FUTURE FOCUS INFOTECH – A CRITIQUE *VIS-À-VIS* CLASSIFICATION PRINCIPLES

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Certainty lies at the heart of taxation law as individuals must be aware of what might be taxable and thus be given the liberty to plan their finances accordingly. It is in this light that the principles of classification in service tax law assume importance as they provide guidance regarding what head a service may be taxable under. So, how are these principles that can now be found in the text of the Finance Act to be interpreted? What happens when principles of classification are incorrectly construed? This paper attempts to answer these questions, studying the decision of the Chennai CESTAT in **Future Focus Infotech v. Commissioner of Service Tax**. *The paper argues that the decision of the CESTAT is incorrect and can have undesirable repercussions as precedent.*

I. INTRODUCTION

Services were first taxed in 1994 by means of the Finance Act.[1] Presently, as there are 119 taxable services,[2] a need for classification of services has arisen for several reasons: in order to ensure registration of the service provider in the appropriate category, to ascertain the date of commencement of taxability, to know the rate of applicable service tax, to determine the right to claim exemptions, to avail the correct abatements, to claim appropriate CENVAT credit and to claim rebates in case of exporters of specified services.[3] Thus, §65A was inserted by the Finance Act, 2003[4] to specify the principle governing the classification of taxable services under the existing regime. §65A codifies the norm that a more specific description must override the less specific one[5] and that in case of composite services, the service must be classified in accordance with its essential character.[6] Moreover, §65A contains a residuary clause which states that where the aforementioned provisions cannot be

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1 The Finance Act, 1994, §65; MITTAL, LAW, PRACTICE AND PROCEDURE OF SERVICE TAX 1-15 (2010).

2 The Finance Act, 1994, §§65(1) to 65(105).

3 S. AGARWAL, TREATISE ON SERVICE TAX 307 (2011-2012); R. PULANI & M. PULANI, HANDBOOK ON SERVICE TAX 76 (2005); R.K. JAIN, SERVICE TAX LAW GUIDE 87 (2010-11).

4 With effect from May 14, 2003.

5 Finance Act, 1994, §65(2)(a).

6 Finance Act, 1994, §65(2)(b).

applied, the service must be classified under the sub-clause of §65(105) that appears first.[7]

The interpretation and use of §65A came for consideration before the Chennai Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') in the case of *Future Focus Infotech* v. *Commissioner of Service Tax*, ('*Future Focus Infotech*')[8] wherein the Court looked into whether the Assessee's services fell under the head 'manpower recruitment and supply agency'[9] or 'consulting engineer'.[10] In ruling that the service was of 'manpower recruitment', the Court made interesting observations regarding the implementation of the classification principles under §65A.

It is submitted that the classification principles have not been properly applied in the decision and this could mislead courts that may rule on similar matters in the future. With the purpose of establishing this proposition, this paper is divided into three parts. Part-II provides an overview of the development and interpretation of classification principles under §65A prior to *Future Focus Infotech*. Part-III undertakes a factual analysis of the decision itself. Part-IV critically analyses the manner in which classification principles have been employed in *Future Focus Infotech* and the impact this may have on future rulings of courts in India.

II. PRINCIPLES OF CLASSIFICATION: AN OVERVIEW OF GENESIS AND ORIGINS

When the State sought to tax services, there were no corresponding principles for the classification of services for this purpose. This was despite it being apparent that the problem of classification of services is concomitant to the taxation of services itself. Before the introduction of §65A, for many years, the *ad hoc* rulings of courts on the subject of classification norms constituted the law on the point. For example in, *Moorco (India) Ltd.* v. *Collector of Customs*,[11] the Supreme Court, interpreting the Schedule to the Customs Act, upheld the general principle that, "the classification which is the most specific has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries the one most nearer to the description should be preferred."[12] A similar principle was upheld in *Plasmac Machine Mfg. Co. (P) Ltd.* v. *CCE*[13] in the context of central excise.

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7 Finance Act, 1994, §65(2)(c).

8 Future Focus Infotech v. Commissioner of Service Tax, (2010) 18 STR 308 (Chennai CESTAT).

9 Finance Act, 1994, §65(68).

10 Finance Act, 1994, §65(31).

11 1994 Supp (3) SCC 562: (1994) 74 ELT 5.

12 Moorco (India) Ltd. v. Collector of Customs, *id.,* ¶4.

13 1991 Supp (1) SCC 57: (1991) 51 ELT 161, ¶19. *See also*, Dunlop India Ltd. v. Union of India, (1976) 2 SCC 241: (1983) 13 ELT 1566.

The Supreme Court in *CCE* v. *Bakelite Hylam Ltd.*[14] even classified the goods concerned based on its 'essential characteristics'.

Thus, for many years, there was no organized, concrete law on the classification of services for the purposes of taxation. Therefore, a government notification was issued on January 7, 2003 with the intent to clarify, compile and codify the position regarding classification of taxable services.[15] Under the said notification, it was stated that even if a service falls under two or more categories, it may only be taxed once, which makes accurate classification imperative[16] and in this light, the notification states, "the guiding principle should be that the service should be categorised under that category which is more specific".[17] In any case where doubts as to classification arise, the Central Excise Officer must decide the same according to the merits of the case.[18] This notification appears to be a codification of the law as developed by the judiciary in cases such as the ones discussed above.

§65A was finally introduced vide the Finance Act, 2003, and states as follows:

> "65A. Classification of taxable services
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> (1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65. (2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows:—
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> (a) the sub-clause which provides the most specific description shall be preferred to sub clauses providing a more general description;
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> (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;
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> (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the

[14] (1997) 10 SCC 350: (1997) 91 ELT 13.
[15] Circular No. ST-51/13/2002 [F. No. 178/2002-CX.4] dated January 7, 2003.
[16] Circular No. ST-51/13/2002 [F. No. 178/2002-CX.4] dated January 7, 2003, ¶2.
[17] Circular No. ST-51/13/2002 [F. No. 178/2002-CX.4] dated January 7, 2003, ¶4.
[18] Circular No. ST-51/13/2002 [F. No. 178/2002-CX.4] dated January 7, 2003, ¶5.

> sub-clause which occurs first among the sub-clauses which equally merit consideration."[19]

It is important to note that with the introduction of §65A, the prior departmental instructions vide Circular No. ST-51/13/2002 has been withdrawn.[20]

§65A has been interpreted in a slew of cases since its introduction. By way of illustration, the application of §65(1) is seen in *Coal Handlers (P) Ltd.* v. *CCE*[21] where the Kolkata CESTAT held that proper classification must be done in terms of §65A and that a particular service may be classified only under one head in §65. Similarly, in the case of *Speed and Safe Couriers*,[22] the Court held that under §65A principles, a service cannot be classified under *both* courier services and franchise services. In *Kopran* v. *CCEX*, the Court considered whether an activity fell under the definition of 'market research agency' and 'scientific and technical consultancy services'.[23]

Courts have also considered §65(2) on occasions. In *Super Poly Fabrics*,[24] the New Delhi CESTAT ruled that according to §65A, classification must be first made in accordance with §65. It is only where such classification cannot be made that resort must be had to §65A(2). Accordingly, in *Western Agencies Pvt. Ltd.* v. *CST, Chennai*,[25] the Court ruled that the loading and unloading of cargo in a port area are taxable under §65(82) as 'port service' as this would be the most *specific* description of the service provided. A similar position on the need to determine specific description was upheld in *Nirman* v. *CCE*.[26]

It is in this background that an analysis of *Future Focus Infotech* has been carried out. The next part discusses the particulars of the case.

III. *FUTURE FOCUS INFOTECH*: A BRIEF OUTLINE

The facts in *Future Focus Infotech* involve contracts between the assessee, Future Focus Infotech and its client companies, Tata Consultancy Services ('TCS') and Infosys, for the supply of services connected with

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19 Finance Act, 1994, §65A.

20 Vide Serial No. 33, ¶3, Circular No. 93/04/2007 dated May 10, 2007; S.S. GUPTA, SERVICE TAX 51 (2011).

21 (2004) 171 ELT 191 (Kolkata CESTAT).

22 Speed and Safe Couriers v. CCE, Cochin, (2010) 26 STT 139 (Kerala CESTAT).

23 Kopran v. CCEX, (2009) 16 STR 279 (Mumbai CESTAT).

24 Super Poly Fabrics v. CCE, Ludhiana, (2006) 4 STR 595 (New Delhi CESTAT).

25 (2008) 12 STR 739 (Chennai CESTAT).

26 (2011) 22 STR 58 (Bangalore CESTAT).

software development, modification or other similar tasks. The supply of these services is at the will of and subject to the approval of the service receiver.[27] The question for consideration was whether these services should fall within the definition of 'manpower recruitment' under §65(68) or 'consulting engineer' under §65(31). Admittedly this is no longer an issue given the 2008 notification on the point, however, the decision remains relevant in the context of general principles of classification in service law.

In the order in originals, delivered in 2008, it was held that the assessee was engaged in providing manpower recruitment services. This was because (a) the assessee was not engaged in any software development on its own premises; (b) the assessee had no control over the technical nature of activities carried out by its employees; (c) the entire service was provided under the supervision of the clients; and (d) the assessee was also unaware of the nature of activities required by TCS and Infosys.[28]

The order in originals was challenged by the assessee on the basis that the levy of tax was not supported by law as required by Art. 265 of the Constitution. The assessee submitted that the service must be classified under 'software engineer' because:

i. There is no contractual obligation for a supplier of manpower to undertake the provision of any specified service. However, the *deliverables* under the contract at hand is specifically provision of computer software service. This is therefore outside the definition of 'manpower recruitment'.

ii. Since service law is contract-driven, the final *responsibility* under the contract is the delivery of computer software services, not merely manpower.

iii. The *accountability* in the case of 'manpower recruitment' is the mere supply of manpower, however, as in the instant case, the accountability is also related to the quantum and quality of work performed. Therefore, the definition of manpower supply is not appropriate.

iv. Software services can be provided from any place and it cannot be said that this becomes manpower supply merely because it is supplied from a fixed *location* as in the present case.

v. The presence of a *defect liability clause* proves the existence of service in the nature of a 'consulting engineer' since manpower recruitment contracts cannot contain such a provision.

[27] *Future Focus Infotech*, *supra* note 9, ¶2.
[28] Future Focus Infotech, *supra* note 8, ¶3.

vi. *Termination* in the present case arises from failure to provide the specified software contract services and not for failure to supply manpower.

vii. The *consideration* is traceable to the provision of software consultancy services and not to manpower supply.[29]

viii. Further, even if resort must be made to §65A(2), it is clear that the services must be classified as consulting engineering services since this is the more specific description under §65A(2)(a) and as the definition of 'consulting engineer' appears prior to 'manpower recruitment' in §65 [§65A(2)(c)].

In reply, the Department submitted as follows:[30]

i. The work of the Assessee cannot fall under the definition of 'consulting engineer' because they have not been engaged for any particular project and since the employees of the assessee did not possess any qualifications in computer science or engineering. Further, once the engineers are placed with TCS/Infosys, the Assessee no longer has any control over them, save with respect to administrative matters.

ii. The service rendered does not fall within the definition of 'business auxiliary service'.

iii. The principal purpose for the agreements is the supply of manpower and not for the supply of software engineer services.

iv. Since there is no ambiguity, §65A(2) need not be considered.

The Department also raised claims stating that the claim is time-barred and that a penalty must be imposed on the Assessee since there is no real confusion regarding the taxability of the subject matter.[31]

The Chennai CESTAT after considering the arguments made by both parties as well as the specific provisions of the contract, ruled in favour of the Department, stating that the services in question fell within the definition of 'manpower recruitment'. The Court explained that in this case, the clients TCS and Infosys were merely seeking to obtain personnel for carrying out its projects. The obligation to provide suitable manpower did not imply in any way that the Assessee was undertaking any activity involving software services.[32] Paragraph 13 of the ruling states:

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[29] Future Focus Infotech, *supra* note 8, ¶5.
[30] Future Focus Infotech, *supra* note 8, ¶6.
[31] Future Focus Infotech, *supra* note 8, ¶6.
[32] Future Focus Infotech, *supra* note 8, ¶12.

> "No doubt there are clauses relating to deliverables and quality of work in the contracts but these by themselves do not indicate that the appellants are providing information technology software services to TCS and Infosys. Any person or organization obtaining skilled personnel has to ensure that such men deliver work of standard quality. No one would employ a person who is not skilled enough and no one would pay for shoddy work even if done by a skilled man. The relevant clauses in the contract in this regard on which much emphasis was sought to be put by the learned senior counsel for the appellants have to be viewed in the light that TCS and Infosys are merely seeking to obtain personnel from the appellants with necessary skill who will work diligently on the projects undertaken by TCS and Infosys."[33]

Accordingly, similar activities of the Assessee in respect of IBM and CAP GEMINI were held to be taxable under the head of 'manpower recruitment'.[34]

IV. A CRITICAL OVERVIEW: THE POSITION IN *FUTURE FOCUS INFOTECH* VIS-A-VIS §65A

The decision in *Future Focus Infotech* is interesting and has contributed to the law relating to classification in a number of ways. For *one*, the Court has provided an overview of the elaborate arguments of the Assessee and Department in classifying the service under §65(105). The Assessee and Department analyse (a) the nature of deliverables; (b) the responsibility under the contract; (c) accountability under the contract; (d) the location of performance of services; (e) the liability for defects; (f) termination of the contract; and (g) consideration for the contract.[35] This provides a systematic guideline for proving classification under *any* head under §65(105) in the future. *Second*, the Court has rightly stressed the importance of the individual clauses of the contract in each case. In paragraph 12, the Court states, "We are of the view that not only the wordings of these clauses are to be considered but also how different clauses of the contracts actually operate have to be seen".[36] This buttresses the proposition in the recent case, *Vijay Travels* v. *CST Ahmedabad*[37] where the Ahmedabad CESTAT held that the categorization of a service is dependent on the legal interpretation of documents such as contracts and agreements entered into between the service provider and his customer. It is, however, submitted

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33 Future Focus Infotech, *supra* note 8, ¶13.
34 Future Focus Infotech, *supra* note 8, ¶15.
35 Future Focus Infotech, *supra* note 8, ¶5.
36 Future Focus Infotech, *supra* note 8, ¶ 12.
37 Vijay Travels v. CST Ahmedabad, (2010) 19 STR 671 (Ahmedabad CESTAT).

that there are some significant concerns with the decision as well. These are outlined below.

A. APPLICATION OF §65A(2): JUDICIAL OVERSIGHT

The text of §65A states: "When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows...."[38] The position of law is, therefore, that first, the Department must first attempt to satisfy the definitions under §65(105). If *prima facie* it appears that the service may be classified under two or more clauses under §65(105), *then* the principles of classification under §65A(2) must be applied. The Department in *Future Focus Infotech* argued in paragraph 6 of the decision that "since there is no ambiguity, there is no need to resort to §65A(2)(a) for classification".[39] The Chennai CESTAT in its decision is unclear about whether it has accepted the contention of the Department in paragraph 6 or not. Paragraph 15, the Court vaguely states as follows: "looking at all aspects of the case and taking into account all the arguments made before us, we come to the conclusion that the appellants are only supplying skilled manpower for which they are liable to pay service tax...".[40] It is submitted that in the event that the pronouncement in paragraph 15 implies that the argument of the Assessee supporting the application of §65A(2)[41] has been rejected, then the Court is incorrect in doing so, as the definition of a *prima facie* classification under two services was made out in the facts. The reasons for this are substantiated below.

The Finance Act, 1994 does not under §65A or any other attending section lay down the requirements for a *prima facie* classification. Therefore, the definition must be adopted from general principles of law. It is well established that the term *prima facie* implies "on first appearance or subject to further evidence or information"[42] or "on/at first viewing".[43] This indicates a low threshold of proof, also evinced in a number of decisions in other fields of law wherein the requirement to prove a '*prima facie* case' is only to establish "the comparative strength of the case of either parties or by finding out if the plaintiff has raised a 'triable issue'".[44] This standard has been adopted in a series of cases including *Cadila Health Care Ltd.* v. *Cadila Pharmaceuticals Ltd*,.[45] *State Trading Corpn. of India Ltd*. v. *Jainson Clothing Corpn*.,[46] *Standipack Pvt. Ltd.*

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38 The Finance Act, 1994, §65A.
39 Future Focus Infotech, *supra* note 8, ¶6.
40 Future Focus Infotech, *supra* note 8, ¶15.
41 Future Focus Infotech, *supra* note 8, ¶15.
42 BLACK'S LAW DICTIONARY, 1228 (BryanGarder ed., 2004).
43 Georg Nils Herlitz, *The Meaning of the Term Prima Facie*, 55 LA. L. REV. 391, 391 (1994-1995).
44 S.M. Dyechem Ltd. v. Cadbury (India) Ltd., (2000) 5 SCC 573.
45 (2001) 5 SCC 73: AIR 2001 SC 1952.
46 (1994) 6 SCC 597: AIR 1994 SC 2778.

v. *Oswal Trading Co. Ltd.*,[47] and *Doraiswamy* v. *Dayalan*.[48] On the facts of *Future Focus Infotech*, it is clear on first appearance that the service could fall under either 'manpower recruitment' or under 'consulting engineer'. Not only does Cl. 1G of the contract between the assessee and Infosys define 'services' as including not just manpower supply but *also* "software development, modification or other tasks",[49] Cl. 2D makes the assessee responsible for the quality of service rendered by the personnel to be supplied to Infosys.[50] These terms are mirrored in the agreement with TCS. In fact, under Cl. 3(b) of the agreement between the assessee and TCS, it is stated as follows: "Appellants to perform all activities commonly known as Software Development and Maintenance Activities...",[51] which seems to draw a direct link between the Assessee and the act of software engineering itself. In this light, *prima facie*, the service appears to fall under both 'manpower recruitment' as well as 'consulting engineer' and the Court erred in not applying §65A(2).

B. §65A(2): SPECIFIC DESCRIPTION AND CLAUSE (C)

It is further suggested that objection must be raised even assuming that the Court considered the application of §65A(2). Under §65A(2)(a), "the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description".[52] The definition of 'consulting engineer' is *more specific* than the definition of 'manpower supply'. This is for a number of reasons. Software engineering was initially exempted from taxation by Notification 4/99 ST of February 28, 1999[53] and excluded from the definition of 'taxable services' under §65(105)(g) of the Finance Act. The relevant portion of the notification states that "in exercise of the powers conferred...the Central Government...hereby exempts the taxable service provided to any person by a consulting engineer in relation to computer software, from the whole of the service tax leviable thereon under section 66 of the said Act".[54] This was however later included within the realm of taxable services in 2008 by an amendment to §65 of the Finance Act which not only inserted an explanation to §65(105)(g) regarding the taxation of "services provided by a consulting engineer in relation to advice, consultancy or technical assistance..."[55] and by the insertion of a separate entry for taxation of information technology

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47 AIR 2000 Del 23.

48 (2002) 2 CTC 462: "whether there is a reasonable and arguable case for the plaintiff".

49 Future Focus Infotech, *supra* note 8, ¶2 (A)(3).

50 Future Focus Infotech, *supra* note 8, ¶2 (A)(5).

51 Future Focus Infotech, *supra* note 8, ¶2 (B)(1).

52 Finance Act, 1994, §65A(2)(a).

53 Notification 4/99 ST dated February 28, 1999.

54 Notification 4/99 ST dated February 28, 1999, ¶2.

55 Explanation to §65(105)(g), Finance Act, 1994, substituted vide Finance Act, 2008 (18 of 2008) dated May 10, 2008.

software under §65(53a) of the Finance Act.[56] This legislative history clearly indicates that the term 'consulting engineer' is of more specific description than the general term 'manpower supply'. A similar argument was made before the Chennai CESTAT in paragraph 4 of *Cognizant Technologies Solutions* v. *Commissioner* ('*Cognizant*')[57] and approved by the Court in paragraphs 9 to 11 ruled in favour of the Assessee.[58] Further, as §65A(2)(b) has no application to the present case because no composite service is involved,[59] reference may be made to §65A(2)(c), under which it is stated that "when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration".[60] 'Consulting engineer' falls under §65(31)[61] whereas 'manpower recruitment' falls under §65(68) of the Finance Act, 1994[62]. Clearly, by a simple application of §65(68), the classification under 'consulting engineer' must be upheld.

Hence for the reasons discussed above, it is suggested that the Chennai CESTAT erred in not applying the norms of §65A(2) to the facts of *Future Focus Infotech* and that if the Court had done so, the outcome of the decision may have been very different.

C. COGNIZANT AND FUTURE FOCUS INFOTECH: AN EXERCISE IN ARBITRARINESS

The third point of criticism of the decision in *Future Focus Infotech* is based on the decision in *Cognizant*. In a rare turn of events, *Cognizant* and *Future Focus Infotech* were decided by the same bench of the Chennai CESTAT on the same day and concerned the same issues,but the decision in *Cognizant* and *Future Focus Infotech* are exactly the opposite, that is, in *Cognizant* it was found that the services in question fell within the definition of 'consulting engineer'. In this light, it is instructive to analyse the decision in *Cognizant*.

Cognizant concerns a master biometrics service agreement entered into between the companies Pfizer and Cognizant. The case outlines the scope of the agreement between the parties and it can be found that the essential clauses of the agreement are similar to those in *Future Focus Infotech*. To illustrate: (i) Under Cl. 21 of the agreement between Infosys and Future Focus Infotech provides for periodic reporting summarising the work performed[63]

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56 The Finance Act, 1994, §65(53a), inserted vide Finance Act, 2008 (18 of 2008) dated May 10, 2008.

57 Cognizant Technology Solutions v. Commissioner, (2010) 22 STJ 178 (Chennai CESTAT), ¶4.

58 *Id*.,¶ 9 to 11.

59 Finance Act, 1994, §65A(2)(b).

60 Finance Act, 1994, §65A(2)(c).

61 Finance Act, 1994, §65(31).

62 Finance Act, 1994, §65(68).

63 Future Focus Infotech,*supra* note 8, ¶2(A)(5).

and Cl. 3.6 of the Cognizant agreement stipulates regular updates on the progress of the service;[64] and (ii) Cl. 1H of the Future Focus Infotech-Infosys agreement[65] provides for the execution of a Task Order containing statement of work to be completed which under Cl. 3 of the Future Focus Infotech-TCS agreement is to "render services through its selected employees to work on computer software application development, implementation and maintenance of specific projects to be identified and allocated by TCS".[66] Parallelly, Cls. 1.1 and 1.3 of the Cognizant agreement provide for the execution of an equivalent Work Order containing the nature and scope of services to be performed by Cognizant[67] which includes, "biometric services by retained staff for various Pfizer sponsored clinical studies."[68]

Based on these facts, the question before the Court was whether the service fell within the description of 'consulting engineer' or 'manpower recruitment'.[69] The counsel on behalf of the Assessee, referring to pertinent clauses of the Cognizant agreement, urged that the services fell within the definition of 'consulting engineer' based on the nature of deliverables, responsibility, accountability for services, location of the service, the nature of defect liability, termination of the contract and consideration for the services performed.[70] It was further contended, without prejudice to the previous argument, that even under §65A(2), the services must still fall under the definition of 'consulting engineer'.[71] The counsel for the Department, to the contrary, suggested on the basis of specific clauses of the Cognizant agreement that the service must be classified under 'manpower recruitment'.[72] The Chennai CESTAT in adjudicating the matter held that the service fell under 'consulting engineer' on the basis that "(i)t has to be appreciated that recruitment and training precedes provision of specialized services" and that consequently since manpower was retained for training for Pfizer in the first phase and supplied only in the second phase, "the assistance in recruitment and imparting of specialized training for the recruited personnel cannot be held against the appellants' claim."[73] It appears, thus, that the primary reason for the Court's decision in favour of the Assessee appears to be that Cognizant was not merely involved in supplying personnel, but under the first phase of the agreement was also responsible for imparting specialised training to the personnel, independent from the factum of recruitment. This attracted the definition of 'consulting engineer'. It is, however, pertinent to note that this was also the case in *Future Focus Infotech*. Cl.

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64 Cognizant, *supra* note 57, ¶2(2)(g).
65 Future Focus Infotech, *supra* note 8, ¶2(A)(4).
66 Future Focus Infotech, *supra* note 8, ¶2(B)(1).
67 Cognizan*t*, *supra* note 57, ¶2(1)(c).
68 Cognizant, *supra* note 57, ¶2(7)(a).
69 Cognizant, *supra* note 57, ¶4.
70 Cognizant, *supra* note 57, ¶4.
71 Cognizant, *supra* note 57, ¶4.
72 Cognizant, *supra* note 57, ¶5.
73 Cognizant, *supra* note 57, ¶10.

2D of the Future Focus Infotech-Infosys agreement indicates that the Assessee in this case also had a "responsibility to maintain and manage its tasks."[74] If services of the personnel are unable to perform the required tasks, it was the obligation of the Assessee to ensure continuity of the service. It is therefore evident that Future Focus Infotech had the responsibility of ensuring quality of service, much like the case in *Cognizant*. Given this, there is little explanation for why the decisions are divergent.

V. CONCLUDING REMARKS

This paper attempts to analyse the ruling in *Future Focus Infotech* and to understand its impact on the principles of classification in service tax law. In pursuance of this objective, it carries out an analysis of the genesis of §65A, gives an outline of the essential features of *Future Focus Infotech* and finally, critically studies the decision in light of §65A. In conclusion, it is suggested that the impact of *Future Focus Infotech* in the field of classification is mixed. I have found that although there are some laudable features of *Future Focus Infotech*, including the systematic criterion for classification of services which was adopted by parties before the Court and the emphasis that was laid on the specific clauses in each case, the Court has erred in holding that the services fall under the head of 'manpower recruitment and supply'. This is for three reasons, as outlined above. First, the Court was not justified in disregarding the application of §65A(2), second, applying §65A, the service would be classified under 'consulting engineer' and third, the decision in *Future Focus Infotech* is in complete opposition to *Cognizant* which not only has similar facts, but is also a decision of the same bench of the Chennai CESTAT. Perhaps, if the Court had considered the decision in *Cognizant* and had not overlooked the application of §65A(2) to the facts of the case, the decision would have been different.

[74] Future Focus Infotech, *supra* note 8, ¶2(A)(5).