CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

CHENNAI

REGIONAL BENCH - COURT No. III

Service Tax Appeal No.40909 of 2014

(Arising out of Order-in-Original No.02.2014 (ST) dated 30.01.2014
passed by Commissioner of Central Excise, Salem)

M/s. URC Constructions Private Limited **...Appellant**
No.119, Power House Road,
Erode – 638 001.

VERSUS

Commissioner of CGST & Central Excise, **...Respondent**
No.1, Foulk's Compound, Anai Medu,
Salem – 636 001.

APPEARANCE :

Ms. Radhika Chandrasekhar Advocate, for the Appellant
Ms. O.M. Reena, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41130/2024

DATE OF HEARING : 22.08.2024
DATE OF DECISION : 22.08.2024

Per Ms. Sulekha Beevi. C.S

Brief facts are that the appellant is engaged in providing construction services and is registered with the department. During the course of verification of their accounts for the period from September 2007 to February 2012, it was noticed that,

(a) The appellant provided works contract services to various education institutions for which they had not discharged the service tax, contending that such services are for construction of non-commercial buildings and hence exempted from payment of service tax.

(b) The appellant provided works contract services in respect of construction of buildings for District Office of Food Corporation of India and did not discharge service tax on such services on the contention that being a government building, it is exempted from levy of service tax.

(c) The appellant had taken Cenvat credit on capital goods which were not received in their registered premises.

Show cause notice dated 19.10.2012 was issued for the period 01.04.2007 to 31.03.2012 raising the above allegations and proposing to demand the service tax along with interest and also to disallow the credit availed on capital goods and recover these amounts along with interest. The show cause notice also proposed to impose penalties.

1.1 After due process of law, the original authority confirmed the demand in respect of construction services provided for private educational institutions. The original authority dropped the demand in respect of construction of educational institutions provided for government and government authorities. The demand raised in respect of construction of buildings for Food Corporation of India was dropped. The demand in respect of credit availed on capital goods was confirmed. Aggrieved by such order of confirmation of demand in respect of construction for private educational institutions and disallowance of Cenvat credit on capital goods, the appellant has preferred the above appeal.

2. The Ld. Counsel Ms. Radhika Chandrasekhar appeared and argued for the appellant. It is submitted that the demand has been raised under works contract services alleging that the construction services provided to educational institutions would fall within the ambit of levy of service tax. The definition of Works Contract Service provided under Section 65 (105) (zzzza) was referred to argue specifically that construction services provided primarily for the purpose of commerce or industry only would be subject to levy of tax. From the definition itself, it would be clear that construction activities for educational institutions which are non-commercial in nature and provided to non-profit bodies is not subject to service tax. The details of the services provided to educational institutions are furnished by the appellant as under: -

ADV / ...

URC CONSTRUCTION PRIVATE LIMITED

STATEMENT ON EDUCATIONAL INSTITUTIONS AFFLIATION

S.No	Name of Trust	Name of Educational Institution	Affiliation Details
1	Bannari Amman Educational Trust	Bannari Amman Institute of Technology, Sathyamanagalam	Anna University
2	Jansons Foundations, Tiruchengode	Jansons Institute of Technology, Coimbatore	Anna University
3	Lamika Educational and Charitable Trust, Coimbatore	Kathir College of Engineering, Coimbatore	Anna University
4	Madras Cements Ltd Educational and Charitable Trust, Rajapalayam	Ramco Vidhayala (School), Virudhunagar	Central Board of Secondary Education (CBSE)
5	Paramasivam Palanisamy Charitable Trust, Erode (Reg.No:63/1990)	i) Maharaja College for Women, Erode	Bharathiyar University
		ii) Maharaja International School, Erode	Indian Certificate of Secondary Education (ICSE)
		iii) Maharaja Institute of Technology, Coimbatore	Anna University
6	Integral Ear Institute Coimbatore	Dr.PGV Matriculation School, Coimbatore.	Tamil Nadu Board of Higher Secondary Education (TNBHSE)
7	P.S.Govindasamy Naidu & Sons Charities, Coimbatore	PSG College of Technology, Coimbatore	Anna University
8	The Governing Council of the American College, Madurai	The American College, Madurai	Maduari Kamaraj University
9	Vellammal Educational Trust, Chennai	i) Velammal Matriculation School	State Board of Tamil Nadu
		ii) Velammal College of Engineering and Technology	Anna University
		iii) Velammal Medical College Hospital & Research Institute	Dr.MGR. Medical University
		iv) Vellammal Institute of Technology	Anna University
10	North Arcot Educational and Charitable Trust, Vellore	Vellore Institute of Technology, Chennai	VIT University (Deemed University approved by Govt. of India)
11	Aryanet Trust, Palakkad (Reg.No:99/2010)	Aryanet Institute of Technology, Palakkad	APJ Abdul Kalam Technology University (KTU) (Approved by All India Council for Technical Education (AICTE)
12	Sree Krishna Education Trust	College of Agriculture Technology, Theni	Tamil Nadu Agricultural University

3. It is pointed out by the Ld. Counsel that the department does not dispute the construction services were provided to educational institutions. The adjudicating authority has dropped the demand in respect of educational institutions constructed for government / governmental authorities. While taking this view, the adjudicating authority has held that the construction of educational institutions for government is for non-commercial purposes. However, the demand in respect of construction made for private educational institutions has been upheld for the reason that these educational institutions collect fees from students. The said reasoning given by the adjudicating

authority is erroneous. The running of educational establishments cannot be considered as services provided for commercial purposes. The definition of Works Contract Services does not make any such distinction.

4. The Ld. Counsel relied upon the decision of the Tribunal in the case of M/s. RR Thulasi, Builders India P Limited to submit that the Tribunal in the said decision had considered the issue in detail and after relying upon the Board's Circular which clarified that the construction of educational institutions would not come within the ambit of levy of service tax has set aside the demand.

5. Further, the demand of service tax has been confirmed and quantified in respect of construction services provided to private educational institutions, by denying the benefit of composition scheme. In case the demand is confirmed, the appellant is eligible for the composition scheme as provided in the Works Contract Composition Scheme. The reason for denying the benefit of composition scheme is that the appellant has not intimated the department with regard to the availment of option for payment of service tax under the composition scheme. It is submitted that the appellant had intimated the department of their intention to avail the composition scheme by issuing a letter in 2007 itself. For this reason, the denial of the benefit of payment of service tax under Works Contract Services under the composition scheme is erroneous and prayed that the same may be set aside.

6. The second issue is with regard to the disallowance of credit on capital goods. The allegation is that the appellant has not received the capital goods in their registered premises. The Ld. Counsel submitted that the appellant is not contesting this issue. There was an amendment in Rule 4 in 2012 by which the capital goods procured by out service provider is not required to receive at the registered premises only. There was no intention avail ineligible credit. The appellant has availed credit of capital goods used at the construction site and was under bonafide belief that it is eligible.

7. The Ld. Counsel argued on the ground of limitation. It is submitted that the demand has been raised invoking the extended period alleging that the appellant has suppressed facts with intent to evade payment of service tax. The department has not brought forth any evidence to establish suppression on the part of the appellant. Further, the issue as to whether service tax is to be paid for construction services of educational institutions is interpretational in nature. The Board vide Circular dated 17.09.2004 had occasion to clarify the same. This indicates that the issue is purely interpretational in nature. It is prayed that the demand may be set aside on the ground of being time-barred. The Ld. Counsel prayed that the appeal may be allowed.

8. The Ld. AR Ms. O.M. Reena appeared and argued for the department. The findings in the impugned order was reiterated. It is submitted that after considering in detail, the adjudicating authority has dropped the demand in respect of construction services provided for Food Corporation of India as well as the educational institutions

constructed for government and governmental authorities. In the case of educational institutions constructed for Trust and various other private organizations, the appellant is liable to pay service tax. The Ld. AR relied upon para 20 & 21 to submit that these institutions collect fees from the students and therefore are run for profit and has to be considered as constructions for commercial purpose. It is submitted that the demand confirmed is legal and proper.

9. On the issue with regard to denial of Cenvat credit on capital goods, it is submitted by the Ld. AR that the appellant is not eligible to avail the credit for the reason that the capital goods have not been received by the appellant in their registered premises. It is prayed that the appeal may be dismissed.

10. Heard both sides.

11. The first issue that arises for consideration is whether the appellant is liable to pay service tax on construction services provided for constructing educational institutions. The Ld. Counsel has given the list of educational institutions constructed by them. The original authority has dropped the demand in respect of construction of educational institutions for government /governmental authorities. In doing so, the original authority has taken the view that the construction of educational institutions is for non-commercial purpose. The definition of works contract services is reproduced as under: -

> *"Works Contract Service" is defined under Section 65 (105) (zzzza) of Finance Act, as any service provided or to be provided, to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.*

Explanation For the purposes of this sub-clause, "works contract" means a contract wherein, -

(1) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(II) such contract is for the purposes of carrying out,

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, Installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air- conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation o (d), oration of, or similar services, In relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

Sub clause b of Section 65 (105) (zzzza) of the Finance Act 1994 states that if the construction is for the purpose of commerce or industry the services of Construction of Civil structure would be covered by the definition. The board vide its circular dated 17.09.2004 has clarified the same.

12. The Tribunal in the case of M/s. RR Thulasi builders India P Limited had occasion to consider the very same issue and after referring to the Board's Circular and various other decisions has set aside the demand for construction services provided for construction of educational institutions. The relevant part of the decision of the

Tribunal in case of M/s. RR Thulasi builders India P Limited vide Final Order No. 40703/2024 dated 13.06.2024 is reproduced as under: -

"*7. The issue to be considered is whether the appellant is liable to pay service tax under "Works Contract Service" for the period 01.10.2008 to 30.06.2012 for construction of educational institutions.*

8. It is not in dispute that the appellant has discharged service tax in respect of construction services provided for other than educational institutions. The issue in this appeal is only with regard to the demand raised in respect of construction service for educational institutions. The department is of the view that the appellant has to pay service tax for construction service provided to construct educational institutions. It is the case of the department that even though these educational institutions may be constructed and run by charitable organizations, since these educational institutions collect fees of different nature, they are to be treated as constructions of commercial nature. The Department vide Circular No.80/10/2004-ST dt. 17.09.2004 has clarified that the constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purpose of profit are not taxable being non-commercial in nature. Relevant part of the circular reads as under :

"13. Construction services (commercial and industrial buildings or civil structures) :

13.1 *Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil contractor. Estate builders who construct buildings/civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a labourer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.*

13.2 *The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used' for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. <u>Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being noncommercial in nature.</u> Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.*

13.3 *In case of multi-purpose buildings such as residential-cumcommercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/municipal laws.*

13.4 *The definition of service specifically excludes construction of roads, airports, railway, transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it is clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy."*

The Board in the above circular has explained that when the building is meant only for educational purpose, the levy of service tax is not attracted. The department does not have a case that the educational institutions constructed by appellant are not used principally and solely for providing education.

9. The Ld. A.R has attempted to counter the above circular by stating that the Board has withdrawn the said circular dt. 17.09.2004 pursuant to the issuance of Master Circular No.96/7/2007-ST dt. 23.08.2007. The Ld. Counsel has submitted that as per the Master Circular dt. 10.05.2007, though several circulars were withdrawn, the circular dt. 17.09.2004 was not withdrawn by the Department and is in force during the disputed period. The relevant part of the Master Circular is reproduced as under :

"3. Taking into account the recommendations made in the report submitted by Shri T.R. Rustagi, views/comments/suggestions received from the trade and industry associations, the departmental officers and all material facts, it has been decided that certain service tax circulars/clarifications/instructions which were previously issued with some objectives, but which have since then lost their relevance or have become anachronistic due to changes in law, procedures, etc., should be withdrawn. Accordingly, **the following circulars/clarifications/instructions stand withdrawn with immediate effect, -**

Sl. No.	Circular No./F.No.	Date
1	1/1/94-ST	29-6-1994
2	2/2/94-ST	8-7-1994
3	4/4/94-ST	6-9-1994
4	5/5/94-ST	11-10-1994
5	6/1/95-ST	2-5-1995
6	7/1/96-ST	29-2-1996
7	8/2/96-ST	11-3-1996
8	9/3/96-ST	11-3-1996
9	13/7/96-ST	20-9-1996
10	15/9/96-ST	4-10-1996
11	16/10/96-ST	15-10-1996
12	19/13/96-ST	21-11-1996
13	20/14/96-ST	31-12-1996
14	21/1/97-ST	27-1-1997
15	F. No. B. 43/7/97-TRU	11-7-1997
16	F. No. 148/3/97-CX4	9-9-1997
17	23/3/97-ST	13-10-1997
18	F.No. 354/128/97-TRU	18-12-1997
19	25/2/98-ST	23-7-1998
Sl. No.	**Circular No./F.No.**	**Date**
20	26/3/98-ST	10-9-1998

21	27/1/99-ST	19-5-1999
22	28/2/99-ST	4-7-1999
23	30/1/2000-ST	5-6-2000
24	31/2/2000-ST	31-7-2000
25	34/2/2001-ST	30-4-2001
26	36/4/2001-ST	8-10-2001
27	37/5/2001-ST	27-12-2001
28	38/1/2002-ST	7-2-2002
29	39/2/2002-ST	20-2-2002
30	42/5/2002-ST	29-4-2002
31	45/8/2002-ST	30-7-2002
32	48/10/2002-ST	13-9-2002
33	51/13/2002-ST	7-1-2003
34	53/2/2003-ST	27-3-2003
35	54/3/2003-ST	21-4-2003
36	55/4/2003-ST	24-4-2003
37	56/5/2003-ST	25-4-2003
38	57/6/2003-ST	20-5-2003
39	64/13/2003-ST	28-10-2003
40	65/14/2003-ST	5-11-2003
41	70/19/2003-ST	17-12-2003
42	73/3/2004-ST	5-1-2004
43	74/4/2004-ST	23-1-2004
44	77/07/2004-ST	10-3-2004
45	78/8/2004-ST	23-3-2004
46	79/9/2004-ST	13-5-2004
47	F.No. 341/20/2005-TRU	12-5-2005
48	F.No./354/106/2005-TRU	8-8-2005

The above list in Master Circular No.93/04/2007-ST dated 10.05.2007 shows that the Circular No.80/10/2004-ST dt. 17.09.2004 has not been withdrawn by the Department.

10. When the circular issued by the Board specifically clarified that construction services provided for construction of educational institutions are exempted from levy of service tax we find no reason to hold that these constructions are commercial in nature.

11. It also requires to be stated that the Coimbatore Builders and Contractors Association had addressed to the Chief Commissioner of

Central Excise, Coimbatore vide letter dt. 19.06.2013 requesting for clarifications with regard to various construction services. One of the clarifications raised in the said letter was whether the Circular No.80/10/2004-ST dt. 17.09.2004 is to be treated as withdrawn or not. The said letter by the Coimbatore Builders and Contractors Association as well as the reply by the Coimbatore Commissionerate is as under :

19.06.2013

To

The Chief Commissioner of Central Excise,
Coimbatore.

Respected Sir,

A few members of our organisation engaged in Construction activity are facing problems regarding the abatement availed by them while paying Service tax for the period prior to 1/7/2012.It is requested that clarification may please be given on the following issues-

a. Whether the construction of schools, colleges, hospitals and charitable institutions was liable to Service Tax as the same were not primarily for Commerce or Industry.

b. If the circular No 80/10/2004 dated 10/9/2004, which clarified what types of construction are not to be treated as Commercial, is to be treated as withdrawn, is there an alternate Circular mentioning that construction of schools, colleges, hospitals and charitable institutions are not exempted.

c. Having informed the trade in 2008 vide Circular 98/1/2008 dated 4/1/2008 that existing pattern of payment of Service Tax for ongoing projects as on 1/6/2007should only be under abatement method under Notfn 1/2006 and not under Works Contract, can the Department now demand differential Service Tax even for the ongoing projects as on 1/6/2007 under Works contract.

d. When Service Tax had been discharged by the Builders availing Notification 1/2006 and tax paid on the abated portion wherever material is used , is it correct for the Department to state that even in these cases the classification should be under Works Contact and demand Differential Service Tax for the past five years.

e. When the Builders have filed their ST-3 returns disclosing all the details and their units subjected to frequent audit by the Department in which all the above aspects have been thoroughly examined and no objection raised, can Service Tax now be demanded on the above two issues for the past five years invoking the provisions of Section 73(1) of the Finance Act, 1994.

Your clarifications in this regard will give peace to our members who are apprehending action against them by the Department on the above aspects.

Yours sincerely,
For Coimbatore Builders and Contractors Association

B.Sekar
President

Query :

1. Whether the construction of schools, Colleges, Hospitals and Charitable institutions, was liable to Service Tax as the same were not primarily for Commerce or Industry.

2. If the Circular No.80/10/2004 dated 10.09.2004, which clarified what type of construction are not to be treated as Commercial, is to be treated as withdrawn, is there an alternate Circular mentioning that construction of Schools, Colleges, Hospitals and Charitable Institutions are not exempted.

3. Having informed the trade in 2008 vide Circular 98/1/2008 dated 04/01/2008 that existing pattern of payment of Service Tax for ongoing projects as on 01.06.2007 should only be under abatement method under Notn.01/2006 and not under works contract, can the Department now demand differential Service tax even for the ongoing projects on 01/06/2007 under Works Contract.

4. When Service tax has been discharged by the builders availing Notification 1/2006 and tax paid on the abated portion wherever material is used, is it correct for the Department to state that even in these cases the classification should be under Works Contract and demand differential Service tax for the past Five Years.

5. When the Builders have filed their ST3 returns disclosing all the details and their units subjected to frequent audit by the Department in which all the above aspects have been thoroughly examined and no objection raised, can Service Tax now be demanded on the above two issues for the past five years invoking the provisions of Section 73 (10 of the Finance Act, 1994.

Reply to Query :

1. As per Board's Circular No.80/10/2004-ST dated 17.09.2004, the constructions which are for the use of organizations or institutions being established solely for educational , religious, charitable, health, sanitation or philanthropic purposes and not for the purpose of profit are not taxable, being non-commercial in nature.

2. The said Board's Circular dated 17.09.2004 (not 10.09.2004 as you have mentioned), has not been withdrawn and is in force at present."

(emphasis supplied)

12. From the above, it can be seen that the department itself has taken the view that the circular dt. 17.09.2004 is still in force and that the construction provided for educational institutions are exempted from levy of service tax. Needless to say, that the Board circulars are binding on the department.

13. The Hon'ble High Court of Karnataka in the case of Commissioner of C.Ex (Appeals), Bangalore Vs KVR Construction – 2012 (26) S.T.R. 195 (Kar.) had occasion to consider the issue of refund of service tax paid by an assessee on construction services provided for construction of educational institutions. The Hon'ble High Court upheld the order passed by the Tribunal that construction of educational *institutions is exempt from levy of service tax. Relevant para reads as under :*

> **"12.** It is an undisputed fact that total amount of Rs. 1,24,38,991/- was paid as service tax under different TR-6 challans between February 2005 and February 2007. It is not in dispute the clarifications issued in the circular dated 17-9-2004 includes the building constructions which are for the use of organizations or institutions being established solely for the educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purpose of profit, are not taxable being non-commercial in nature. It is also not in dispute that claim of the respondent before the concerned authority seeking refund of the above said amount was based on the above circular dated 17-9-2004 on the ground that the services are rendered for a non-profit organization. The department is also not denying that services rendered by the respondent by putting up constructions of several buildings stated above to the trust, which is a non-profit organization, hence, a non-profit service is not taxable."

14. In the case of Gujarat Adani Institute of Medical Sciences Vs CCE & ST Rajkot vide Final Order No.A/11309-11310/2023 dated 22.06.2023, the Tribunal considered the very same issue as to whether the demand of service tax raised on construction of educational institutions is sustainable or not. Relevant paras read as under :

> "5.3 We also find that in view of the various documentary evidence and certificates and registrations of the Appellants and analysis thereof and also considering the observations of the ld. Commissioner (Appeals) on this, there is no doubt that building constructed by the Contractor is medical college building. From the Resolution No. HSP/1007/3247/PARK2/A dated
>
> 27.05.2009, issued by the Government of Gujarat, Certificate dated 26.05.2009 issued by the Registrar under the Registration of the Societies Act, 1860,
>
> Certificate dated 26.05.2009 issued under the Bombay Public Trust Act, 1950,
>
> Registration under Section 12AA of the Income Tax Act, 1961 and Memorandum of Association framed under the Act XXI of the Registration of the 1860 for the registration of Literary Scientific and Charitable Society it is clear that the construction of building for which refund claim has been filed is used for educational purpose and the object of the of the use of the building is not for commercial purpose. The certificates and registrations produced by the Appellant clearly established that Appellant i.e M/s Gujarat Adani Institute of Medical Sciences is a charitable trust registered with public trust under the Bombay Public Trust Act, 1950.With all these facts, it is clear that

building constructed by the Appellant is not commercial and industrial construction, therefore does not fall under the category of taxable services, as the same is not used for commercial and industry but it is used for providing education. We also noticed that the Appellant have been granted registration of Trust under Section 12AA of the Income Tax Act which shows that Appellant have been registered for non-commercial purpose. Since the organization of the appellant itself is non-profit purpose, it cannot be said that the building is used for commercial activity. Therefore we do not agree with the finding of the Ld. Commissioner that the activity of running medical college is nothing but a commercial one and same cannot be construed as non-commercial activity/ organization.

5.4 The appellant also argued that, whether, the building is for commercial or otherwise the primary use of such building is required to be seen. We find that this argument is convincing as the similar issue has been considered by this Tribunal in the case of B.G. Shirke Construction Technology Pvt. Ltd. Vs. C.C.E. 2014 (33) S.T.R. 77 (Tribunal - Mumbai), wherein it was held that merely because some amount is charged for using the facility of this stadium the same cannot be commercial construction. The said decision was upheld by the Hon"ble Bombay High Court reported in 2019 (25) GSTL 8 (Bom). The similar issue has been considered in the case of Commissioner of Service Tax Vs. S.M. Sai Construction - 2016 (42) STR 716 wherein the service recipient was charitable trust registered under the Bombay Public Trust Act, 1950.The Tribunal Held that the building constructed was not commercial construction and therefore, Service Tax paid by the recipient was refundable. In an another identical case of Institute of Banking Personal Selection Vs. Commissioner of Service Tax - 2007 (8) STR 579,it was held that an organization does not declare dividend or distribute surplus/profits to its shareholders, trustees and /or members but ploughs back the surplus for the purpose of an object of the organization would be considered as charitable organization. Accordingly, Service Tax would not be charged. It is further held that merely charging of fees will not make position that the appellant institute is not a non-commercial concern.

5.5. In view of the above judgment it is settled that merely by charging fees or higher fees an institution which otherwise, belongs to a Charitable Trust cannot lose its identity as non-commercial entity.

5.6 We note that C.B.E. & C. had issued Circular No. 80/10/2004-S.T., dated 17-9-2004 and in Para 13.2 clarified that the leviability of Service Tax was primarily dependent upon the use of the building or civil structure. Further, it clarified that it was to be ascertained where building or civil structure was used or to be used for commercial or industrial purpose and further required to gather the information as to whether the buildings or civil structures were being used or to be used for the purpose of making profit or not and clarified that if the building or civil structure was used or to be used not for the purposes of profit then the same are not taxable. When the property in question is not used by Appellant for commercial purpose then it cannot be liable for payment of service tax as is apparent from Circular dated 17-09-2004. It is apparent that C.B.E. & C. circular considered the use of the said property as non-commercial in nature. In these circumstances service tax on construction of said building / property cannot be levied."

15. In the case of *KMV Projects Ltd. Vs CCE & ST Hyderabad* - 2019 (27) G.S.T.L. 388 (Tri.-Hyd.), the issue

considered by the Tribunal was whether construction of guest house for temples at Srisailam, Kanipakam and also educational institutions would be subject to levy of service tax. Relevant paras of said Tribunal's decision that the demand of service tax cannot sustain are as under :

"**10.** The ratio laid down after thorough analysis by the Larger Bench of the definition of the works contract service (WCS) hereinabove would mean that any construction which is for non-commercial or nonindustrial purposes, service tax liability under WCS will not arise. In our view, the construction of guest houses and temple complex (multistoried complex) for the purpose of public use in a religious institution, in the absence of any further evidence to show that these guest houses are allotted to non-pilgrims as a hotel accommodation services, for those visiting the temple, we have to hold that the said services would fall under exclusion clause of works contract services and tax liability does not arise. For the period post 1-7-2012, Mega-exemption Notification No. 25/2012-S.T., dated 20-6-2012 at Sl. No. 13(c) exempts the tax liability on a building owned by an entity registered under Section 12AA of the Income-tax Act, 1961 and meant predominantly for religious use by general public. This exemption clearly covers the case of the appellant post 1-7-2012 as it is undisputed that appellant is registered with the income tax authorities under Section 12AA as a charitable institutions for the period pre and post 1-7-2012. The exemption granted by Notification No. 25/2012-S.T. (13)(c) would apply in full force. Accordingly, the demand of the service tax on the services rendered of works contract services to the religious institution does not survive and are liable to be set aside as we do so.

10. As regards demands raised on the buildings constructed for CDAC, NFC and APHMHIDC, we find from the hand-outs given today by the Learned Counsel as well as produced before the adjudicating authority, the APHMHIDC has been stated to be engaged in creating infrastructure facilities of accommodation for medical institutions and quarters, and maintenance of hospital buildings, procurement and distribution of drugs, surgical and consumables and equipment and for storage of these items and that the said APHMHIDC is functioning as no profit and no loss basis. The said hand-out also specifically states that it is an enterprise of Govt. of Andhra Pradesh. On perusal of the profile of NFC, it states that it has been established in the year 1971 as a major industrial unit of Department of Atomic Energy, Govt. of India and the complex is responsible for supply of fuel and reactor core components for all the nuclear power reactors operating in India. The said NFC has been clearly indicated as a Unit of Department of Atomic energy, Govt. of India. As regards the C-DAC, it is indicated in the profile of C-DAC that it is a premium R & D organisation of the Ministry of Electronics and Information Technology (MEIT) for carrying out R&D in IT, electronics, and associated areas. It can be seen from the said profiles of 2-3 units that they are all units of Govt. or local authority of Govt. authorities and cannot be considered as primarily engaged for the purpose of commerce or industry. Learned AR relied upon some balance-sheet of C-DAC to state that they were profit making units to press his argument that they are commercial and industrial purposes. We find that such allegations were not there in the show cause notice and not supported also. We find that the Tribunal in the case of *Ratan Das Gupta & Co* v. *CCE, Jaipur* [2017 (3) G.S.T.L. 247 (Tri. - Del.)] and *Commissioner of Service Tax* v. *S.M. Sai Construction* [2016 (42) S.T.R. 716 (Tri. - Mum.)] following the Larger Bench decision in the case of *Lanco Infratech* has categorically recorded that the buildings constructed for non-commercial and non-industrial purposes are not taxable under works contract services. The said ratio squarely applies in favour of appellant for the demand of service tax in the case of buildings constructed for C-DAC, NFC and APHMHIDC, and it has to be held that these buildings constructed by the appellant and the services rendered under works contract services are not taxable pre or post 1-7-2012.

11. As regards the service tax liability on the buildings constructed for ICFAI, we find that the issue is no more *res integra* as the Tribunal in the case of *Vij Construction Pvt. Ltd.* v. *CCE, New Delhi* [2018 (11) G.S.T.L. 169 (Tri. - Del.)] was considering the very same issue of taxability of the services for construction of buildings for ICFAI and in paragraph No. 6 has held that in regard to campus for ICFAI University Dehradun, the buildings are for use of a recognised university for education and the same cannot be considered as commercial buildings. ICFAI University is having pan India presence, operating in various campuses, it has to be considered as an educational institution, as per the ratio of the decision of the Tribunal in the case of *Vij Construction Pvt. Ltd.* (supra). Accordingly, the service tax liability on the construction of buildings for ICFAI Bangalore, Jaipur and Hyderabad for the period pre and post 1-7-2012 is unsustainable and liable to be set aside and we do so.

12. Learned AR has placed reliance on the judgment of the Hon'ble High Court of A.P. and Hyderabad in the case of *Tirumala Tirupathi Devasthanams* v. *Superintendent of Customs, Central Excise & Service Tax, Tirupathi* [2013 (30) S.T.R. 27 (A.P.)] to state that the guest houses which are constructed for religious institutions and charitable institutions are liable to tax. We find that the said judgment was delivered by the Hon'ble High Court on the facts of that case inasmuch there the Hon'ble High Court was considering in a writ challenge to a letter issued by the departmental authorities to TTDC for registering themselves as providers of accommodation services. It is to be seen that the Govt. of India by issuing Notification No. 25/2012-S.T. (Sl. No. 13(c) has very clearly recorded that the services rendered to "building owned by an entity registered under Section 12AA of the Income-tax Act and predominantly for religious use of general public are exempted." The Revenue's reliance on the decision of the TTDC case may not carry their case any further as the issue was different in that case.

13. Since we have disposed of the appeal on merits itself we are not recording any findings/observations on the various other submissions made by both sides; as also on limitation."

16. The Tribunal in the case of Vijayadeepa Constructions Private

Ltd. Vs CGST & Central Excise, Coimbatore vide Final Order No.40536/2024 dt. 08.05.2024 had also considered the very same issue and after referring to the Circular issued by the Board set aside the demand. Relevant paras read as under :

> "12. The second issue is with regard to demand under 'Works Contracts Service' provided for construction of Engineering College to M/s.KTVR Siddhammal Charitable Trust. The department does not dispute that the building has been used solely for the purpose of Engineering College. So also, the said college is recognized by the AICTE. The appellant has relied upon CBEC Circular No.80/10/2004ST dt. 17.09.2010 wherein the Board has clarified in para 13.2 as under:
>
> > "13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used' for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax."
>
> 13. It is explained by the Board in the aforesaid circular that, when the building is solely used for educational purposes, the levy of service tax is not attracted. We, therefore, find that the building having been used for educational purpose and being non-commercial purpose, the said construction activity cannot be subject to levy of service tax during the disputed period."

17. In view of the above discussions, we find that the demand of service tax under WCS for the disputed period for construction of educational institutions cannot sustain. The issue on merits is answered in favour of the appellant and against the Revenue.

18. The Ld. Counsel has argued on the ground of limitation. From the records, it is seen that the entire figures and details for raising the demand is taken from the accounts maintained by the appellant. Further the appellant has discharged appropriate service tax in regard to all other *construction services. The appellant had not discharged service tax for constructions of educational institutions on a bonafide belief and also taking note of the clarifications issued by the Board as per circular dt. 17.09.2004. There is no positive act of suppression established by the department against the appellant. The issue is also interpretational in nature as there have been several litigations. The Board has also come forward to clarify the nature of construction services when provided to educational institutions. In such circumstances, there are no grounds for invoking the extended period and we hold the demand is time-barred. The issue of limitation is answered in favour of the appellant and against the Revenue.*

19. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any."

13. After considering the facts as above and also following the decision in M/s. RR Thulasi builders India P Limited, we are of the view that the demand of service tax for providing construction educational institutions cannot sustain and requires to be set aside. Ordered accordingly

14. The second issue is with regard to disallowance of credit on capital goods. The Ld. Counsel has submitted that the appellant is not contesting this issue. The demand in respect of credit availed on capital goods is sustained along with interest.

15. In Cenvat Credit Rules, Rule 3 (xi) (i) was amended w.e.f. 20.06.2012 by which the word 'registered premises' was omitted and the word 'by' was introduced. In terms of the substitution w.e.f. 20.06.2012 onwards the service provider would be eligible for credit

on capital goods even if such capital goods are not received in the registered premises. It can be understood that the capital goods in the nature of machine/equipment used for construction activities cannot be received in the registered premises / office of an output service provider. The intention of omitting the words 'registered premises' was only to benefit the output service provider to avail the credit of capital goods required for providing output services. In such circumstances, we are of the opinion that the penalty imposed in this regard requires to be set aside. Ordered accordingly.

16. In the result, the impugned order is modified as under: -

(i) The demand of service tax, interest and penalties confirmed under works contract services for Construction of educational institutions is set aside entirely.

(ii) Demand and interest in regard to disallowance of credit on capital goods is sustained. The penalty in this regard is entirely set aside.

17. The appeal is partly allowed in above terms with consequential reliefs, if any.

(Order dictated and pronounced in the open court)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI. C.S)
Member (Judicial)

psd