CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 25248 of 2013
(Arising out of **Order-in-Original** No.VIZ-STX-001-COM-115-12 dated 27.09.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I)

M/s HNR Constructions .. **APPELLANT**
47-10-17, 1st Floor, B-2,
Varanasi Majestic,
2nd Lane, Dwarakanagar,
Visakhapatnam,
Andhra Pradesh – 530 016.

VERSUS

Commissioner Of Central Excise And Service Tax Visakhapatnam - II .. **RESPONDENT**
Null Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri N.V. Ramana Rao, Advocate for the Appellant.
Shri K. Sreenivasa Reddy, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30591/2025

Date of Hearing: 22.07.2025
Date of Decision: 18.12.2025

[ORDER PER: ANGAD PRASAD]

M/s HNR Constructions (hereinafter called appellant) has filed this appeal against the Impugned Order /OIO No.VIZ-STX-001-COM-115-12 dated 27.09.2012 passed by Learned Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I.

2. A Show Cause Notice C. No.: IV/5/21/2011 AE-I dated 09.03.2012 was served with the allegation of non-payment of Service Tax under the categories of Commercial or Industrial Construction Service (CICS), Construction of Residential Complex Service (CRCS), Works Contract Service

(WCS) & Renting of Immovable property Service (RIPS) with intention to evade Service Tax.

3. The appellant replied on the notice vide their letter dated 22.08.2012, the Learned Commissioner had passed the impugned order. Aggrieved by order of Commissioner, Appellant has filed this appeal.

4. Learned Counsel for the appellant submit that the construction of Medical Colleges, which are recognized by the Medical Counsel of India to impart Medical Education to the students qualified based on the examination conducted by the Government and construction of associated teaching Hospitals to extend the medical treatment facilities in the course of Medical Education, are therefore, prima facie, not intended for any commercial or industrial purposes. This fact could easily be verified at any point of time from the details available in the open website of the aforesaid Medical colleges, or from the copies of the agreements entered, or by visiting the aforesaid colleges and hospitals if felt necessary or by corresponding with the Government of Andhra Pradesh. Thus, the following constructions are made for non-commercial and non-industrial purposes and are not taxable services and hence the demands on the value of the constructions under "Commercial or Industrial Construction Service" are not sustainable.

SNo.	Year	Name of Service receiver	Description of Construction	Value of work Done	Amount in Rs.			
					Service Tax	Ed Cess	SH Ed Cess	Total
1	2006-07	Anil Neerukonda Society	Construction of Medical college and associated teaching Hospital vide agreement dated 08.12.2005 Name of the College: NRI Medical College, Sangivalasa	2,08,35,446	8,25,084	16,502	-	8,41,586
2	2007-08							
3	2008-09	Sri Rama	Construction	15,00,000	1,50,000	3,000	1,500	1,54,500

4	2009-10	Educational trust(MIMS)	of Medical college and associated teaching Hospital vide agreement dated 28.03.2005 Name of the College: Maharaja institute of Medical College, Nellimarla, Vizianagaram	1,23,42,172	12,34,217	24,684	12,342	12,71,243
				Total				34,88,041

5. Learned Commissioner in his findings stated that the appellant have not produced any evidence to establish that the organization for which the construction has been taken up is an organization solely setup for imparting education and not for profit by shifting the burden on the appellant. The Learned Counsel for the appellant states that the appellant had produced copies of the ground plan and appellant have no objection or submitting them once again if an opportunity is provided to them.

6. Learned Counsel for the appellant submitted that the demand confirmed on "works contract" is not sustainable as the subject services are not suited to its definition as per the definition; "works contract" service covers only those works contract, other than works contracts in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams and for the purposes of carrying out the activities specified at items no (a) to (e) of the above definition. The other works contracts, those were not covered in the above definition, are obviously not the items to be subjected to levy of Service Tax under the category of "works contract" as defined under Section 65(105)(zzzza) of the Finance Act, 1994.

7. For the period prior to 01.07.2010; construction service provided by the builder/ developer will not be taxable, in terms of Board's Circular No

108/02/2009-ST dated 29.01.2009. For the period after 01.07.2010, construction service provided by the builder / developer is taxable in case any part of the payment / development rights of the land was received by the builder / developers before issuance of completion certificate and the Service Tax would be required to be paid by builder / developers even for the flats given to the land owner. As the clarifications / circulars issued by the CBEC are binding on the department as held by the Apex Court in a catena of cases, the subordinate officers cannot take a different stand. The Learned Commissioner has made an attempt to state that the present case is not envisaged in the above case circular by relying on the decision of CESTAT Chennai, in the case of M/s LCS City Makers Pvt Ltd., Vs CST Chennai. The builder has no construction agreement but has an agreement of sale by receiving installment payments. The intended buyer has no option to get constructed his flat by other person. Therefore, CBEC circular is squarely covered in the appellant's case and hence there is no Service Tax liability on the appellants.

8. On the demand of Service Tax on Rentals, Learned Counsel for the appellant argued that the mere renting is not a taxable service, as held by Hon'ble High Court Delhi, in the Home Solution decision. Therefore, CBEC made a retrospective amendment in the Finance Act, which now reads as "any service provided or to be provided to any person, any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or for the furtherance of, business or commerce." By this retrospective amendment, the department has the authority to collect Service Tax retrospectively even on mere renting and in past cases, and where demands were already raised. However, it does not empower them to levy service tax afresh in respect of past period, overriding the provisions of Section 73 of the Finance Act, 1994 ignoring the aspect of

limitation of time. Extended period is not applicable to such demand, as there has not intent to evade tax since mere renting is not taxable under the "renting of immovable property" as held by Delhi Tribunal in the case of Home Solutions.

9. Learned Counsel for the appellant also submits that without prejudice to the above submission that certain activities are not classifiable under "work contract", even if it is assumed otherwise, demanding of Service Tax on the total gross value is not correct. The Service portion in the work contract is taxable to service tax, but not the entire gross value. Having proposed the classification of the Service under "work contract" service, the effective concessional rate of duty @ 2%/4% under composite scheme applicable to such works contract should have been adopted, while computing tax liability for any reason. If it is not possible to allow the option of composite scheme for any other reason, then the other alternate option to work out the Service Tax liability only on the service portion of the contract is by applying the provision of Rule 2A of Service Tax (Determination of Value) Rules, 2006. Thus, by leaving out both options, while demanding Service Tax @12%/10% along with cess on the total gross value of work contract, is not as per the statutory provisions of law and hence not sustainable.

10. Learned Counsel for the appellant submits that the appellant had paid Service Tax for an amount of Rs. 98,066/- on 06.03.2007 i.e. 5 years before service of notice under intimation to the department. This amount voluntarily paid, but not in the course of any detection or investigation. In terms of provision of Section 73(3) of the Finance Act, 1994, the notice ought not to have been issued for the amount of Rs. 98,066/- that was already paid to that extent.

11. Learned Counsel for the appellant also submitted that the appellant have not received any Service Tax amounts over and above the amounts billed and as such the amounts received by them needs to reconsidered as cum tax receipts for computation of Service Tax liability.

12. Since, no Service Tax was applicable on the referred services, it cannot be said that appellant had an intention to evade the Service Tax. By our collection of the consideration for the rendered services, and that not collected any single paisa from the clients towards Service Tax. The appellant registered with the department and all transactions are entered in their books of accounts as per the accounting procedure. The entire proceedings initiated in the Show Cause Notice were based on the information recorded in book of accounts. In these circumstances, invoking the extended period of limitation under the proviso of Section 73(1) is not correct.

13. Learned Counsel for the appellant relied on the following decisions:

a) CCE Jamshedpur Vs M/s Dabur(India) Ltd., 2005 21(ECR) 129(SC)

b) M/s Ok play (India) Ltd., Vs CCE Delhi III 2005(66) RLT 657 (SC)

c) CCE Chandighar Vs M/s Silence Auto Ltd., 2005(66) RLT 657 (SC)

d) Bhor Steel Tapes Ltd., & Bhor Industries Ltd., Vs CCE Pune 2005 TIOL 390 CESTAT

e) CCE Chandighar Vs Zero Engineering Pvt Ltd., 2004 TIOL CESTAT Delhi.

14. Learned Counsel for the appellant also submitted that the appellant opted for the SVLDRS and filed a SVLDRS declaration to come out of this litigation. Unfortunately, they were unable to pay the tax itself before the due date due to certain financial and personal problems and were unable to get immunity from payment of interest and penalties. Hence, the case could

be considered for the benefit of Section 80(2) of the Finance Act. This Section has overriding effect over Section 70, 77, 78 of Finance Act, 1994.

15. Learned Representative for the Department submits that the appellant had contended that they had undertaken "Construction of Medical College and General Hospital" vide agreement dated 08.12.2005 for M/s Anil Neerukonda Society and that as such these works are not classifiable under the category of "Commercial or Industrial Construction Service" as they are not meant for commerce or industry as required under the definition of the said service and relied on the clarification issued vide Board's Circular No. 80/10/2004-ST dated 17.09.2004. Vide agreement dated 08.12.2005 the appellants were allotted the work of construction of Hospital Building. The appellant had not submitted any evidence to substantiate their claim that the organization for which the construction has been taken up, is an organization solely set up for imparting education and not for profit and have also not furnished any ground plan of the constructions as envisaged under Board's Circular. As regards Constructions undertaken for HNR Varam, Learned Authorized Representative submits that the appellant had undertaken construction of 'Varam Commercial Complex' at Srikakulam. As per the letter dated 12.05.2004 addressed to M/s HNR Constructions by the owner Sri. AV Narasimham, the appellants were allotted the work of construction of "Varam Construction Complex" as per the design drawings and scope of the work agreed by both parties. There was a construction of a building and that said building was primarily used for commerce. Hence, construction of HNR Varam is classifiable under the category of 'Commercial or Industrial Construction Service'. Learned AR further stated that the appellant's had received an amount of Rs. 43,80,000/- towards the construction of a residential complex by name of 'HNR Arcade'. The appellant's have claimed that they need not pay service tax as per the clarification given by the Board

vide Circular No. 108/02/2009 ST dated 29.01.2009. From the above clarification of the Board, it is evident that the levy of Service Tax would not be attracted till 01.07.2010, in case of transaction involving the construction of a residential complex initially executed through an "Agreement of Sale" which provides for stage wise payments by the prospective buyer and then subsequent transfer of property in favour of the buyer through execution of a "Sale Deed" on which the appropriate stamp duty is paid. In the instant case the builder had not entered into any 'agreement to sell but had entered into "agreement for construction" of house and flat and the owner-ship of the land rests with the prospective buyer since he had already purchased the land through the "Sale Deed" and the builder had no right over the land'.

16. The definition of Residential Complex under Section 65(91a) of the Finance Act, 1994 specifically excludes a 'complex' which is constructed by a person directly engaging any other person for design or planning of the layout, the construction of such complex is intended for use as residence by such person. It is pertinent to observe that the word used in the exclusion clause is "complex" intended for personal use. Hence, the 'personal use' exemption would be available only when the entire residential complex is constructed by a builder for any person intended for his personal use, but the same would not be applicable in case the flat/residential unit is constructed by a builder for an individual flat owner. Hon'ble CESTAT, Chennai, in the case of M/s LCS City Makers Pvt Ltd., Vs Commissioner of Service Tax, Chennai [2012-TIOL-618-CESTAT.Mad.] had held that:

> "The exclusion in the definition of the service is for a complex intended for personal use. The clause cannot be applied to individual flats in a complex. So, we do not see much merit in this argument."

17. It is also held that because the undivided land share was first registered and then an agreement to construct was entered into, the benefit of CBEC Circular No. 108/02/2009-ST dated 29.01.2009 was not applicable and the appellants are liable to pay Service Tax.

18. Submissions regarding Constructions undertaken for Anil Neerukonda Society: Learned AR states that the introduction of "Works Contract Service", this activity undertaken by the appellants is rightly classified under:

"Works Contract Service as this is a more specific service, since the both the conditions of this service i.e. transfer of property where VAT is involved and also construction for building for commerce is involved. Thus, the appellants are liable to pay Service Tax on the amount of Rs. 98,76,311/- received during the year 2007-08 towards constructions undertaken for Anil Neerukonda Society under "Work Contract" service. So far as Construction undertaken for Sri Rama Educational Trust he submitted that the appellants had undertaken the work of construction of Medical College, its attached Hospital and Hostels for Boys and Girls at Nellimarla Village, Vizianagaram vide various work orders. The appellants had furnished only work orders relating to the said works and had not produced any other documents or ground plans in respect of this project. The appellants have not produced any evidence to show that the organization for which the construction has been taken up, is an organization solely set up for imparting education and not for profit and have also not furnished any ground plan of the constructions as envisaged under Board's Circular No. 80/10/2004-ST dated 17.09.2004. In the absence any documentary evidence to prove the constructions under taken is not primarily used in commerce or industry, the services rendered by the appellants to Sri Rama Educational Trust are classifiable under the category of 'Works Contract Service'. In so far as

Varam Residency is concerned the appellants had under taken construction of "Varam Residency" at Palakonda Road, Srikakulam. As per the detailed statement furnished by the appellants, they had received an amount towards project "Varam Residency". The appellants have not contested the facts in this issue. Appellant had also undertaken constructed for Ambica Infrastructures Vizianagaram for construction of "Multiplex Complex" at Vizinagaram for vide agreement dated 04.05.2008 for a consideration of Rs. 7,20,00,000/-. The Multiplex complex consists of Cellar, Sub-Cellar, Ground, First, Second, Third and Fourth Theatre floors of Total area of 1,20,000 sq. ft. As per the agreement the contractor shall arrange all construction material except plumbing, electrical and sanitary material. Since the both the conditions i.e. transfer of property where VAT is involved and also constructions for building for commerce is involved are fulfilled and hence, the said construction is classifiable under "Works Contract Service". As regards Construction undertaken for Oruganti Eswara Rao as per the detailed statement furnished by the appellants, they had received an amount of Rs. 19,00,000/- towards 'Multi Complex' constructed for Oruganti Eswara Rao at Srikakulam. The appellant's have not contested the facts in this issue. As far as construction undertaken for Ambica Hotel Projects, Visakhapatnam, the appellants had undertaken construction of Ambica Hotel Project vide agreement dated 23.03.2011 for M/s Ambica Agarbatties, Aaroma & Industries Ltd., Eluru, for a consideration of Rs. 2,40,00,000/-. The project consists of construction of Basement Ground, First, Second, Third and Fourth and Terrace Floor above terrace floor and swimming pool covering a total area of 40,000 sq. ft. As per the agreement the contractor shall arrange all construction material except plumbing, electrical and sanitary material. Since the both the conditions i.e. transfer of property where VAT is involved and also construction for building for commerce is involved, the said construction

is rightly classifiable under "Works Contract Service". Therefore, in view of the project discussion above, the demand raised in respect of constructions undertaken for all the remaining projects are liable for Service Tax under the category of "Works Contract Service". Under the category of "Works Contract Service", there is a option for the service provider to opt for determining the taxable value of the services provided for payment of Service Tax (Determination of Value) Rules, 2006 or under Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. The option under composition scheme can be made by the contractor, on contract-to-contract basis, prior to payment of Service Tax. In the present case the appellant's have not paid Service Tax on any of the projects discussed above and the Proprietor of M/s HNR Constructions, Sri. Tangi Harinarayana in his statement dated 03.11.2011 had submitted that he would like to discharge their Service Tax liability under works contract service availing the composition scheme and reiterated the same in his reply to the Show Cause Notice. However, as the appellant's had not obtained registration under the 'Works Contract Service' and had not discharged their Service Tax liability in respect of any of the services undertaken by them, since 2007, it appears that the appellants are not eligible to avail the composition scheme. Renting of immovable property during the period 2007-08 to 2010-2011 the appellant's had received rents from M/s Minerva Softech Pvt Ltd., M/s Vasundara Projects Pvt Ltd., for occupation of his apartment as office building. The appellants had also received rent from M/s Bharathi Cellular Ltd., towards telecommunication tower on the roof of their building."

As per Section 65 (90a) of the Chapter-V of the Finance Act, 1994 as amended, "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include:

a) Renting of immovable property by a religious body or to a religious body; or
b) Renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Further as per Explanation-1 to Section 65 (90a) of the Act, 1994 for the purposes of the sub-clause, 'for use in the course or furtherance of business or commerce' includes use of theatres, exhibition halls and multiple-use buildings. Similarly, as per Explanation-2 to Section 65 (90a) of the Act, 1994 for the removal of doubt, it is declared that for the purposes of this clause, 'renting of immovable property' includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.

As per Section 65(105) (zzzz) of the Finance Act 1994, as amended by the clause 76 of the Finance Act 2010, taxable service includes the service provided to any person, by any other person by renting of immovable property or any other service in relation to such renting for the use in the course or furtherance of business or commerce and includes:

i) Building and part of a building, and the land appurtenant thereto;
ii) Land incidental to the use of such buildings or part of a building;
iii) The common or shared areas and facilities relating there to; and
iv) In case of a building located in a complex or any industrial estate, all common areas and facilities relating thereto, within such complex or estate,
v) Vacant land given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce.

Renting of Immovable Properties is a taxable service from 01.06.2007, M/s HNR Constructions had rented out their premises to various clients and had collected rentals/lease from them. Thus, it is clearly evident that the appellant's had provided their immovable properties on rent and collected rentals from their service recipients and therefore they had rendered taxable services as provided under Section 65(90a) of the Finance Act 1994.

19. Heard both the sides and perused the records.

20. We find that the demand has been confirmed under various categories including Commercial or Industrial Construction Service, Works Contract Service and Renting of Immovable Property Services. In so far as, CICS is concerned the matter is no longer res-integra, as it is now settled issue that no demand can sustain for the period prior 01.07.2010, as clarified by CBEC Circular No. 108/02/2009 – ST dated 29.01.2009, and further, confirmed vide subsequent Circular no. 151/2/2012 – ST. Therefore, the demand made either under the category of CICS or under WCS for the period prior to 01.07.2010 would not sustain, it is not disputed in all these works under taken by the appellant there is an involvement of goods along with services and therefore, it be in the nature of works contract only. In so far as, period beyond 01.07.2010 is concerned, we find that the appellant is taking a plea that the nature of construction was for certain hospitals etc, and it could not be said to be use for any Commercial or Industrial purposes and that the Department has not made out a case to especially its classification under the category of their scope and definition of the relevant service. We find that this aspect of demand beyond 01.07.2010 is in respect of services provided by them which would fall under the category of WCS and not under the category of CICS as alleged.

21. In so far as Service Tax on renting of immovable property is concerned, there is no dispute that Service Tax is leviable in such service. Therefore, we find no infirmity that Service Tax is payable on said services by the appellant. However, we find that the history of said services being taxable or otherwise has underground various litigations and finally, it was held that the retrospective amendment brought by the Government for levy of Service Tax was valid. Therefore, during the relevant period, it could be bonafide filed that there was no need to pay the Service Tax on renting of immovable property. Therefore, to that extent and in the absence of any other substantive evidence to suggest suitable evasion extended period cannot be invoked for recovering the Service Tax on this service.

22. We also find that even in respect of WCS, there were certain disputes during the period and various circulars issued by the Board clarifying their position and therefore, there could have been a bonafide belief about non-payment of Service Tax. Moreover, that the appellant have also paid certain Service Tax during the material period.

23. In so far as the issue of limitation is concerned, we find that in the background of the nature of the impugned services, the non-payment of Service Tax on the said services could have been under bonafide belief that they have been covered under exemption or for that matter they were not liable to pay Service Tax at all. Thus, in the absence of any tangible and cogent evidence on record that they have not discharged Service Tax with an intention to evade Service Tax, invocation of extended period would not sustain. The demand beyond extended period is set aside and there is no other element which is necessary for imposition of the penalty under Section 78 is also set aside. Since, the entire demand is set aside.

24. Therefore, the demand will not sustain on grounds of merit and partly on grounds on limitation. Further, imposition of penalties will also not sustain. Thus, appeal is liable to be allowed.

25. Appeal allowed.

(Pronounced in open court on 18.12.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha