CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi,

COURT –II

Date of hearing/decision: 08.06.2018

Appeal No. ST/1796/ 2012- EX (DB)
[Arising out of Order-in-Appeal OIA-16/AKJ/ST/JPR-I/2012 dated 22/02/2012 passed by the Commissioner of Central Excise and Service Tax-JAIPUR-I (Appeal).]

Sohan Lal Mathur Appellant

Vs.

C.C.E. & S.T.-Jaipur-i Respondent

Appearance:
Ms. Rinki Arora, Advocate for the appellant
Sh. P. Juneja, DR for the Respondent

Coram:
Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 52202/2018

Per: V. Padmanabhan:

1. The present appeal challenges the order in appeal NO. 16/2012 dated 16/02/2012. The appellant is registered under the provisions of Service Tax under the category of Commercial or Industrial Construction Service. During the disputed period 2004-05 to 2007-08, the Departmental audit noticed that the appellant had carried out the construction work for :-

   i. Maharaja Vinayak Dental College and Research Institute, Jaipur
   ii. Gyan Vihar School of Engineering and Technology Jagatpura, Jaipur.
   iii. Jagan Institute of Management Studies, Jaipur.

2. The Department was of the view that the construction work carried out for the above institutions will be liable for payment of Service Tax under the category of Commercial or Industrial Construction Service falling under Section 65 (30a) of the Finance Act, 1994. Accordingly,

after issue of show cause notice, the Service Tax demand stands raised against the appellant. This demand of Service Tax with interest and penalty stands challenged in the present appeal.

3. In this connection we heard Ms. Rinki Arora, Ld Counsel for the appellant and she submits as follows:-

i. All the three educational institutions for which construction activity was carried out are conducting courses which are affiliated and recognized by various universities and other competent authorities such as AICTE /ICMR/ State Government. She submitted that the adjudicating authority and the appellant authority have taken the view that these educational institutions are 'commercial concerns' in view of the high fees charged by them. But she emphasized that the fees charged is in line with the orders of Hon'ble Supreme Court etc. She emphasized that charging of fees does not come in the way of considering these educational institutions as 'non-commercial' as held by the Tribunal in the case of ***Banna Ram Choudhary V/s CCE, Jaipur Final Order No. 53149/2017 dated 01/05/2017*** wherein the Tribunal set aside the demand for Service Tax in respect of construction work carried out for educational institutions.

4. The Ld. DR justified the impugned order.

5. The demand for Service Tax has been raised under the category of Commercial or Industrial Construction Service. From the record it is seen that the construction work has been carried out by the appellant for three different educational institutions. It is not in dispute that these educational institutions are running courses which are recognized by

various Universities, AICTE etc. The lower Authorities have taken the view that these educational institutions are charging high fees and are to be considered to be in the nature of commercial concerns and hence the construction activity carried out by the appellant is for commercial purposes and hence liable to Service Tax.

6. There is no dispute on the fact that the construction activity has been carried out for educational institutions. The Tribunal had occasion to consider a similar case in the case cited by the appellant where construction services were rendered to similar educational institutions. It has been observed by the Tribunal that the premises used for educational purpose by recognized educational institutions cannot be categorized as 'Commercial Buildings'. The observations of the Tribunal are reproduced below: -

> *"5. We note that the appellants claimed that the substantial part of the demand relates to construction of building for colleges. These are institutions approved by the competent authority like AICTE and are affiliated to recognized universities. We note that for liability under "commercial or industrial construction service", the buildings constructed should be primarily used for "commerce or industry". Buildings used for educational purpose by recognized educational institutions cannot be categorized as "commercial buildings". The quantum of fee collected or the owner of the building being a „commercial person", will not have effect on the categorization of the building. The lower authorities gave emphasis to purported commercial nature of the owner of the building. This, in our view, is not relevant."*

7. By following the decision of the Tribunal (supra) in the identical circumstances, we set aside the impugned order and allow the appeal.

(Dictated and pronounced in the open Court)

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha