

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL : CHENNAI**

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41266 of 2015

(Arising out of Order-in-Original No. 03/2015 dated 27.02.2015 passed by
the Commissioner of Central Excise, Customs and Service Tax, Coimbatore)

M/s. Shree Mahalakshmi & Co.

....Appellant

No. 62, Ramaswamy Layout, D.P.F. Street,
P.N. Palayam, Coimbatore – 641 037.

VERSUS

The Commissioner of GST and Central Excise .Respondent

No. 6/7, A.T.D. Street, Race Course,
Coimbatore – 641 018

APPEARANCE:

Shri. S. Durairaj, Advocate for the Appellant

Shri. Sanjay Kakkar, Authorised Representative for the Respondent

CORAM :

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)**

FINAL ORDER No.40443/2025

DATE OF HEARING: 21.01.2025

DATE OF DECISION:17.04.2025

Per Ajayan T.V.,

M/s. Shree Mahalakshmi & Co., the appellants herein, have preferred this appeal assailing the impugned Order in Original No.03/2015 dated 27.02.2015 (OIO), whereby the adjudicating authority has inter-alia confirmed the demand of Rs.1,52,07,369/- towards the service tax payable by the appellants under the category of "Works Contract Service" during the period from April 2008 to June 2012 under section 73(2) of the Finance Act, 1994

(Act), invoking the extended period of limitation under proviso to Section 73(1) of the Act, along with applicable interest thereon and imposing equivalent penalty under Section 78 of the Act and a penalty of Rs.10,000/- under Section 77(2) of the Act.

2. Succinctly, the facts are that the appellants are registered with the Department as service providers of Commercial or Industrial Construction Services and Construction of complex services and is registered with the department and have also filed periodical ST-3 returns. During verification of their accounts, it was observed that they had undertaken construction services for various educational institutions. The details of such construction services undertaken by them were furnished by the appellants vide letter dated 09.01.2014. The appellants relied on CBEC Circular dated 17.09.2004 and contended that no Service Tax was payable them and claimed exemption from such works contract service rendered, in their ST-3 returns for the period from October 2008 to June 2012. However, it appeared to the Department that the above circular will not apply to appellant since the institutions run by the service recipient provide educational/other services only by charging applicable fees and no proof had been provided to the effect that they were not making income /profit out of its activities. In addition to the above, it appeared that the above circular was withdrawn by CBEC's Circular No. 354/28/2007-TRU dated 23.08.2007. It was also noticed that appellant was registered with the Commercial Tax Department with effect from 15.05.2008 and were paying VAT on the transfer of property in goods involved in execution of the

contract(s) with various educational institutions. From the above, it appeared that the said services rendered by appellant were classifiable under "Works Contract Service" and liable to Service Tax under Section 65(105)(zzzza) of the Finance Act 1994. Further, by not declaring the correct classification of services in the ST-3 return and whether the construction was intended for commerce or industry in respect of the works contract services provided to various education institutions, and having not been able to produce any evidence to the effect that the school/colleges are run without any motive to generate income/profits, it appeared that the appellant had suppressed vital facts with intent to evade payment of duty and hence the extended period is invokable. In view of the above, a Show Cause Notice No. 10/2014-Commr dated 21.04.2014 was issued to the appellant. After due process of law, the adjudicating authority confirmed the demand to the extent stated above, aggrieved by which the appellant had preferred the appeal and is before this Tribunal.

3. The Ld. Counsel Shri S. Durairaj appeared and argued for the appellant. He submitted that service tax & cess of Rs. 1,45,16,726/- was demanded for the period 1.4.2008 to 30.6.2012 on the grounds that works contracts for construction of educational institutions are for commerce since fees are collected. In the case of M/s RGP Construction Vs CCE, Salem-2024 (7) TMI 1168, the Hon'ble CESTAT, Chennai has set aside the demand on the grounds that construction of educational institutions is excluded from the levy since it is not meant for commerce or industry. It is his submission

that the Service Tax and Cess of Rs. 6,37,360/- demanded for the period 2010-11 and 2011-12 actually pertained to works contracts for construction of center median in the National Highway, but was sought to be denied by the adjudicating authority on the ground that the service of construction of center medians was rendered to the service recipients who are advertising agencies and thus was for the purpose of display of advertisement and cannot be equated with that of construction of roads. It is his submission that while the nature of the work undertaken by the appellant is not denied the Department has not adduced any evidence to prove that it is for advertising whereas the evidence adduced by the appellant would indicate that it is construction of center median on the National Highway and Section 65 (105) (zzzza) excludes works contracts for roads from the levy. It is his submission that service tax and cess of Rs.53,283/- was demanded for the period 2011-12 for construction of Govt Buildings, which are non-commercial and Section 65 (105) (zzzza) excludes such buildings from the levy.

4. He further submits that the period involved is April 2008 to June 2012. SCN was issued on 21.4.2014 and the entire period is beyond the normal period one year/18 months. It is his submission that during the relevant period. classification of construction services and availing exemptions are interpretational issues, which were settled by various forums in favour of assesses and further the details of services claimed as exempted were declared in the periodical ST-3 returns and they have filed VAT returns also. Under such circumstances, extended period cannot be invoked. Reliance was

placed on the decision of M/s RGP Construction Vs CCE, Salem-2024 (7) TMI 1168 and it was submitted that the appeal may be allowed with consequential benefits.

5. Shri. Sanjay Kakkar, Ld. Authorised Representative appeared and argued for the Respondent. The findings in the impugned order was reiterated and it was urged that the adjudicating authority has rightly held that any claim on non-profit and non-commercial nature of institutions has to be substantiated only by way of establishing the credentials of such institutions and not by merely stating that they are in the field of education or health care. He would also emphasize that the reliance placed by the adjudicating authority on the decision of the Hon'ble Supreme Court in Bangalore Water Supply & Sewerage Board case is appropriate and submitted that the appeal may be dismissed.
6. We have heard both sides, perused the appeal records and the decisions submitted as relied upon.
7. We find that the issues to be decided are:
 - a) whether the works contract services of construction rendered to education institutions and government office buildings can be treated as construction of a new building or civil structure or a part thereof, primarily for the purposes of commerce or industry;
 - b) Whether the construction of medians can be considered as works contract in respect of roads; and
 - c) whether the demand is barred by limitation.

9. We note that Section 65(105)(zzzza) stipulates “taxable service” means 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,—

- (i) 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 or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

8. As regards the first issue, we find that the following aspects are not in dispute:

- 1) That the appellants have undertaken construction services for various educational institutions, that were being run by Charitable Trusts.
- 2) The appellants have claimed that they are out of the ambit of such works contract service rendered in their ST-3 returns periodically filed.
- 3) The SCN has asked the appellant to show cause as to why the services rendered by them with reference to construction of new building to educational institutions should not be assessed to tax under Section 65(105)(zzza) of the Act invoking the extended period of limitation.
- 4) The adjudicating authority has found that the appellant has not furnished any evidence such as the bye laws of the trust to evidence that the educational institutions/trusts have not been making systemic profits or in case of making such profits the same is utilized only for educational or other philanthropic purposes and thus the claim of the appellant that such educational institutions/trust would be 'non-commercial' is rejected and confirmed the said classification. The adjudicating authority has rendered a finding that the extended period of limitation is invokable holding that it is the bounden duty of the assessee to ensure that they satisfy the conditions set out for making any claim regarding exempted services.

9. We find that the adjudicating authority has misdirected himself in rendering the finding that it is the bounden duty of the assessee to ensure that they satisfy the conditions set out for making any claim regarding exempted services. Admittedly, the Department is seeking to tax the services of the appellant as “works contract service” under clause ii(b) of the explanation to Section 65(105)(zzzza), as being “construction of a new building primarily for the purposes of commerce or industry”.

10. Unlike a statutory exemption notification issued in exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, prescribing conditions, the circulars issued by CBEC are under Sec. 37B of the Central Excise Act, 1944, as applicable for the purposes of service tax vide Sec. 83 of Finance Act, 1994 and are instructions and directions issued to the central excise officers for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties. The Hon’ble Supreme Court has held in ***CCE, Bolpur v Ratan Melting & Wiring Industries, 2008 (231) ELT 22 (SC)***, *inter-alia*, that so far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions.

11. Therefore, unlike an exemption notification with conditions stipulated therein to claim the exemption, the benefit of which when claimed puts the burden of proof on the claimant to satisfy firstly that it comes within the ambit of the exemption notification and then

to satisfy that it had fulfilled the conditions stipulated therein to secure the benefits, there are no such requirements when the appellant contests taxability, on a belief stemming from the contents of Board Circular. On issues of taxability, to bring the prospective assessee within the ambit of the levy, the burden of proof is always on the revenue and that cannot be shifted onto the assessee. It is necessary to note the fundamental distinction between burden of proof and onus of proof. The burden of proof lies with the person who has to prove a fact and it never shifts, but the onus of proof shifts. Onus means the duty of adducing evidence. Thus, if the Revenue seeks to tax the assessee under "Works Contract Service" and particularly under clause (ii)(b) of the explanation, then the burden of proof is on the Revenue to show at first that the construction which the assessee has undertaken is of a building or civil structure or part thereof, primarily for the purposes of commerce or industry. Once the Revenue is able to discharge its burden of proof, then if the assessee is contesting the taxability, the onus shifts on to the assessee to prove that it is not so. In the instant case when the appellant is under a belief that it is not within the ambit of the taxable service, unlike an exemption notification which has mandated conditions which the appellant would have the burden to prove that it has fulfilled, the burden of proof on the appellant is only to show wherefrom such belief has stemmed. Once the appellant discharges its burden of proof in this regard, then the onus would shift on the Revenue to prove that the belief of the appellant is incorrect.

12. Therefore, when an assessee is under a belief that it does not come within the ambit of a definition of taxable service indicated in the statute, it only need to be shown wherefrom such a belief emanates and in this case demonstrably, the appellant has indicated that such a belief was premised on the Board's Circular No. 80/10/2004-S.T., dated 17-9-2004 issued soon after The Finance (No.2) Bill, 2004 had been enacted on 10-9-2004. We have perused the said Circular and note that after listing out twelve new services, including Construction Services (commercial or industrial buildings or civil structures) in para 1(A) and detailing that the taxable services listed therein in para 1(B) get expanded, Para 2 of the said circular indicates that it is the scope of these changes that are explained in the subsequent paragraphs. The relevant portions are 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. 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.

13.3 In case of multi-purpose buildings such as residential-cum-commercial 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.” (emphasis supplied)

13. The adjudicating authority has also recorded that the appellant has during the personal hearing produced printouts from the websites of the institutions for which the appellant had undertaken construction and these websites declared that the educational institutions were run by charitable trusts. Therefore, when the instructions issued by CBEC, stipulate “**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.**”, it is sufficient for the appellant to harbour a belief that the buildings, the works contract of construction of which have been entrusted to it and such entrustment being made by a charitable trust established for the purposes enumerated supra, are not taxable as such constructions are found by CBEC to be non-commercial in nature. Further, when the websites of these institutions also declare that they are being run by charitable trusts, as evidenced in this matter, that bolsters such belief of the appellant. We are therefore of the view that in the instant case while the appellant has discharged its burden of proof as regards its contention of non-taxability, the Revenue has not been able to adduce an iota of evidence that the buildings the construction of which the appellant has undertaken for these educational institutions are primarily for the purposes of commerce or industry, which burden was on it so discharge. Thus, we find that the confirmation of demand on the works contract of construction

services rendered by the appellant to the educational institutions cannot sustain and is liable to be set aside.

14. We note that the Ld. A.R has emphasised on the reliance placed by the adjudicating authority on the decision of the Honourable Supreme Court in the Bangalore Water Supply & Sewerage Board case, wherein on the issue of whether charitable institutions are industries, while interpreting provisions of Industrial Disputes Act, 1947, it was held that noble objectives, pious purposes, spiritual foundation and developmental projects are no reason not to implicate these institutions as industries. However, we find that in the Judgement of the Honourable Supreme Court rendered in the case of ***T.M.A Pai Foundation & Others v. State of Karnataka & Others, (2002) 8 SCC 481***, the Honourable Apex Court while sitting as a bench of eleven judges, has in para 29 thereof, while noting the reliance placed on the aforesaid Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 wherein it was held that educational institutions would come within the expression "industry" in the Industrial Disputes Act, has cited with approval the distinguishing of the judgement made by Jeevan Reddy J., in the case of Unni Krishnan, J.P v. State of A.P (1993) 1 SCC 645, observing as under :

" But the applicability of this decision was distinguished by Jeevan Reddy J., observing (at SCCN p.753, para 200) that "we do not think the said observation (that education is an industry) in a different context has any application here."

15. Further we note that in the said decision in TMA Pai Case, in para 57 the Honourable Supreme Court has held as under:

" We, however, wish to emphasise one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institutions. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution." (emphasis supplied).

16. While the law of the land, as laid down in the Apex Court decision in TMA Pai, itself indicates that the object of setting up of an educational institution is by definition charitable, it only lends strength to the appellant's contention premised on the aforesaid Circular that the works contract services of construction of new building to educational institutions are non-commercial in nature. It is also pertinent that, unlike the assessee, who would, at best, be having a commercial engagement with the institution in the course of its business, and would be hard pressed to delve into the finances of the educational institution, much less an analysis thereof, the Department has no such constraints. We are of the view that the

Department is in fact equipped with the wherewithal of statutory backing to embark on such an inquiry as to the credentials of these institutions and to examine whether or not these institutions are profiteering, rather than the reasonable revenue surplus that they can generate for the purpose of development of education and expansion of the institution and to establish whether these institutions are primarily for commerce or industry or otherwise. This would all the more be so as the Board's Circular No. 80/10/2004-S.T., dated 17-9-2004 was issued explaining the scope of the changes brought about consequent to the enactment of the Finance (No. 2) Bill, 2004 on 10-09-2004 and thus primarily providing instructions/guidance to the officers. It is also pertinent that the Board's circular continued to be in existence as noted by this Tribunal in the decision in ***R.R. Thulasi India Pvt Ltd***, that is cited infra.

17. We find that even otherwise, the issue of whether the works contract services of construction rendered to education institutions can be treated as construction of a new building or civil structure or a part thereof, primarily for the purposes of commerce or industry, has been dealt with by this Tribunal on an earlier occasion in the ***Service Tax Appeal No.41763/2015 in the case of M/s. R.R. Thulasi India Pvt Ltd v The Commissioner of CGST & Central Excise, Salem Commissionerate, vide Final Order No.40703/2024 dated 13.06.2024, since reported in 2024 (7) TMI 1067-CESTAT Chennai***. The relevant portions of the order are reproduced below:

"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 :"

18. Reproducing the relevant parts of the said Departmental Circular dated 17.09.2004, this Tribunal goes on to hold in para 8 and para 9 as under:

8...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 :"

19. Thereafter, reproducing from the Master Circular in para 9, this tribunal stated in para 9, 10 and 11 as under:

"9..... 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:"

20. After reproducing the said letter by the Coimbatore Builders and Contractors Association as well as the reply by the Coimbatore Commissionerate, this Tribunal then finds in para 12 as under:

"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."

21. Thereafter, this Tribunal has reproduced the relevant portions of the decisions in ***Commissioner of C.Ex (Appeals), Bangalore Vs KVR Construction, 2012 (26) S.T.R. 195 (Kar.), Gujarat Adani Institute of Medical Sciences Vs CCE & ST Rajkot vide Final Order No.A/11309-11310/2023 dated 22.06.2023, KMV Projects Ltd. Vs CCE & ST Hyderabad, 2019 (27) G.S.T.L. 388 (Tri.-Hyd.), and this Tribunal decision in Vijayadeepa Constructions Private Ltd. Vs CGST & Central Excise, Coimbatore vide Final Order No.40536/2024 dt. 08.05.2024***

and after considering the same, gone on to further hold as under:

"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."

22. We find that the said decision has since been followed by this Tribunal in ***M/s. RGP Construction versus The Commissioner of CGST & Central Excise, Salem, 2024(7) TMI 1168-CESTAT CHENNAI.***

Therefore, in view of our discussions supra and considering the aforesaid decisions of this Tribunal which are binding on us, we hold that the demand of service tax on the works contract services rendered by the appellant to educational institutions that has been upheld in the impugned OIO cannot sustain and is therefore hereby set aside. Likewise, on perusal of the appeal records we find that the

construction of Government Buildings, such as Divisional Office Building in Highways Office Campus, Trichy Road, Coimbatore, cannot be considered a building primarily of commerce or Industry so as to be exigible to service tax as has also been stated in the CBEC Circular dated 17.09.2004. We hold that the demand on this count cannot sustain and is also thus set aside.

23. We also note that the definition of taxable service of works contract under Section 65(105)(zzzza) of the Act excludes works contract "in respect of" roads. The phrase "in respect of" indicates 'in connection with,' 'as regards', or 'with reference to', in its grammatical sense. There is no dispute that the work entrusted with the appellant is that of construction of center-medians in Coimbatore on Highways No.67 (Trichy Road). The Adjudicating Authority concedes the same. However, the service tax is sought to be levied on the ground that such service is rendered to an Advertising Agency who in turn is engaged in providing advertising which is done in pure commercial considerations. We are unable to concur with the said reasoning of the Adjudicating Authority. The definition of works contract service, while excluding works contract in respect of roads, does not contain any stipulations as to the identity of the service recipient, much less the nature of the service recipient's business considerations, and the said contention of the Adjudicating Authority is extraneous in determining the appellant's entitlement to the exclusion from the ambit of the definition as claimed.

24. We note that the works contract excluded in the definition is predicated on the identity of the infrastructure that is specified therein, namely, roads, airports, railways, transport terminals, bridges, tunnels and dams which are nothing but the salient physical infrastructural markers of a nation's or region's economic foundation. When the work carried out by the appellant is indisputably conceded as that of constructing center-medians on Highway No.67 (Trichy Road), and since 'center-medians' essentially demarcate and divide the road, the works contract undertaken by the appellant of constructing center medians is clearly a "works contract in respect of roads" so as come within the exclusion specified in the definition. We therefore hold that the service tax demand on this activity of the appellant is unsustainable and is therefore set aside.

25. In any event, we find that the details pertaining to the activities of the appellant are based on what has been furnished by the appellant. The show cause notice also concedes that the appellant has claimed exemption for such works contract service rendered in their ST 3 returns. This Tribunal has on an earlier occasion, vide its ***Final Order 41524/2024 dated 28.11.2024 in the case of Xomax Sanmar Limited, Unit II v. Commissioner of CGST and Central Excise, Trichy***, inter-alia, noticed an earlier decision of this Tribunal in ***Accurate Chemical Industries v CCE, Noida, reported in 2014(300) ELT 451 (Tri-Del)***, wherein the Tribunal, after considering various CBEC Circulars regarding scrutiny of ER-1 returns, held that the returns filed by an assessee are required to be subjected to detailed scrutiny in course of which the concerned officer

can call for the documents from the assessee wherever necessary for scrutiny. We reiterate our view that allowing the assessee to self-assess the tax is a mere facility extended to the assessee. That in no way detracts or dilutes the statutory responsibility of the jurisdictional central excise officers to ensure correctness of the assessment and duty payments made. Therefore, when an assessee is indicating that it is claiming a part of its service rendered as exempted from tax duly reflecting such claim in the returns filed, then it is for the jurisdictional officer to be alert and promptly inquire as to the nature of exemption that is being claimed by the assessee. In view of the mandatory responsibilities cast on the central excise officers by various circulars to scrutinize the returns, they cannot abdicate such responsibility. The failure to take up the information for scrutiny is not to be held to the detriment of the appellant by invoking the extended period of limitation. The appellant's claim that it has not discharged service tax on the works contract services of construction rendered to educational institutions on a Bonafide belief taking note of the clarifications issued by the Board as per the Circular dated 17-09-2004 cannot be discounted. There is no positive act of wilful suppression or misstatement of facts by the appellant that has been established by the Department. In these circumstances, we find that the adjudicating authority has grossly erred in invoking the extended period of limitation. We hold that the demand is therefore time barred and the issue of limitation is answered in favour of the appellant.

26. In view of our discussions above, we set aside the impugned Order in Original to the extent it confirms the demands on the appellant along with applicable interest and imposes penalties on the appellant. The appeal is allowed with consequential relief in law, if any.

(Order pronounced in open court on 17.04.2025)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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