IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 06/03/2017.
DATE OF DECISION : 06/03/2017.

Service Tax Appeal No. 548 of 2012

[Arising out of the Order-in-Appeal No. 465/(AKJ)/ST/JPR-I/2011 dated 28/12/2011 passed by The Commissioner (Appeals), Central Excise, Jaipur.]

M/s Ratan Das Gupta & Co. Appellant

Versus

CCE, Jaipur Respondent

Appearance

Ms. Rinki Arora, Advocate – for the appellant.

Ms. Neha Garg, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52221/2017 Dated : 06/03/2017

Per. B. Ravichandran :-

The appeal is against order dated 28/12/2011 of Commissioner (Appeals – I), Jaipur. The appellants are engaged in providing construction service to various clients. The dispute in the present appeal relates to service rendered by the appellant to two customers – M/s Yagvalkya Education Society, Jaipur and

M/s Self Ridge Institute, Jaipur. The Revenue held that the buildings constructed by the appellant for these two customers are of commercial nature and accordingly liable to service tax under the category of "commercial or industrial construction service". The service tax demand was accordingly confirmed alongwith imposition of penalties on the appellant. On appeal, vide the impugned order, the said confirmation was affirmed.

2. The learned Counsel appearing for the appellant submitted that the buildings constructed by the appellant are for educational institution and in fact used by these institutes for educational purpose, as recognized by AICTC and State Education Board. The confirmation of service tax liability is on the ground that these institutes charged high fees from the students and are apparently of commercial nature. The learned Counsel submitted that the buildings are for education purpose and recognized institutes are governed by the regulations for affiliation.

3. The learned AR submitted that the impugned order examined the submissions of the appellant and the confirmation was made after considering the defence.

4. We have heard both the sides and perused the appeal records. For tax liability under "commercial or industrial construction service", the building constructed should be used primarily for commerce or industry. In the present case, we note that the buildings are for educational institutes recognized to provide education in college/school level. This fact is not

disputed. The quantum of fee collected cannot be the criteria to decide the commercial or non-commercial nature of a building. The building for college or school, recognized by competent authority to provide education, are to be considered as non-commercial building. We find that the lower authorities heavily relied on the fee structure stating that collection of high fee will make the institute/building as commercial. We are not in agreement with the said proposition. Recognized educational institutions are governed by the concerned Regulatory Authority which includes the terms for fee collection also. In any case, collection of fee for providing education, per-se, cannot make the educational institute as a commercial institute or the building as a commercial building. No other issue is raised in this appeal for decision.

5. In view of the above observation and discussion, we find no merit in the impugned order. Accordingly, the same is set aside. The appeal is allowed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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