

"Ejusdem Generis"

Latin and law are satin and silk! The influence and use of Latin words in Legal lexicon match the use of Hebrew words in the Holy Bible! Most of the often-used words in the legal terminology, such as, ***res judicata, locus standi, res integra, modus operandi***, etc, are all Latin terms! In this article let us understand another legendary legal term, which has enormous significance in jurisprudence!

Ejusdem Generis (pronounced as "eh-youse-dem generous") is a very important Latin term to mention ***"of the same kind or class"*** and used to interpret loosely written statutes. As per this legal term, in any canon of construction, when a general word or phrase follows a list of specifics, the general word or phrase shall be interpreted to include only items of the same type as those listed. In other words, where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. For example: if a law refers to *automobiles, trucks, tractors, motorcycles and other motor-powered vehicles*, then the mention of "*vehicles*" would not include *airplanes*, since the list was of land-based transportation. Similarly, in the phrase, *horses, cattle, sheep, pigs, goats or any other farm animal*, the general mention "*or any other farm animal*" would be held to include only four legged, hoofed mammals, typically found on farms and thus would exclude *chickens*!

In beloved tax domain, the Hon'ble Courts have exhaustively used and comprehensively interpreted this golden rule of "Ejusdem Generis". Out of various landmark decisions, the decisions of the Hon'ble Apex Court in the following cases are worth a case study:

M/s. Siddeshwari Cotton Mills Pvt. Ltd Vs UOI and Anr {1989 (39) ELT 498}
Asst. Collr of C. Ex Vs M/s. Ramdev Tobacco Company {1991 (51) ELT 631}
M/s. Grasim Industries Ltd. Vs Collr of Cus, Bombay {2002 (141) ELT 593}

A legal safari along the above cases shall lead to a conclusion that, to constitute an “Ejusdem Generis”, *inter alia*, (again a Latin term!), the following attributes are essential, viz,

1. There shall be a “class” of the same kind.
2. Such “class” shall constitute a “genus”.
3. There shall be no contra legislative intent.
4. If general words were allowed to take their natural meaning it would result in absurdity or unintended/unforeseen complication.

In our day-to-day excise activities, we come across few classic examples warranting the application of this rule of “Ejusdem Generis”, both under the Central Excise Rules, 2002 and the Cenvat credit Rules, 2004. Rule 16(1) of the CER, 2002, deals with the situations, wherein, the duty paid excisable goods are brought back to a factory for being *re-made, refined, re-conditioned or for any other reason*. By applying this rule of *Ejusdem Generis*, the phrase “*for any other reason*” in the above said sub-rule, has to be read in consonance with the preceding words such as “*re-made, refined, re-conditioned*” and cannot be flamboyantly stretched to mean any other reason, such as, “trading” etc (Maybe, we consultants argue that “trading” is nothing but a re-sale and hence would fit into the groove!). Going by the spirit of this rule and construction, the said general term “*any other reason*”, shall mean and include only the activities /processes akin to the predecessor terms. Another example would be under Rule 4 (5) (a) of the CENVAT Credit Rules, 2004, whereby, the inputs / capital goods are sent to a job worker for *further processing, testing, repair, reconditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose*. Hereto, the general term “*any other purpose*”, shall be read in conjunction to the preceding words and not for other arbitrary purposes, such as, “storing”.

Now to the crux of the article. Till now, we have seen the meaning, scope and application of the rule of “Ejusdem Generis”. Applying the rationale, we wish to extend the application of this Rule to the new horizon of Indirect taxes, “Service Tax!” As already stated, this rule is intended to be employed to interpret loosely written statutes. Service tax has the honour of the “Most Loosely Worded Statue” on this planet and is the best candidate to qualify for this Rule.

Today, Construction services are taxed under two categories viz, "Commercial/Industrial Constructions" and "Residential Complexes" under the Service tax. The levy on the "Construction services" was from 10/9/2004, which was earlier defined under clause (30a) of Section 65 of the Finance Act, 1994. Until 16/6/2005, under the said category of "Construction service", only the Commercial / Industrial constructions, were taxed. With effect from 16/6/2005, two significant changes were brought under the "Construction Services". As a new service called Construction of Complex (Residential) was introduced and the scope of the existing Commercial / Industrial construction services was widened. While redefining the Commercial/Industrial construction services and introducing the "Construction of Residential Complexes, the law makers has specifically included a separate sub section, under both the services, so as to include the "completion and finishing services", which reads as:

"completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure"

Notification 15/2004-ST, is an exemption Notification under the "Construction services", which provides for an exemption from the gross value, to an extent of 67%, thus making only 33% of the gross value as taxable value, for the payment of Service tax. However, this notification excluded two categories from availing the benefit, namely,

1. Where the CENVAT Credit on inputs and capital goods has been availed, and
2. Where the service provider avails the benefit of the Notification 12/2003-ST.

The reasoning behind this abatement notification, appears to be two fold, viz.,

1. As in the construction service, there is a huge involvement of materials used in the provision of service (such as Cement, Steel, Glass etc), the abatement percentage may be an average estimate that, out of the total value two thirds shall represent the value of the materials portion and only one third represent the service portion and

2. The Service Provider may not be able to get proper documents to avail the Cenvat credit on the materials used, as they are generally purchased from unregistered sources.

The above said logical reasoning is vivid from the exclusions provided in the Notification 15/2004-ST, whereby, the benefit of the abatement was denied to the service providers who have either availed the Cenvat credit on inputs/capital goods or who have availed the benefit of Notification 12/2003-ST (whereby the goods are sold during the provision of service). The above conclusion is further fortified by Notification 4/2005-ST, by which an Explanation was inserted to the Notification 15/2004-ST, which reads as:

"For the purposes of this notification, the "gross amount charged" shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service."

From the above Explanation, it is crystal clear that, to qualify for the said abatement, on one hand, the service provider has to include the value of the materials used in the provision of service and on the other hand, he shall not avail either Cenvat credit on inputs/capital goods or Notification 12/2003-ST.

So far so good. But the arrival of Notification 19/2005-ST (and Notification 18/2005-ST), is nothing but a bombshell, deadlier than the "Little Boy" dropped over Hiroshima. The said Notification, brought an important amendment to the above said Notification 15/2004, whereby, the benefit of the abatement of 67% from the gross value is not available to the service providers, who provide **ONLY** the finishing / completion services. In other words, such service providers are required to pay service tax on the entire value of such finishing services. Similar embargo is also cast for the services in respect of Construction of Residential Complexes vide Notification 18/2005-ST.

As extracted earlier, the finishing/completion services also contemplate utilization of materials. Can there be a painting without paints, carpentry without wood, flooring without tiles or a false ceiling without gypsum? In fact, the involvement of materials in the provision of such finishing/completion services is mammoth and no less when compared to the rest of the construction. It is also true that these finishing/completion service providers shall be tiny operators compared to the mega

service contractors and to them, procuring the materials at source with proper documents, would be practically impossible! In such a case, the said embargo is definitely cruel and against the legislative intention!

Now let us apply the tests of "Ejusdem Generis" to the present case.

1. There exists a "class" of the same kind, whereby, it's a class of Construction service providers,
2. Such class constitutes a genus, whereby, there is a massive usage of materials, in the provision of service,
3. There appears to be no contra legislative intent and
4. If the benefit were denied for such service providers, then it would result in an absolute absurdity or unintended/unforeseen complication.

And hence, are we not right in applying this rule of "Ejusdem Generis" to the above situation and conclude that the benefit of 67% abatement is available to such service providers, who provide only the finishing/completion services? In the discussed case, the basic requirement of "specific" and "general" words, to apply the rule of "Ejusdem Generis", may be absent. But are we not justified in extending this golden rule to save the situation from another catastrophe?