CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70249 of 2023

(Arising out of Order-in-Appeal No.191-ST/APPL/LKO/2023 dated 02.03.2023 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Sheetal Prasad, **.....Appellant**
(40/48, Bada Ukhara, Rajpurchungi, Agra-282001)

VERSUS

Commissioner of Central Excise &
CGST, Agra **....Respondent**
(Sanjay Place, Agra)

APPEARANCE:

Shri Manu Kulshreshtha, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70106/2025

DATE OF HEARING : 28.02.2025
DATE OF PRONOUNCEMENT : 05.03.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.191-ST/APPL/LKO/2023 dated 02.03.2023 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow.

2. Briefly stated, the facts of the case are that the Appellant is engaged in providing its services being construction services, Educational/Charitable Institutions. The services pertain to the construction of buildings of charitable/educational institutions which are registered under Section 12A of the Income Tax Act, 1961.

3. On the basis of the information received from the Income Tax Department under third party data exchange policy, it appeared to the Department that the Appellant had received amounts on account of provisions of services but did not pay service tax to the Government. The period of dispute is Financial

Year 2015-16, 2016-17. Show cause notice[1] dated 28.04.2021 was issued proposing as under:-

i. *Service Tax amounting to Rs.89,10,638/- (Rs. Eighty Nine Lakh Ten Thousand Six Hundred Thirty Eight only) including all cess should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*

ii. *Interest on the above demanded amount should not be charged and recovered under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*

iii. *Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*

iv. *Penalty should not be imposed upon them under Section 77(1)(a) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 as the noticee failed to take registration in service tax.*

v. *Penalty should not be imposed upon them under Section 77(1)(c)(i) and (ii) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 in as much as the noticee failed to provide the information/documents as called for by the Central Excise Officer.*

vi. *Late fee for non-filing /late-filing of service tax returns as discussed above, should not be demanded and recovered as per the provisions of Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Act ibid and further read with Section 174 of the CGST Act, 2017.*

4. The learned Adjudicating Authority vide the Order-in-Original dated 26.05.2022 confirmed the demand of service tax amounting to Rs.89,10,638/- as proposed in the SCN and also imposed equal penalty under Section 78 and penalty of Rs.10,000/- each under Section 77(1)(a), 77(1)(c)(i) & (ii) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 and imposed late fee of Rs.80,000/- under Section 70 of the Act read with Section 7C of the Rules.

5. On appeal before the first Appellate Authority, the learned Commissioner (Appeals) vide the impugned Order-in-Appeal, partly allowed the appeal before him by holding that the demand

[1] SCN

of service tax for the Financial Year 2015-16 is barred by limitation and accordingly the demand of service tax alongwith interest and proportionate penalty has been dropped by him. Penalties imposed under Section 77(1)(a), 77(1)(c)(i) & (ii) and late fee imposed under Section 70 of the Finance Act, 1994 have also been dropped and modified the demand of service tax for the Financial Year 2016-17 from Rs.55,31,993/- to Rs.33,67,300/-. The Appellant Assessee still being aggrieved with the demand for the Financial Year 2016-17 has filed the present appeal before the Tribunal.

6. Heard both the sides and perused the appeal records.

7. The dispute in the present appeal as to whether the service tax has been rightly demanded as short paid or not paid. Pursuant to the SCN dated 28.04.2021, service tax has been demanded as short paid/not paid, based on the Income Tax records like Form 26AS, Income Tax Returns, Profit & Loss Account etc., for the Financial Year 2016-17. The proposed demand of Rs.33,67,300/- has been confirmed with equal amount of penalty under Section 78 of the Finance Act, 1994. The details of the demand in dispute as follows:-

Sr. No.	**Name of Department**	**Amount received (In Rs.) F.Y. 206-17**
1.	St. Georges College	15837578
2.	St. Georges College (Unit-II) Agra	19918953
3.	The Indian Heritage School	1123425
Total		**36879956**

8. It is also on record that the Appellant had total receipts of Rs.3,68,79,956/- only and there exists no evidence that any additional monetary consideration over and above this amount had been received by them, which makes them eligible for benefit of cum-taxability as provided under sub-section (2) under Section 67 of the Finance Act, 1994. Hence, the value of service comes out to be Rs.2,24,48,669/- at the rate of 15% and the value of service tax comes out to be Rs.33,67,300/- which is liable to be recovered alongwith interest.

8.1 It is contended that the service receiver is a trust, a charitable trust registered under Section 12 A/12 AA of the Income Tax Act, providing service of education and are not involved in any commercial activities. It is further contended that imparting of education is also in the nature of religious/charitable activities and hence, exempted vide Sl.No.13 of Notification No.25/2012-ST. It was observed by the lower authorities that exemption is granted for the services to a trust etc. registered under Income Tax Act in the nature of construction, etc., which are predominantly used by general public. Further, charitable activity in para 2 (k) of the Notification has been defined as activities relating to:–

(i) Public health;
(ii) Advancement of religion or spirituality;
(iii) Advancement of educational programmes or skill development;
(iv) Advancement of any other object of general public utility.

8.2 Hence, it was held that benefit of exemption is not available for the activity of the construction of school or hospital buildings.

8.3 Ld. Counsel urges that exemption has been provided for the construction done for charitable institutions registered under Section 12 AA of the Income Tax Act.

8.4 Section 12 AA read with section 12 A of the Income Tax Act provides for process of registration of a trust or institution, where income derived from the property etc. held under trust, is wholly meant for charitable or religious purposes, wherein exemption from income tax is available, subject to certain conditions.

8.5 Further, 'charitable purpose' is defined under Section 2 (15) of the Income Tax Act – 'Charitable purpose' includes relief of the poor, education, yoga, medical relief, preservation of environment, etc. and the advancement of any other object of general public utility.

8.6 Further, in the facts of the case, it is admitted that the service tax has been provided for civil construction of school building or hospital building to a charitable institutions or Trust registered under Section 12 AA of the Income Tax Act and the said activities are covered under the definition of 'Charitable Purpose' under the Income Tax Act. Further, the exemption notification in clause 13 (C) only states that, services provided by way of construction, erection, alterations, etc. is exempted, if the building is owned by an entity registered under 12 AA of the Income Tax Act and meant predominantly for religious use by public. Thus, education and medical services are also in the nature of religious services. The said activities are exempt under clause 2(k) of Notification No.25/2012-ST.

8.7 Having considered the rival contentions, I hold that religious use includes providing of education, and medical aid, which reduces human suffering. Accordingly, I hold that the Appellant is entitled to exemption with respect to aforementioned works contract service provided to the Trusts registered under Section 12A/12AA of the Income Tax Act.

9. In view of the above discussion, the demand of service tax of Rs.33,67,300/- is set aside, penalty under Section 78 is also set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on - **05.03.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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