included in exempted items, the parts of power-driven pumps were omitted. A representation was made to the Government pointing out this error. Accordingly, by subsequent notification dated 25.4.1992, the said mistake was corrected. In this background, it was found that the notification dated 25.4.1992 was clarificatory in nature.

23. However, as against this, in the case of Sedco Forex International Drill. Inc., it was found that the earlier provision of Section 9(1)(ii) was clear and it provided taxing only the income earned in India. It was held that the explanation, as brought on statute book by amendment of 1999 which gives an artificial meaning to the term earned in India and also brings under the tax net salary for the rest period when the assessee was not working in India, makes a substantive change in the existing law and as such could not be said to be clarificatory in nature. It is to be noted that even though in the amendment words "removal of doubt it is clarified" were used, the aforesaid view has been taken by the Apex Court.

24. Similarly, in the case of Martin Lottery Agencies Ltd., though the words "for removal of doubts" and "it is hereby declared" were used, it was held that the provision was of such a nature which would bring into effect a substantive change and as such merely by virtue of use of the said words it could not be said that the amendment was clarificatory or declaratory in nature. The Constitution Bench in the case of Commissioner of Income Tax vs. Vatika Township, held that a proviso to Sec. 113 of the Income Tax Act brought about a substantive change and as such could not be held to be declaratory or clarificatory and as such did not have retrospective operation and held that it would only apply prospectively. It is to be noted that even by the amendment, the words "for removal of doubts", "it is declared" were used.

25. In this background, we have to consider as to whether the 2010 Notification can be said to be declaratory or clarificatory in nature or as to whether it brings into effect the substantive change in law.

26. As has been discussed hereinabove, in view of the provisions of the Maritime Zones Act, though the sovereignty of India extends over the territorial waters, insofar as the continental shelf and exclusive economic zone of India is concerned, by virtue of the provisions of sub-section (6) of Section 6 and sub-section (7) of Section 7, a fiction is created that such of the areas would be deemed to be a part of India for the purposes of such enactments which are extended to those areas by the Central Government by issuing notification. It would thus be clear that insofar as continental shelf and exclusive economic zone is concerned, unless a notification is issued in exercise of powers under sub-section (6) of Section 6 and subsection (7) of Section 7 of Maritime Zones Act, the areas in the continental shelf and exclusive economic zone cannot be

considered to be the area where the sovereignty of India extends. Only upon issuance of such notification, the areas which are so notified will be deemed to be the areas of India, in respect of which the notification is issued. Only then the provisions of the statute concerned would be applicable to such areas.

27. It is further to be noted that even the Department was also aware of the said situation. It will be relevant to refer to the Service Tax Circular No. 36/4/2001 dated 8.10.2001:-

#### "DEPARTMENT CLARIFICATION

Services provided outside the limits of Indian territorial waters not liable to Service Tax-At present the levy of service tax extends to the whole of India except the State of Jammu and Kashmir. The expression "India" includes the territorial waters of India. Indian territorial waters extend up to twelve nautical miles from the Indian land mass. Chapter V of the Finance Act which governs the levy of Service Tax has not extended to the levy to designated areas in the Continental Shelf and the Exclusive Economic Zone of India (as has been done in case of Central Excise vide Notification No. 166/87-C.E., dated 11-6-87 and in case of Customs by Notification Nos. 11/87-Cus., dated 14-1-87 and 64/97-Cus., dated 1.12.97). It is, therefore, clarified that the services provided beyond the territorial waters of India are not liable to Service Tax as provisions of Service tax have not been extended to such areas so far.

(Source: Service Tax Circular No. 36/4/2001 dated 18-10-2001)"

It would thus be clear that the Department itself was aware that unless a notification was issued under the provisions of Maritime Zones Act, then the provisions of Chapter V of Finance Act which governs the levy of Service Tax could not be made applicable to any area in the continental shelf and exclusive economic zone of India.

28. For the first time, the 2002 Notification was issued under the provisions of the Maritime Zones Act on 1.3.2002 thereby extending provisions of Chapter V of Finance Act to the designated areas in the continental shelf and exclusive economic zone of India as declared by the Notification of the Government of India in the Ministry of External Affairs dated 18.7.1986 and 19.9.1996 with immediate effect. It would thus be seen that for the first time from 1.3.2002, the areas in respect of which the notifications were issued in 1986 and 1996 were brought under the purview of the service tax. However, the notification only extended the applicability of service tax to the areas which were covered under the said notifications of 1986 and 1996. Even after issuance of 2002 notification, the provisions of Chapter V of the said Act did not apply to the other areas in the continental shelf and exclusive economic zone of India which were not covered by the said notifications.

29. The 2009 July Notification brought an amendment by which the words beginning with "designated areas in the continental shelf" and ending with the

words "with immediate effect" were substituted by the words "installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India". As such, by virtue of the said notification, the service tax provisions were made applicable to installations, structures and vessels in the said continental shelf and exclusive economic zone of India. Thus, by virtue of this amendment, the services provided to installations, structures and vessels in the continental shelf of India and exclusive economic zone of India, whether covered under the areas under the 1986 or 1996 notification came under the tax purview. Prior to that, only such of installations, structures and vessels in the continental shelf of India and exclusive economic zone of India were under the tax net, if they were in the areas as notified in 1986 and 1996 notifications. However, the July, 2009 Notification removed the said restrictions and the service tax provisions were made applicable to the installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India, irrespective of the fact, as to whether they were in the areas which were covered by the notifications of 1986 and 1996 or not.

30. Vide 2010 Notification, the Govt. of India in supersession of the 2002 Notification, extended the provisions of Chapter V of the Finance Act, 1994 to the areas specified in column 2 of the Table in the continental shelf and exclusive economic zone of India, for the purposes as mentioned in column 3 of the said Table. Sr. No. 1 of the Table would show that in respect of whole of continental shelf and exclusive economic zone of India, any services provided for activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof have been brought under the tax net. It would further be seen from Sr. No. 2 of the table, that insofar as the installations, structures and vessels within the continental shelf and exclusive economic zone of India constructed for the purpose of prospecting and extraction or production of mineral oil and natural gas are concerned, any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity has been brought in the tax net. It would thus be seen that the 2010 Notification extensively expands the tax net. Sr. No. 1 of the table brings services provided for all activities pertaining to construction of installation, structures and vessels for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof under the tax net. Perusal of Sr. No. 2 of the Table would reveal that insofar as installations, structures and vessels within the continental shelf and exclusive economic zone of India constructed for the purpose of prospecting or extraction or production of mineral oil and natural gas are concerned, any services provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity has been brought under the tax net. A comparison of the 2002 Notification, as amended in 2009 and Sr. No. 2 of Table of the 2010 Notification would reveal that whereas under the earlier Notification, the services provided to the installations, structures and vessels were under the

tax net, the subsequent notification brought all services, whether provided or to be provided by or to such installations, structures and vessels. The comparison would show that insofar as the installations, structures and vessels are concerned, though the 2002 Notification as amended in 2009, covers only the service to the installations, structures and vessels, by way of 2010 Notification, the services to or by the installations, structures and vessels have been brought into the tax net.

31. The principles while interpreting the tax statute have been stated by the Apex Court in the case of COMMISSIONER OF INCOME TAX Vs. KASTURI and SONS LTD., AIR 1999 SC 1275 : (1999) 153 CTR 1 : (1999) 237 ITR 24 : (1999) 2 JT 272 : (1999) 2 SCALE 75 : (1999) 3 SCC 346 : (1999) 1 SCR 1207 : (1999) AIRSCW 960 : (1999) 3 Supreme 25 . In paras 9 and 10, the Apex Court observed as under:-

"9. The principle that a taxing statute should be strictly construed, is well settled. In Principles of Statutory Interpretation by Justice G.P. Singh, Sixth Edition 1996, the law is stated thus:-

"The well established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means: "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its word. In a classic passage LORD CAIRNS stated the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hands, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute." VISCOUNT SIMON quoted with approval a passage from Rowlatt, J. expressing the principle in the following words: "In a taxing Act one has to look merely at what is clearly said. There is no room for any 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. One can only look fairly at the language used." Relying upon this passage Lord Upjohn said: "Fiscal measures are not built upon any theory of taxation".

"10. It is obvious that the Legislature has deliberately used the word "moneys." Wherever the Legislature intended to refer to payment in kind other than cash or money, it has taken care to provide specifically therefor. For example in S. 41(1) itself, the Legislature has used the expression "whether in cash or in any other manner whatsoever." There are several sections in the Act which refer to benefits other than cash though the value thereof can be ascertained in terms of cash or benefits which are convertible in cash. See ss. 17, 23(3), 28(iv), 40-A(2a), 93(3) (c)(i). For example, S.28(iv) speaks of the value of any benefit or perquisite

whether convertible into money not, arising from business or profession. In S. 93(4)(c), "benefit" is defined as a payment of any kind for the purposes of the section. A converse case arose before the Calcutta High Court in Commissioner of Income Tax Vs. Kanan Devan Hills Produce Company Ltd., (1979) 119 ITR 431 in which the words "which results directly or indirectly in the provision of any benefit or amenity or perquisite whether convertible into money or not" in Cl. (c) (iii) of S. 40 of the Act came up for interpretation and the Division Bench of the high Court held that those words excluded cash paid directly to an employee as there was no question of convertibility to money where cash was paid. When the Legislature has instead of using any word such as "benefit" used only the term "money," it can refer only to money as understood in the ordinary common parlance."

32. Though there are various pronouncements of the Apex Court with regard to interpretation on taxing statute, we do not propose to burden the Judgment with plethora of authorities. We will only refer to two recent Judgments of the Apex Court. In the case of Commissioner of Income Tax-III Vs. Calcutta Knitwears, Ludhiana, (2014) AIRSCW 4433 : (2014) 362 ITR 673 : (2014) 5 JT 151 : (2014) 4 SCALE 375 : (2014) 6 SCC 444 . The Apex Court considered its earlier Judgments and observed thus:-

" 24. We may gainfully refer to The Cape Brandy Syndicate v. Inland Revenue Commissioners [1921] 1 KB 64 at 71 which involved the Finance (No. 2) Act 1915 which imposed excess profits duty on trade or businesses commenced after the outbreak of the First World War in 1914. By subjecting the legislation to a strict literal interpretation, Rowlatt J. held that the Finance (No. 2) Act 1915, in isolation, did not apply to businesses that commenced after the outbreak of war in 1914 and observed as follows:

"... the principle in favour of a strict literal approach ... simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

25. In Commissioner of Stamp Duties (NSW) v. Simpson, (1917) 24 CLR 209 Barton J., citing Viscount Haldane in Lumsden v. Inland Revenue Commissioners, [1914] AC 877, stated the following:

"The duty of Judges in construing Statutes is to adhere to the literal Construction unless the context renders it plain that such a construction cannot be put on the words. This rule is especially important in cases of Statutes which impose taxation."

The Court in Simpson case (supra) sought to determine whether a deed poll constituted a settlement for the purposes of Section 49 of the Stamp Duties Act, 1898 (NSW). Section 3 which defined the word "settlement" as meaning "any contract or agreement" was examined. The Court by adopting a strict literal

approach held that only a contract or an agreement could constitute a settlement and that Section 49 providing for deed poll was not applicable and therefore, the taxpayer did not have to pay any stamp duty.

26. Lord Granworth in *Grundy v. Pinniger*, (1852) 1 LJ Ch 405 has observed that:

"To adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."

That is to say, once the literal rule is departed, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of the edifice of fiscal legislations which impose economic duties and sanctions.

27. In taxing statutes, even if the literal interpretation results in hardship or inconvenience, it has to be followed (G.P. Singh's *Principles of Statutory Interpretations*, 12th Ed, 2010, Lexis Nexis Butterworths Wadhwa Nagpur; Bennion on *Statutory Interpretation*, 5th Ed., Lexis Nexis, p. 863; Vepa P. Sarathi, *Interpretation of Statutes*, 5th Ed., Eastern Book Company, Chapter VIII, *Taxing Statutes*). This Court in *Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal*, AIR 1950 SC 265 : (1950) 18 ITR 569 : (1950) 1 SCR 435 has held that hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear and apparent. Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint to do so. *Pandian Chemicals Ltd. Vs. Commissioner of Income Tax*, (2003) 183 CTR 99 : (2003) 262 ITR 278 : (2003) 5 SCC 590 , *Nasiruddin and Others Vs. Sita Ram Agarwal*, AIR 2003 SC 1543 : (2003) 4 CTC 284 : (2003) 2 JT 56 : (2003) 1 SCALE 658 : (2003) 2 SCC 577 : (2003) 1 SCR 634 : (2003) 2 UJ 781 : (2003) AIRSCW 1474 : (2003) AIRSCW 908 : (2003) 2 Supreme 472 : (2003) 2 Supreme 50 , *Bhaiji Vs. Sub Divisional Officer, Thandla and Others*, (2002) 10 JT 353 : (2003) 1 SCC 692 : (2002) 5 SCR 116 Supp , *J.P. Bansal Vs. State of Rajasthan and Another*, AIR 2003 SC 1405 : (2003) 3 JT 169 : (2003) 3 SCALE 154 : (2003) 5 SCC 134 : (2003) SCC(L&S) 605 : (2003) 2 SCR 933 : (2003) 3 SLJ 252 : (2003) 2 UJ 897 : (2003) AIRSCW 1848 : (2003) 2 Supreme 856 , *State of Jharkhand and Another Vs. Govind Singh*, (2004) 10 SCALE 174 : (2005) 10 SCC 437 , *Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others*, (2003) 1 DMC 1 : (2002) 10 JT 571 : (2003) 1 SCC 730 : (2002) 5 SCR 689 Supp : (2003) 1 UJ 215 , *Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others*, AIR 2003 SC 2434 : (2003) 2 CTC 564 : (2003) 4 JT 225 : (2003) 4 SCALE 241 : (2003) 6 SCC 659 : (2003) 3 SCR 762 : (2003) 2 UJ 1102 : (2003) AIRSCW 2445 : (2003) 3 Supreme 729 , *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, AIR 2002 SC 1706 : (2002) 81 ECC 22 : (2002) 141 ELT 593 : (2002) 3 JT 551 : (2002) 3 SCALE 349 : (2002) 4 SCC 297 : (2002) 2 SCR 945 : (2002) 128 STC 349 : (2002) AIRSCW 1646 : (2002) AIRSCW 968 : (2002) 2 Supreme 156 : (2002) 3 Supreme 155 and *Union of India (UOI) and Another Vs. Hansoli*

Devi and Others, AIR 2002 SC 3240 : (2003) 95 CLT 140 : (2002) 7 JT 42 : (2002) 6 SCALE 356 : (2002) 7 SCC 273 : (2002) 2 SCR 324 Supp : (2002) 2 UJ 1345

28. The Australian High Court in *Federal Commissioner of Taxation v. Westraders Pty Ltd.*, (1980) 144 CLR 55 considered the scope of Section 36A of the Income Tax Assessment Act, 1936(Cth), which on a literal interpretation allowed the taxpayer to make a profit and still claim a loss for tax purposes. The Commissioner argued the taxpayer's conduct amounted to a tax avoidance scheme and should therefore be disallowed under Section 260 of the Income Tax Assessment Act, 1936(Cth). The Court held that under a literal interpretation Section 36A could apply to allow the taxpayer to claim a loss. Barwick CJ, speaking for the majority relied on the decision in *Inland Revenue Commissioners v. Westminster (Duke)*, [1936] AC 1 which advocated the literal approach be applied when interpreting taxation legislation and stated the following:

"It is for the Parliament to specify, and to do so, in my opinion, as far as language will permit, with unambiguous clarity, the circumstances which will attract an obligation on the part of the citizen to pay tax. The function of the court is to interpret and apply the language in which the Parliament has specified those circumstances. The court is to do so by determining the meaning of the words employed by the Parliament according to the intention of the Parliament which is discoverable from the language used by the Parliament. It is not for the court to mould or to attempt to mould the language of the statute so as to produce some result which it might be thought the Parliament may have intended to achieve, though not expressed in the actual language employed"

29. In *Cooper Brookes (Wollongong) Pty Ltd. v. Federal Commissioner of Taxation* (1981) 147 CLR 297 it is held that in a taxing statute if the language is unambiguous, departing from the literal approach "may lead judges to put their own ideas of justice or social policy in place of the words of the statute". Similar view was espoused in *C and J Clark Ltd. v. Inland Revenue Commissioners*, [1975] 1 WLR 413 and *BP Refinery (Westernport) Pty Ltd. v. Hastings Shire*, (1977) 180 CLR 266.

30. In *Hepples v. FCT*, (1991) 173 CLR 492, the High Court of Australia unequivocally favoured the principle that taxation legislation should be subject to a strict literal interpretation and opined that such an approach was supported by "common sense". Therein, the taxpayer, on ceasing to be employed, was paid \$40,000 by his employer in exchange for the taxpayer agreeing that he would not carry on or be interested in certain businesses and would not divulge any trade secrets. The issue before the Court was whether or not such payment would form part of the taxpayer's assessable income for the purposes of the Income Tax Assessment Act, 1936(Cth). It was held that since the Act did not provide for such payments to form part of a taxpayer's assessable income, the payment would not be assessable.

31. This Court in *Tata Consultancy Services v. State of Andhra Pradesh* has ascribed plain meaning to the terms computer and computer programme in a fiscal statute and reiterating the proposition laid down in *Inland Revenue Commissioner case (supra)*, observed that a court should not be over zealous in searching ambiguities or obscurities in words which are plain.

32. In *Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another*, (2004) CriLJ 3362 : (2004) 187 CTR 97 : (2004) 266 ITR 1 : (2004) 2 JT 510 : (2004) 2 SCALE 512 : (2004) 9 SCC 686 : (2004) 2 SCR 434 : (2004) AIRSCW 1768 : (2004) AIRSCW 3692 : (2004) 2 Supreme 193 : (2004) 2 Supreme 556 , this Court has explained that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency. Where the legislative intent is clear from the language, the Court should give effect to it *Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others*, (2006) 131 CompCas 285 : (2004) 11 SCC 625 ; *Government of A.P. and Another Vs. Road Rollers Owners Welfare Association and Others*, (2004) 9 SCALE 34 : (2004) 6 SCC 210 .

33. In *B. Premanand and Others Vs. Mohan Koikal and Others*, AIR 2011 SC 1925 : (2011) 129 FLR 439 : (2011) 4 JT 130 : (2011) 3 SCALE 598 : (2011) 4 SCC 266 : (2011) 1 SCC(L&S) 676 : (2011) AIRSCW 2546 : (2011) 2 Supreme 598 this Court has observed as follows:

"32. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language.

33. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean."

34. Thus, the language of a taxing statute should ordinarily be read understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is

to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less. J. Srinivasa Rao Vs. Govt. of A.P. and Another, (2006) 13 SCALE 27 : (2006) 9 SCR 534 Supp , Raja Jagdambika Pratap Narain Singh Vs. Central Board of Direct Taxes and Others, AIR 1975 SC 1816 : (1975) 100 ITR 698 : (1975) 4 SCC 578 : (1976) 1 SCR 49 : (1975) 7 UJ 558 "

33. The Constitution Bench of the Apex Court in the case of Vatika Township Pvt. Ltd. was considering the reference to it as to whether the proviso to Sec. 113 of the Income Tax Act which provided for levy of surcharge on tax on undisclosed income, found during search and seizure for the block assessment period was prospective or retrospective in nature. While holding the said provision to be prospective in nature, the Constitution Bench observed thus:

"41. We would like to embark on a discussion on some basic and fundamental concepts, which would shed further light on the subject matter.

41.1 No doubt, there is no scope for accepting the Libertarian theory which postulates among others, no taxation by the State as it amounts to violation of individual liberty and advocates minimal interference by the State. The Libertarianism propounded by the Australian-born economist philosopher Friedrich A. Hayek and American economist Milton Friedman stands emphatically rejected by all civilised and democratically governed States, in favour of strongly conceptualised "welfare state". To attain welfare state is our constitutional goal as well, enshrined as one of its basic feature, which runs through our Constitution. It is for this reason, specific provisions are made in the Constitution, empowering the legislature to make laws for levy of taxes, including the income-tax. The rationale behind collection of taxes is that revenue generated therefrom shall be spent by the governments on various developmental and welfare schemes, among others.

41.2 At the same time, it is also mandated that there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and should prescribe the liability to pay taxes in clear terms. If the concerned provision of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favours the subjects, as against the revenue, has to be preferred. This is a well established principle of statutory interpretation, to help finding out as to whether particular category of assessee are to pay a particular tax or not. No doubt, with the application of this principle, Courts make endeavour to find out the intention of the legislature. At the same time, this very principle is based on "fairness" doctrine as it lays down that if it is not very clear from the provisions of the Act as to whether the particular tax is to be levied to a particular class of persons or not, the subject should not be fastened with any liability to pay tax. This principle also acts as a balancing factor between the two jurisprudential theories of justice-Libertarian theory on the one hand and Kantian theory along with Egalitarian theory propounded by John Rawls on the other hand.

41.3 Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In *Billings v. U.S.* [14], the Supreme Court clearly acknowledged this basic and longstanding rule of statutory construction:

"Tax Statutes... should be strictly construed, and, if any ambiguity be found to exist, it must be resolved in favor of the citizen. *Eidman v. Martinez*, 184 U.S. 578, 583; *United States v. Wigglesworth*, 2 Story, 369, 374; *Mutual Benefit Life Ins. Co. v. Herold*, 198 F. 199, 201, aff'd 201 F.918; *Parkview Bldg. Assn. v. Herold*, 203 F. 876, 880; *Mutual Trust Co. v. Miller*, 177 N.Y. 51, 57."

41.4 Again, in *United States v. Merriam*[15], the Supreme Court clearly stated at pp. 187-88: "On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer.

*Gould v. Gould*, 245 U.S. 151, 153"

41.5 As Lord Cairns said many years ago in *Partington v. Attorney-General*[16]: "As I understand the principle of all fiscal legislation it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

It can thus be seen that the Constitution Bench has in unequivocal terms held that there is no scope for accepting the Libertarian theory while considering a taxation statute. The Constitution Bench has further held that a law imposing taxation has to be unambiguous and should prescribe the liability to pay tax in clear terms.

34. It would thus appear that it is settled position of law that in taxing statute, the Courts have to adhere to literal interpretation. At first instance, the Court is required to examine the language of the statute and make an attempt to derive its natural meaning. The Court interpreting the statute should not proceed to add the words which are not found in the statute. It is equally settled that if the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. It is further settled that an equitable, construction, is not admissible in a taxing statute, where the courts can simply adhere to the words of the statute. It is equally settled that a taxing statute is

required to be strictly construed. Common sense approach, equity, logic, ethics and morality have no role to play while interpreting the taxing statute. It is equally settled that nothing is to be read in, nothing is to be implied and one is required to look fairly at the language used and nothing more and nothing less. No doubt, there are certain judgments of the Apex Court which also holds that resort to purposive construction would be permissible in certain situation. However, it has been held that the same can be done in the limited type of cases where the Court finds that the language used is so obscure which would give two different meanings, one leading to the workability of the Act and another to absurdity.

35. In the present case, we find that the plain reading of the 2009 Notification would give a clear meaning and it cannot be said to be obscure. The words are clear and plain capable of giving only one meaning that the provisions of Chapter V of the Finance Act are extended to the installations, structures and vessels in the continental shelf and exclusive economic zone of India. We find that the words used in the said notification are not capable of giving two meanings. As already discussed hereinabove, prior to 2002, the areas in the continental shelf and exclusive economic zone of India were not brought under the purview of service tax net. Only by the Notification of 2002, the said provisions were made applicable to the areas in the continental shelf and exclusive economic zone of India, only insofar as the areas which were covered under the 1986 and 1996 notifications. By amendment to 2002 Notification by the 2009 Notification, the services rendered to installations, structures and vessels were brought in the service tax net irrespective of the fact that as to whether the said installations, structures and vessels were situated in the areas covered under the 1986 and 1996 notifications or beyond such areas. However, for the first time in 2010, the tax net has been widened so as to include almost all the services related to prospecting or extraction or production of mineral oil and natural gas, including the services rendered to or by such installations, structures and vessels.

36. It is further to be noted that it is a settled principle of law that, it is presumed that each and every word used by the legislature is with some intention. It is equally settled that each and every word used by the legislature is to be required to be given meaning and not ignored. It is to be noted that in the 2010 notification no such words like "it is clarified for removal of doubts" or "it is declared" are used. However, even in the absence of such words, a statute could be construed to be declaratory or clarificatory, if upon interpretation of the same such a meaning could be derived. As such, we will have to gather the legislative intent from the words used in the statute. The 2010 Notification uses the words "in supersession of the Government of India, in the Ministry of Finance (Department of Revenue) Notification No. 1/2002 service tax dated 1.3.2002". It could thus be clear that the legislative intent is to supersede the 2002 Notification as amended in 2009 and substitute with 2010 notification. The legislative intent could further be gathered from the following words: "except as things done or omitted to be done before such super session." It would thus be

seen that what has been saved by the notification upon supersession is only in respect of things done or omitted to be done before supersession i.e. before 27.2.2010. The words used are "Central Government hereby extends". It is thus clear upon plain reading of 2010 notification, that the legislative intent of 2010 notification is

(i) that it supersedes the 2002 notification, it consequently also supersedes 2009 amendment which was brought in 2009 to the 2002 Notification,

(ii) it only saves the things done or omitted to be done before such supersession and

(iii) from the date of issuance it extends the provisions of Chapter V of the Finance Act, 1994 to the areas specified in column 2 of Table in the continental shelf and exclusive economic zone of India for the purpose as mentioned in column 3 of the said Table.

37. It is sought to be contended on behalf of the Revenue that in 2002 Notification, as amended in 2009, this Court should construe that the legislature not only intended to make the provisions applicable to the installations, structures and vessels in the continental shelf and exclusive economic zone of India but also by the installations, structures and vessels. We find that if the contention as raised by the Revenue is to be accepted, then between the word "to" and "the installations, structures and vessels in the continental shelf and exclusive economic zone of India", the words "and by" will have to be read into. In our considered view, that would amount to supplying casus omissus.

38. In the case of J. Srinivasa Rao Vs. Govt. of A.P. and Another, (2006) 13 SCALE 27 : (2006) 9 SCR 534 Supp , while considering the provisions of Andhra Pradesh Motor Vehicles Taxation Act, 1963, an argument was sought to be raised on behalf of the Revenue that it was permissible to supply casus omissus. Rejecting the said contention and relying on the observations made by His Lordship Tulzapurkar, J. (as His Lordship then was), the Court observed thus:-

"29. However, we may notice that therein only Tulzapurkar, J. stated the law thus: (SCC p.376, para 10)

"In other words, under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but as the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature."

30. Giving the plain meaning to the provisions referred to hereinbefore, in our

opinion, the rate of tax could not be increased in derogation to the proviso appended to Section 3 of the Act. The notification in our opinion as it seeks to change the basis of the mode of taxation is illegal and, thus, cannot be sustained."

39. It would thus be seen that the Apex Court held that the *casus omissus* could be provided only in case of clear necessity and when reasons for the same could be found in four corners of the statute. It further held that *casus omissus* could not be readily inferred.

40. Again in the case of *Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others*, AIR 2007 SC 1984 : (2007) 2 CTC 273 : (2007) ELR 1166 : (2007) 7 JT 613 : (2007) 7 SCALE 392 : (2007) 5 SCC 447 : (2007) 6 SCR 955 : (2007) AIRSCW 3752, the Apex Court was considering the provisions of Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. An argument was advanced that the words "unless different intention appears" should be read in Section 20(1) of the said Act. Rejecting the contention, the Apex Court observed as follows:-

"92. Submission of Mr. Andhyarujina that this Court must read the words "unless a different intention appears" in sub-section (1) of Section 20 of the 2003 Act, in our opinion, is impermissible in law. We have rejected a similar contention of Mr. Nariman urging us to read down and apply the purported rule of purposive construction while construing Section 14 of the 2003 Act. We do not intend to apply different tests in the matter of construction of Section 20 of the 2003 Act. Omission of words in a particular statute may play an important role. The intention of the legislature must be, as is well known, gathered from the words used in the statute at the first instance and only when such a rule would give rise to anomalous situation, may the court take recourse to purposive construction. It is also a well-settled principle of law that *casus omissus* cannot be supplied (See *J. Srinivasa Rao v. Govt. of A.P.*)."

"93. The proviso appended to sub-section (1) of Section 20 of the 2003 Act although for all intent and purport incorporates Section 6 of the General Clauses Act but a significant departure therefrom must be borne in mind. If the legislature has used different words, or has omitted certain words, in our opinion, the same cannot be read as containing the words "unless a different intention appears" It may be that the provisions of the 2003 Act are demonstrably different from the 1962 Act but we must assume that the legislature did so deliberately. The intention of the legislature by making a distinction between sub-section (1) and sub-section (2) of Section 20 of the 2003 Act, in our opinion, is obvious. The fact that the significant words "unless a different intention appears" or the Act does not contain a provision inconsistent therewith were known to the legislature. Whereas in subsection (1) of Section 20 of the 2003 Act they did not introduce any such thing, they did so while enacting sub-section (2) thereof."

The Apex Court in unequivocal terms rejected the contention regarding supply of

casus omissus. It held that the intention of the legislature must be gathered from the words used in the statute and only when such rule give rise to anomalous situation, the Court may take recourse to purposive construction.

41. As already discussed hereinabove, it cannot be said that the meaning as gathered from the plain reading of the words in 2009 Notification or 2010 Notification can be said to be leading to obscure or anomalous situation. In that view of the matter, we find that the contention in that regard also deserves to be rejected.

42. In view of settled legal position, we find that the 2010 Notification cannot be said to be clarificatory in nature, but it brings about substantive change in law. Whereas the 2002 Notification as amended by 2009 Notification is applicable only to the services rendered to installations, structures and vessels, the 2010 Notification widens the tax scope and amongst various other services also brings into the service tax net the services rendered to or by the installations, structures and vessels.

It can thus be seen that the present transaction, which is in the nature of providing services by the vessels of the appellant for the purpose of prospecting mineral oil and as such is a service consumed by the seabed of Continental Shelf of India would come in the tax net only after 2010 Notification came into effect. We are of the considered view that the said service cannot be said to be a service rendered to the installations, structures and vessels. Not only this, but the Respondent also in the order-in-original has noted that the appellant is discharging applicable service tax on the services received by installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone of India but was not discharging the service tax on services consumed by the seabed of Continental Shelf of India.

43. Since we have held that the transactions involved in the present case is not taxable under the Notification of 2009, and as such, the demand of tax would not be sustainable, we do not find it necessary to go into the question as to whether since the contract was prior to the Notification dated 7.7.2009, the demand for tax could be made or not.

44. In that view of the matter, we answer the substantial questions of law as under:-

Question (a)

The learned Tribunal erred in holding that the transactions involved in the present case falls under Notification No. 21/2009-ST dated 7.7.2009 issued under the provisions of clause (a) of sub-section (6) of Section 6 and clause (a) of sub-section (7) of Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.

Question (b)

As a consequence of answer to question (a), it is held the learned Tribunal has erred in upholding the tax demand against the Appellant.

Question (c)

In view of answers to questions (a) and (b) holding that the demand for tax against the appellant was not justified, we do not find it necessary to go into the said question.

45. Appeal is, accordingly, allowed in terms of prayer clause (b). However, in the facts and circumstances, no order as to costs.