

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Sl. No.	Appeal No.	Appellant	Respondent	Impugned Order
1.	ST/882/2009	Sarovar Hotels Pvt. Ltd.,	Commissioner of Customs, Central Excise & Service Tax, Hyderabad – IV	OIA No. 14/2009 (H-IV) S. Tax dt. 27.07.2009
2.	ST/2394/2010	-do-	-do-	OIA No. 14/2010 (H-IV) S. Tax dt. 20.08.2010
3.	ST/32/2012	-do-	-do-	OIA No. 30/2011 (H-IV) S. Tax dt. 12.10.2011
4.	ST/26536/2013	-do-	-do-	OIA No. 31/2013 (H-IV) S. Tax dt. 25.02.2013

Appearance

Shri S. Thirumalai, Advocate for the Appellant.

Shri Guna Ranjan, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 05/07/2018

Date of Decision: 07/08/2018

FINAL ORDER No. A/30843-30846/2018

[Order per: P. Venkata Subba Rao]

Heard both sides and perused the records.

2. The appellants provided “cleaning services” to various Buildings of the Indian School of Business. During the period April, 2003 to August, 2004, appellants paid service tax under Management

Maintenance and Repair service (MMR); thereafter they stopped paying Service Tax from September, 2004 and claimed a refund of service tax paid for the period up to August, 2004 which was sanctioned. From 16.06.2005 a separate service of “cleaning activity” was introduced in Service Tax Act, and the appellant took registration and had been paying service tax under protest until December, 2007 when they stopped paying of service tax on the services and informed the Department about such non-payment by letter dated 18th March, 2008. They also filed refund claims on 31st March, 2008 for the service tax paid from 1st April, 2007 to 30th November, 2007 on the ground that the cleaning services were provided, to an educational institution and hence they are not liable to service tax. The Learned Assistant Commissioner rejected the refund claim vide his order dated 24th February, 2009 contending that the cleaning services rendered by them are liable to service tax. The Department issued a letter dated 05.12.2008, asking the appellant to pay service tax. Subsequently, the Department issued a show cause notice dated 16.03.2009 for the period December, 2007 to November, 2008. Show cause notices were issued for subsequent periods as well and the demands were confirmed and the appeals were decided in favour of the Revenue as follows:

SCN	OIO No.	OIA No.	Period
C. No. IV/16/231/2008 ST dated 22.05.2008	OIO No. 13-R/2009-ST dated 24.02.2009	OIA No. 14/2009 (H-IV) S. Tax dated 27.02.2009	April, 2007 to November, 2007
O. R. No. 04/2009-Adjn. (ADC) (S. Tax) dated	OIO NO. 16/2009 – Adjn. (ADC) (S. Tax) dated	OIA No. 14/2010 (H-IV) S. Tax dated 20.08.2010	December, 2007 to November, 2008

16.03.2009	15.12.2009		
O.R. No. 37/2010 Adjn. (ST) dated 21.04.2010	OIO No. 29/2011- ADC (S. Tax) dated 24.06.2011	OIA No. 30/2011 (H-IV) S. Tax dated 12.10.2011	December, 2008 to January, 2011
O.R. No. 54/2012 – Adjn. (ADC) (S. Tax) dated 26.03.2012	OIO No. 87/2012 – S. Tax dated 31.10.2012	OIA No. 31/2013 (H-IV) S. Tax dated 25.02.2013	February, 2011 to May, 2011

3. Aggrieved by the Orders-in-Appeal, the appeals have been filed before this Bench on the following grounds:

- i) Housekeeping services provided to ISB are not taxable under the category of cleaning services, because it is confined to commercial and industrial building services.
- ii) CBEC Circular No. 80/2004 – ST dated 17.09.2004 excludes constructions which are for the use of organizations or institutions being established solely for educational, charitable, health, sanitation or philanthropic purposes from the Service Tax.
- iii) CBEC Circular No. B1/06/2005-TRU dated 27.07.2005, specifically excludes cleaning services from the ambit of service tax, if they are provided to a non-commercial building.

It has been held in the case of *Indian School of Business Vs. CCE, Hyderabad* [2009 (16) STR 632 (Tri. Bang.)], that it is not rendering Commercial Training or Coaching services. Similar order was issued in the case of *Great Lakes Institute of Management Limited Vs. CST, Chennai* [2008 (10) STR 202 (Tri – Chennai.)]. The Learned Counsel argued that since ISB has been excluded from the definition of

Commercial Training or Coaching Services, the cleaning services rendered by them to ISB must necessarily be excluded from the scope of cleaning service for commercial and industrial buildings.

4. The Learned Departmental Representative on the other hand, vehemently opposed the appeals and pointed out that the term commercial has not been defined in the Finance Act, 1994. It has been held by CESTAT Delhi in the case of *Mukesh Kalway* [2017 (3) G.S.T.L. 183 (Tri- Del.)], that cleaning services even provided to Railways, Airport Authority of India are liable to service tax as considered as these are commercial organizations by nature.

5. We have considered the submissions made by both sides.

6. The term “cleaning activity” has been defined in Section 65(24b) of the Finance Act, 1994 as “cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilizing of objects or premises of:

- i) commercial or industrial buildings and premises thereof; or
- ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof.

but does not include such services in relation to agricultural, horticulture, animal husbandry or dairying.”

7. The short point to be decided is whether the buildings of the Indian School of Business are to be treated as Commercial Buildings or not and consequently, the cleaning services rendered to them are taxable services or otherwise.

8. The Learned Counsel relied on the case of Great Lakes Institute of Management Limited (supra) and the Indian School of Business (supra) to argue that ISB is not a commercial institution. Therefore, the cleaning services rendered to the ISB are not liable to service tax. We find that these orders were passed in a specific context. It was to decide or not these institutions fall under category of exclusion from the definition of “Commercial Training and Coaching Service” as defined in the Service Tax Act. With respect to that particular decision, it has been decided that they are excluded. These orders were not passed in context of service tax on cleaning service. Letter F. No. B1/06/2005 –TRU, dated 27.07.2005 issued by the CBEC clarifying the scope of service tax in the context of period 2005-2006 reads as follows:

“9. Cleaning services

9.1 Any service provided or to be provided to any person, by any other person, in relation to cleaning activity is taxable under sub-clause (zzzd) of section 65(105) of the Finance Act, 1994. “Cleaning activity” has been defined under clause (24b) of section 65 of the Finance Act, 1994.

9.2 Generally contracts / agreements are entered into for cleaning of commercial complexes such as multiplexes, shopping complexes, office complexes, industrial buildings etc. The contracts / agreements may be in writing or may be unwritten. The gross amount charged for such cleaning would be leviable to service tax. This taxable service includes,-

(i) specialized cleaning services such as disinfecting and exterminating, sterilization of objects, etc. Such cleaning services would be taxable when performed for commercial or industrial buildings and their premises, factories, plant and machinery, tank or reservoir of such buildings;
(ii) Disinfecting, exterminating insects, rodents and other pests and fumigation services in respect of specified premises would be liable to service tax. In respect of multi-storeyed commercial buildings, window cleaning is a specialized service. Window cleaning services, including exterior window cleaning using swing stages would be liable to service tax;
(iii) Floor cleaning and waxing, wall cleaning etc. performed on the premises of commercial or industrial buildings;
(iv) Specialized cleaning services such as cleaning services for computer rooms, cleaning of machinery or plant, reservoirs and tanks of commercial or industrial buildings, furnace and chimney cleaning services and similar services.

9.3 *However, such cleaning services in relation to agriculture, horticulture, animal husbandry or dairying would be excluded from the purview of service tax. Further, such cleaning services in respect of non-commercial buildings and premises thereof would not be covered within the purview of service tax under this category."*

The question is whether the building of ISB can be considered as non-commercial building or commercial building. It is not in doubt that Indian School of Business is registered as a company under the Companies Act and is engaged in the business of teaching management. This activity of the Indian School of Business does not make it a non-commercial institution; it is a commercial institution engaged in the business of providing management education. They would have been covered under the Commercial Training and Coaching Services but for the exclusion clause therein. There is no such exemption as far as cleaning activity rendered by the appellant is concerned and we find no reason to treat the buildings and premises of Indian School of Business anything other than commercial buildings and premises for the purpose of cleaning services. In fact, even Railways and Airport Authority of India were

treated as commercial institutions for the purpose of cleaning services although they were involved in public service for a cost. We, therefore, find no reason to hold that the cleaning activity rendered by the appellant is excluded from the scope of service tax. In view of the above, we find that the appeals are liable to be rejected and we do so. The appeals are rejected.

(Order pronounced on 07/08/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

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