CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 51841 of 2018

[Arising out of Order-in-Original No.14/PK/GST/DE/2017-18 dated 27.03.2018 passed by the Commissioner (Appeals) of Central Goods and Service Tax, New Delhi]

M/s. Ajab Singh & Co. : Assessee
Village-Gaurakhpur, Wazirabad Road, Shahdra,
New Delhi-110094

Vs.

Commissioner of Central Excise, Customs, : Revenue
Central Goods, Service Tax, Delhi-I

Appearance:
Present for the Assessee : Shri A.K.Batra and Ms. Sakshi Khanna, Chartered Accountant

Present for the Revenue: Shri Mihir Ranjan, Special Counsel
Shri Rajeev Kapoor, Authorized Representative

AND

SERVICE TAX APPEAL NO. 52151 of 2018

[Arising out of Order-in-Original No.14/PK/GST/DE/2017-18 dated 27.03.2018 passed by the Commissioner (Appeals) of Central Goods and Service Tax, New Delhi]

Commissioner of Central Excise, Customs, : Revenue
Central Goods, Service Tax, Delhi-I

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Appearance:
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Shri Rajeev Kapoor, Authorized Representative

Present for the Assessee: Shri A.K.Batra and Ms. Sakshi Khanna, Chartered Accountant

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:08.12.2025
Date of Decision:01.04.2026

Final Order No. 50629-50630/2026

HEMAMBIKA R. PRIYA

These two appeals have been filed by M/s. Ajab Singh & Co.[1] and the Department against the common Order-in-Original No.14/PK/GST/DE/2017-18 dated 27.03.2018 passed by the Commissioner of Central Excise and Service Tax, Rohtak (Haryana), wherein the assessee is in appeal against confirmation of the demand of service tax of Rs. 25,99,345/- and Rs. 69,70,727 alongwith interest and appropriate penalties of the Finance Act, 1994, whereas the Revenue is in appeal against the dropping of the part of the demand.

2. The brief facts are that the assessee, M/s. Ajab Singh & Co., is a sole proprietorship concern of Mr. Ajab Singh, having his registered office at Village Gokulpur, Wazirabad Road, Shahdara, Delhi-110094. The assessee was registered with the Service Tax Department vide registration no. AKDPS2160CSD001 dated 04.03.2010, under the taxable category of 'Renting of Immovable Property Services'. Up to 31.03.2009, the assessee carried on the business of civil construction under the proprietorship concern M/s. Ajab Singh & Co. With effect

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1 the Assessee

from 01.04.2009, the said proprietorship concern was converted into a partnership firm M/s. Ajab Singh & Co. having its registered office at Khasra No. 299, Village Gokulpur, Wazirabad Road, Shahdara, New Delhi-110094. Intelligence was gathered by the Service Tax Department to the effect that the assessee was engaged in the provision of construction services but was not discharging the service tax liability on the consideration received from its clients. Based on such intelligence, the present proceedings were initiated against the assessee for the period 01.04.2006 to 31.03.2011. Consequently, a Show Cause Notice dated 19.10.2011, proposing a demand of service tax amounting to Rs. 6,20,70,392/- together with interest thereon and imposition of penalties under Sections 76, 77 and 78 of the Finance Act, 1994. Vide the Order-in-Original No.31/ST/COMMR/DM/RTK/2012-13 dated 29.01.2013, the adjudicating authority confirmed the entire demand along with interest and penalties. Being aggrieved by the said Order-in-Original, the assessee preferred an appeal before the CESTAT, New Delhi. The said appeal was disposed of vide Final Order No. 58122/2013 dated 23.10.2013, whereby the matter was remanded to the Adjudicating Authority for fresh consideration. Pursuant to the remand, the matter was taken up for hearing by the Commissioner on 06.02.2018 and was adjudicated vide the impugned order. By the said order, a demand of Rs. 25,99,345/- was confirmed against the proprietorship Concern and a demand of Rs. 69,70,727/- was confirmed against the partnership firm. At the same time, the Commissioner dropped the demand of Rs. 5,14,61,056/-, holding that construction activities relating to roads, boundary walls, tunnels, culverts, etc., were not exigible to service tax. Further, the Commissioner extended the benefit of cum-tax, and deducted the value of material involved therein. Against this, both the assessee and the Revenue have filed the present appeals.

3. Learned counsel for the assessee submitted that the notice has been issued in the name of the proprietorship concern M/s Ajab Singh & Co. even for the period after 01.04.2009, when the said concern had ceased to exist and a new partnership firm under the same name had come into operation. Service tax liability, if any, in respect of services provided by the partnership firm cannot be fastened upon the erstwhile proprietorship concern, and vice versa. Consequently, the demand for the period post 01.04.2009 against the assessee partnership firm is void ab initio as no show cause notice was issued. In this regard, learned counsel relied upon the decision of the Tribunal in **Aksh Technologies Limited** versus **Commissioner of Central Excise & Service Tax, Jaipur**[2]**.**

3.1 Learned counsel further submitted that the Show Cause Notice suffered from incurable vagueness in as much as it failed to classify the services rendered by the assessee under the appropriate category prescribed under the Finance Act, 1994. In the absence of proper classification, the entire basis of demand collapsed. Further, the fact that there was no classification in the show cause notice gets

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2 2017 (12) TMI 554-CESTAT NEW DELHI

confirmed from the impugned order. Learned counsel contended as regards the construction of EWS houses including internal development and electrification, the assessee had admitted the demand of service tax in respect of contracts awarded for construction of EWS houses and upgradation of 476 houses, and discharged the payment of service tax of Rs. 34,54,868/-(after deducting the value of material involved in the contract), which has duly been appropriated vide the impugned order. The community hall was constructed by the assessee for the occupants, and the said construction was non-commercial in nature. The demand has been raised by invoking the extended period of limitation under the proviso to Section 73 of the Finance Act, 1994. The invocation of extended period is wholly unjustified, in as much as there was no suppression, fraud, or wilful misstatement on the part of the assessee.

4. Learned Special Counsel for the Revenue submitted that the Department's investigation covered both the proprietorship concern (before 01.04.2009) and the partnership firm (w.e.f. 01.04.2009). Investigations had revealed that the proprietorship had failed to discharge its service tax liability and had not even registered with the department. During the investigation, the partnership firm was registered with the Service Tax Department, and had supplied all documents for both the periods. Learned Special Counsel contended that the Show Cause Notice was issued to M/s Ajab Singh & Company and to Shri Ajab Singh (as Proprietor). Learned Special Counsel

submitted that the proprietorship Concern had not filed any appeal and the partnership firm alone had filed the appeal, the challenging the validity of the demand confirmed against it. The demand against the proprietorship concern had attained finality in law, as the proprietor had filed no appeal. The assessee-partnership firm lacked the necessary locus standi to challenge this portion of the order. In this regard, learned Special Counsel relied on the decision of the Hon'ble Supreme Court in **Commissioner of Central Excise** versus **Flock (India) Pvt. Ltd.**[3] wherein the Apex Court held that once an adjudication order attains finality, it cannot be reopened indirectly in appeal by another entity. He also relied on **Commissioner of Central Excise** versus **Mahaan Diaries**[4]**.**

4.1 Learned Special Counsel further submitted that it is a fact that the assessee and its earlier proprietorship concern had executed 26 contracts with the Delhi Development Authority[5]. Initially, due to a lack of cooperation, the SCN was issued based on best judgment without segregating the classification of services. However, he contended that there was no violation of the principles of natural justice. The core principle dictates that the assessee must be aware of the allegations against them and must be given an opportunity to defend themselves. In this case, the appellants were aware that the demand pertained to Works Contract Service after June 1, 2007. During the remand, they were provided ample opportunity for their

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3 [2000 (120) ELT 285 (SC)]
4 2004 (166) ELT 23 (SC)
5 DDA

defense; all 26 contracts were examined in detail, and exemptions were granted. Therefore, the principles of natural justice were fully adhered. He submitted that the assessee has argued that the projects executed for DDA, a government authority, should be exempt from taxation under Sr. No. 12 or 13 of Notification No. 25/2012-5T dated June 25, 2012. However, this argument cannot be accepted, as the DDA is engaged in both commercial and non-commercial activities. Furthermore, as the appellant has sought an exemption, the responsibility to prove that the work contracts executed for DDA are non-commercial lay with him, which has not been satisfied.

5. We have heard the learned counsel for the assessee and the learned Authorized Representative appearing for the Revenue and have perused the entire records. We shall deal with each appeal individually.

6. **Service Tax Appeal No. 51841 of 2018** has been filed by the assessee against the order in original 11/ST/Commr/MRR/2015-16 dated 27.3.2018 wherein the Commissioner has confirmed the demand of Rs. 25,99,345/- against the proprietorship concern and Rs. 69, 70,727/- against the partnership firm along with interest and penalties.

7. We note that this is second round of litigation wherein the Commissioner has adjudicated consequent to the remand order of this Tribunal. It would be appropriate to reproduce the said remand order.

> "5. It is the contention of the appellant that show cause notice has been issued to diff to 2 different persons in as

much as for the period prior to 01. 04. 2009, Mr Ajay Singh is proprietor of firm and with effect from 01. 04. 2009 proprietary firm was converted into partnership firm. Show Cause notice has been issued in the name of Mr. Ajab Singh and Co. (proprietor, Mr Ajab Singh). We find that in the show cause notice as well as in the education order demand has been confirmed against Ajab Singh and Co(proprietor, Mr Ajab Singh).
This is a fact on record that partnership firm came into existence with effect from 01. 04. 2009 and the partnership firm is a different entity from proprietor firm demanding service tax in a single show cause notice/ order in original by the department from the partnership firm as well as proprietary firm is not executable.

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8. In view of the fact that there is one show cause notice has been confirmed against the partnership firm and the proprietor firm, there is no classification of the taxable service done by the commissioner, there is no segregation of demand in respect of various taxable services provided by the applicants and also the assessment done under section 72 in spite of the submission of details by the applicant before the Commissioner during the course of education. We find this a fit case for demand. We therefore, after waving the pre-deposit, remand the case back to Commissioner, to decide the matter of fresh after affording an opportunity of hearing to the Appellants. Department is free to issue a separate show cause notice to partnership firm/proprietor firm in accordance with the law."

Consequent thereto, we note that the impugned order has confirmed the demand as indicated hereinbelow:

Particulars	2007-08	2008-09	2009-10	2010-11	Total
Community Hall	14,07,814/-	-	-	-	14,07,814
Construction of 200 EWS Houses including internal development and electrical installation	-	5,82,526	15,58,435	11,00,494	32,41,455
Construction of 210 EWS Houses including internal development	-	5,82,526	15,58,435	11,00,494	32,41,455

and electrical installation					
Construction of 200 fruit and vegetable stalls	-	68,335	-	-	68,335
Upgradation of 476 houses by providing water one kitchen cabinet…	-	-	-	10,54,098	10,54,098
Total	14,07,814	11,91,531	34,87,897	34,82,830	95,70,072

8. Ld Counsel has submitted that the show cause notice had been issued in the name of M/s Ajab Singh & Co.(Proprietorship concern) for the period after 01.4.2009 whereas the said proprietorship concern had ceased to exist consequent to the partnership firm that had come into operation. we note that it is an admitted fact that post 1.4.2009, the said proprietorship concern had been converted into a partnership firm, and the Tribunal vide its remand order has held that a single show cause notice addressed to the partnership firm and proprietorship concern was not 'executable'. The Tribunal went on to give liberty to the Department to issue a fresh notice. We note that the impugned order in Para 4.1.4 has recorded the said direction. The said para is reproduced for ease of reference:

> "4.1.4 Hon'ble Tribunal under Final Order No.58122/2013 dated 23.10.2013 remanded the matter to the Commissioner to decide the matter afresh after affording an opportunity of hearing to the appellants. The following were the observations in the remand order:
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> i. Demanding ST in a single SCN/O-in-O by the Department from the partnership firm as well as proprietary firm is not executable.

ii. Demand had been confirmed without proper classification of services;

iii. No benefit in respect of exemption claimed by the appellants was given;

iv. Tax was not segregated for the different taxable services allegedly provided;

v. Repair of Road was exempted vide clause 97 of the Finance Bill 2011 but no benefit in respect of this activity had also been given;

vi. Demand was confirmed under best judgment assessment as per Section 72. though appellants had submitted all the relevant information during the adjudication proceedings which had not been examined by the Commissioner in entirety;

vii. Tribunal also gave liberty to the department to issue the separate Show Cause Notice to partnership firm/Proprietor firm in accordance with the law."

9. Learned Special Counsel for the Department has submitted that the impugned order has clearly bifurcated the liability of the proprietorship concern and the partnership firm. It has been further submitted that mere change in the form of ownership does not absolve liability when business continuity is established. The Department relied on the Supreme Court decision in the case of **Commissioner of Central Excise** versus **Flock (India) Pvt Ltd. (supra)** and **Commissioner of Central Excise** versus **Mahaan Diaries** (supra). We note that the Supreme Court's decision in **Mahaan Diaries** was in

the context of SSI exemption benefit availed by the appellant. In this context, the Supreme Court held as follows:-

> "2. It is an admitted position that the respondents are part of a group of companies which are ,(a) M/s Mahaan Foods Ltd.,(b) M/s Mahaan Proteins Ltd.,(c)M/s Mahaan Diaries Ltd. Ofcourse it is claimed that they are all independent companies having different Board of Directors and different shareholders. That may be, but the question is whether or not the respondents have used the brand name or trade name of some other company".

10. We note that the ratio of this judgment does not apply in the present factual matrix, as it was delivered in the context of the entitlement of the SSI exemption to one of the group companies. In the instant case, we note that the Tribunal, in its remand order had clearly held that a single show cause notice to both Proprietorship concern and the partnership firm was not executable. It is perhaps important to note here that Proprietorships are not separate legal entities from the proprietor, who bears full personal liability whereas partnership firms are distinct assessable units with their own PAN and Registration numbers.

11. Further, we find it pertinent to note here that the remand order of the Tribunal was very specific in its finding that a single show cause notice is not sustainable. We are pained to note that despite the Tribunal giving liberty to the Department to issue a fresh Show Cause Notice, there is nothing on record to indicate that a fresh show cause notice was issued addressed to the partnership firm, in compliance to the Tribunal's remand order. In the absence of a fresh notice, we hold

that the demand for the financial years 2009-10 and 2010-11 cannot be sustained. We draw support from the decision of the Apex Court in **Union of India** versus **Kamalakshi Finance Corporation Limited**[6] wherein it was laid down that principles of judicial discipline require that the orders of higher appellate authorities should be followed unreservedly by the subordinate authorities unless its operation is suspended by a competent court.

12. We now move on to the demand confirmed for construction of Community Hall, EWS Houses and fruit & vegetable stalls for the years 2007-08 and 2008-09.

13. As regards the demand for construction of EWS houses, Ld Counsel has submitted that the appellant has admitted the demand of service tax and paid Rs. 34,54,868/- which has been appropriated by the said impugned order. This is an admitted fact and the said payment of tax is accordingly upheld. The demand confirmed for the period 2009-2011 is in any case set aside. However, we note that the Department in their appeal has held that the impugned order has accepted the submission and no verification was carried out. Hence, we give liberty to the Revenue to verify the correctness of the said payment as against the service tax liability.

14. **Community Hall**: The demand of Rs. 14,07,814/- has been confirmed for the year 2007-08 in the impugned order. In this context, ld Counsel submitted that the community hall was non commercial in nature and was not exigible to service tax, whereas it has been

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6 ` 1991 (55) ELT 433 (S.C.)

contended by the Department that Community Hall was for commercial purposes. Further, learned counsel has submitted that the show cause notice is vague, and no classification has been indicated in the notice. In this context, we note that the appellant did not cooperate with the department during investigations and also did not submit all relevant documents. Hence, the notice has been issued using the best judgment method, classifying services where details were available. Ld Special counsel has submitted that the said show cause notice clearly indicated that the demand was under Works Contract Service. Further, we take note of the submission that during the remand proceedings, the appellant had actively participated in the process, hence we hold that no prejudice has been caused to the appellant. We now take up the issue on merits. In this context, we note that Community Halls are infrastructure for public use and is usually rented out at fixed rates. Hence, the contention of the appellant that it was not for commercial use cannot be accepted. Fee-charging for public functions makes the construction commercial and not charitable, unless there is evidence submitted for the same by the appellant. We draw support from the decision of the Allahabad Bench of this Tribunal wherein in the case of **Ghaziabad Development Authority** versus **Commissioner, CGST, Ghaziabad** vide Final Order No. 70787/2025 dated 13.11.2025, the Tribunal upheld the demand of service tax on construction of community hall. Consequently, we uphold the demand on the said issue.

15. **Construction of 200 fruit and vegetable stalls** : A perusal of the relevant contract No. Wd-6 C/o 200 fruit and vegetable stalls i/c internal development, Nasirpur, Dwarka reveals that the assessee was engaged to carry out relevant internal development of fruit and vegitable stalls. It is obvious that such stalls have a clear commercial use and cannot be considered to be non-commercial. Hence, we uphold the demand in this regard as well.

16. **Service Tax Appeal No. 52151 of 2018:-** This appeal has been filed by the Department against the impugned order. The main issues for our consideration are as follows:-

(i) whether the TDS amount is includible in the gross amount chargeable to service tax?

(ii) whether deducting security amount for computation of taxable values is correct?

(iii) whether construction of Boundary Walls is exigible to service tax?

(iv) whether construction of sport complex was exigible to servicle tax?

(v) Landscaping in practice area in commonwealth Games 2010.

17. We deal each of the alone issue individually.

17.1 As regards the benefit of TDS given by the adjudicating authority, we find that as per Section 67(1)(a) of the Finance Act, 1994, service tax is levied on the gross amount charged by the service provider. It is to comply with the income tax provisions that TDS is paid/deposited in the Government out of a statutory liability. Such activity of deduction of TDS is a legal obligation and the amount so deducted cannot be taken as consideration for services so rendered.

18. We draw support from the Tribunal's decision in the case of **Hindustan Oil Explanation Co. Ltd.** versus **Commissioner of CGST, Chennai** vide Final Order No. 40332 of 2019 dated 19.02.2019 wherein the Tribunal held as follows;-

> "5.1 The first issue is with regard to non-inclusion of TDS part which is paid under reverse charge mechanism for the services provided by foreign company. The ld. counsel for appellant has explained that there were two types of contracts and in the second category, the tax has to be borne by the service recipient which is the appellant herein. There is no dispute with regard to the service tax that is payable under the first category as a services provider. The demand is only with regard to the second type of contracts. The appellant has furnished documents to show that though TDS amount is deposited the same is borne by the appellant and has not been made part of the consideration. On perusal of documents, we are convinced that TDS has been borne by the appellant. For example, the letter dated 10.5.2006 shows that the appellant has to pay USD319710 to the foreign company, namely, Thai Nippon Steel Engineering & Construction Corporation Ltd. The said amount has been fully paid as per the foreign certificate remittances. They have not deducted TDS but in fact have discharged the TDS liability. The appellant has borne the same as expenses of their company. On such score, we find that the demand of service tax alleging that TDS has not been included in the gross value is incorrect on facts and cannot sustain. We find that the issue is covered by the decision relied upon by the ld. counsel in the case of Magarpatta Township Development & Construction Co. Ltd. (supra), wherein the facts are as under:-
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> > "3. The learned Counsel took us through the facts of the case and submits that the agreement entered by the appellant with the foreign architect is very clear as the said agreement states that amount to be paid by the foreign architect not to be taxed i.e. by the appellant. He would take us through the agreement and bring to the notice specific clauses; appellant has discharged the Service Tax liability on the actual amount paid by them to such consultant. He would then take us through the provision of Section 67 of the Finance Act, 1994 and submit that the said Section contemplates discharge of Service Tax liability on the gross amount charged by the service provider. He would submit that the architect has

> charged the gross amount that indicated in the agreement. Subsequently, learned Counsel would take us through the provision of Service Tax (Determination of Value) Rules, 2006, as per Rule 7during the relevant period, the provisions were very clear as to actual consultant charges need to be taxed. For this purpose, he relied upon the judgment of the Tribunal in the case of Commissioner of Central Excise, Raigad v. Jawaharlal Nehru Port Trust P. Ltd. - 2015 (40) S.T.R. 533 (Tri.-Mumbai)."
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> The Tribunal in the above decision had set aside the demand."

19. Similarly, in **TVS Motor Company** versus **Commissioner of C. Ex. & ST, Chennai**[7] the coordinate Bench of this Tribunal held as follows:-

> "14.1.4 The TDS is paid / deposited to Government by the appellant out of a statutory liability. Such activity of deducting the tax at source is a legal obligation and the amount so deducted cannot be taken as consideration for services rendered. The amount on which the parties have reached a consensus ad idem can only be the consideration for the services. Further, the amount of tax deducted varies and depends upon the rate in force. There is no agreement by the parties with regard to the amount of TDS that has to be deducted. It wholly depends upon the law prevailing in the direct tax regime…."

19.1 In view of the above decisions, we hold that the amount deducted as TDS is not includible in the gross amount for levy of service tax.

20. **Security Amounts:-** Security amounts or deposits if refundable do not form a part of the consideration for the service, and thus not includible in the taxable value. Section 67 of the Act defines value as the amount charged for the service excluding any deposits which are refunded. In the instant case, the Department has submitted that the

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7 **[2021-VIL-412-Che-ST]**

adjudicating authority has not verified whether this amount was refunded or with held by the appellant. In any case, if this was similar to liquidated damages, it is settled position that the same would not be liable to be taxed. Hence, we hold that this amount is not exigible to tax.

21. **Construction of Boundary Walls:-** Construction of Boundary walls in any area cannot be considered as being for commercial purpose. Boundary walls for public sites, semi public sites, public projects are to be treated as exempted. A perusal of the contracts reveal that boundary walls were built in area designated for relocating traders from walled city to Narela; Public sites, semi public and commercial sites; Boundary wall for STP in D-6, vasant kunj. Mere construction of boundary walls cannot be considered as commercial in nature unless the same is part of a commercial construction performed by a developer for profit. In the instant case, no evidence has been led by Revenue to establish their allegations. Hence, we concur with the findings of the impugned order. We further note that the appellant has submitted certificates from the DDA, that the Boundary walls/facing was to prevent encroachment of DDA land-which is public property. Consequently, we are unable to accept the Department's contention in this regard. We hold that the adjudicating authority has rightly appreciated the facts and held that such works to be exempted from service tax.

22. **Construction of Sports complex:-** the Department has opined that there were commercial shops and constructions within the sports

complex and hence the exemption was not available. We find that this view is not correct. It is essential at this juncture to note that sports complex is built for public use. The primary intent of a sport complex is non-commercial. We draw support from the decision of this Tribunal in **M/s Laing Simplex JV** versus **Commissioner of Central Excise and Service Tax,** wherein it was held that construction services for mega sports complex, despite including amenities like restaurants, guest houses are exempt, as the primary intent is not commercial. The relevant paras are reproduced hereinafter:-

> "8. We observe that the issue to be decided in the present appeal is whether the activity of construction of Mega Sports Complex for hosting 34th National Games by Government of Jharkhand would amount to Works Contract Services as defined under Section 65(105)(zzzza) of the Finance Act, 1994. For the purpose of ready reference the said section is reproduced below:
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> > "Works contract", for the purposes of section 65(105)(zzzza), 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
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> > (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 airconditioning 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;

9. We observe that the adjudicating authority has held that the activity undertaken by the Appellant are covered under Clause (e) mentioned above as EPC project, whereas the Appellant claimed that their activity would fall under Clause(b) mentioned above as it is construction of a civil structure not primarily meant for commerce or industry. A perusal of the activity undertaken by the Appellant indicate that the sports complex is a civil structure, primarily meant for conducting sports activities and not meant for commercial purposes. We agree with the contention of the Appellant that the facilities like Restaurants, VIP Guest house, Hotel facility etc. is only for the purpose of making the sports complex habitable and functional and in accordance with international standards. The same in no way make the Sports complex is meant for commercial purposes. Accordingly, we are of the view that the activity of the Appellant are covered under Clause (b) of the definition of 'Works Contract Service' mentioned above. We observe that this view has also been taken by the Hon'ble Bombay High Court in the case of **CCE&ST Pune Vs B J Shirke Construction Technology Pvt Ltd [2019 (25) GSTL 8 (BOM)]**. The relevant part of the decision is reproduced below:-

> "13. There is no dispute that the plot of land on which the stadium is constructed is owned by Government of Maharashtra. The record maintained by the local authorities would indicate that the plot is for public welfare use and not for residential or commercial purpose. The question that arises for consideration is whether, user of the stadium area to the extent of 1/3rd of the total area for commercial purpose would tantamount to 'commercial or industrial construction service' as defined by Section [65(25b)] of the Finance Act, 1994. It is not even the case of the appellant that the stadium is exclusively used for commercial purpose. Relying on materials which indicate that 1/3rd of the area of the stadium can be utilized for commercial purpose, other than sports, the appellant wants us to arrive at a conclusion that construction is commercial construction service as defined under Section 65(25b) of the Finance Act, 1994. No doubt, various rates are specified for different facilities in the sports complex. As observed earlier, it is not even the case of the appellant that sports complex is exclusively or even primarily used for commercial purpose.
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> 14. It may be that various rates are specified for different facilities in the sports complex. This by itself is not sufficient to establish that the sports complex is exclusively or primarily used for commercial purpose. The agreement itself permits the Committee to use the area to the extent of 1/3rd of the total area for commercial purpose.

15. Let us consider the definition of the term 'commercial or industrial construction service' which is extracted hereinbefore. Clauses (a) to (d) of the definition provides for various types of construction and allied works including glazing, plastering, painting etc. and also repair, alteration, renovation etc on which service tax can be levied. This construction of the allied works ipso facto does not attract the levy of the service tax as further part of the definition would indicate. The said construction, in order to attract service tax, will also have to satisfy the conditions laid down by subsequent part of the definition i.e.
(i) used, or to be used, primarily for; or
(ii) occupied, or to be occupied, primarily with; or
(iii) engaged, or to be engaged, primarily in,
commerce or industry, or work intended for commerce or industry……….

16. The language employed in the definition clause is clear and unambiguous. The plain meaning as can be understood from the definition clause, more particularly, the clarification contained in clauses (i), (ii), (iii) is that the construction ipso facto is not leviable to service tax, but it is only when it is used, or to be used, primarily for "commerce" or "industry" or work intended for "commerce" or "industry" that service tax can be levied. Thus, it is only that construction which is to be used or primarily to be used for commerce that is subject to levy of service tax.
17. In the present facts, we find that dominant user of the sports complex is non-commercial. The definition uses the words "used or to be used primarily for commerce or industry" clearly indicating that the user is to be exclusively for commercial purpose or at least it must be primarily for commercial purpose. The definition leaves us in no manner of doubt that if the predominant user of the "sports stadium" is not commercial, then the same cannot be subjected to levy of service tax. Thus, in the facts of the present case, though an area to the extent of 1/3rd is used for commercial purpose prescribing separate rates for such user, this by itself is not sufficient to attract service tax.
18. Even the circulars issued by the Board dated 17-9-2004 and 10-2- 2012 would indicate that only if such constructions are for commercial purposes, like, local government bodies constructing shops for letting them out, such activities would be commercial and builders would be subjected to service tax. The Director of Sports and Youth Services, Pune in his Affidavit filed

> before the authorities on earlier occasion has deposed that the stadium will be continued to be used for the noncommercial purposes even after the Commonwealth Youth Games, 2008 are over. The materials on record do not satisfy the test that the stadium is used or used primarily for commercial purpose. It is the stand of the respondent that while pursuing their object of popularizing sports by selecting best available means, they incidentally charge for the usage and the said revenue will not convert the activities into commercial use. The stand is reasonable.
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> 19. We therefore do not find this to be a fit case to interfere with the order passed by the CESTAT in exercise of our further Appellate jurisdiction. The order under challenge is neither perverse nor vitiated by an error apparent on the face of the record."

22.1 10. We also observe that the same view has been held by the Principal Bench of CESTAT, New Delhi, in the case of **Jatan Construction Pvt Ltd vs. CCE, Jaipur (Final Order no. 58135 of 2017 in ST Appeal no. 60249 of 2013),** wherein identical case has been decided in favour of the assessee by relying on the Larger Bench decision in **Lanco Infratech Ltd vs. CCE, Hyderabad 2015 (38) STR 709 (Tri-LB).** The above said decision of CESTAT in **Jatan Construction (Supra)** has been upheld by the Hon'ble Rajasthan High Court wherein the Revenue's Appeal has been rejected. Consequently, we find no infirmity in the impugned order in extending the benefit of exemption to construction of Sports Complex.

23. **Landscaping:-**From the nature of the contract, it is evident that the landscaping was done in practice area meant for participants of commonwealth games. We are unable to appreciate the confusion in the minds of the reviewing officers as to the difference it is likely to make. It is apparent that such practice areas were made for the

commonwealth games participants at the commonwealth games village. At the time of its construction, the sole purpose was for its use by the participants of the Commonwealth Games only. There is no commercial use at the time of its construction. Hence, we hold that the adjudicating authority has rightly extended the benefit to the appellant.

24. In view of the above, we dismiss the appeal filed by the Revenue. As regards the appeal filed by the assessee, we hold as follows:-

(i) We set-aside the demand confirmed for the period 2009-10 and 2010-11

(ii) We uphold the demand confirmed in respect of construction of Community Hall and 200 fruit and vegetable stalls.

(iii) As regards the demand for construction and upgradation of EWS houses, we give liberty to the Department to verify the service tax payment made by the assessee as against the tax liability.

25. The impugned order is upheld to that extent and the appeal is allowed to the extent indicated above.

(Order pronounced on 01.04.2026)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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