CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Division Bench – Court No. – I

Service Tax Appeal No. 22164 of 2015

(Arising out of Order-in-Original No.VIZ-EXCUS-003-COM-003-2015-16 dt.07.05.2015 passed by Commissioner of Central Excise, Customs & Service Tax, Nellore)

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 **......Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Respondent**

WITH

Service Tax Appeal No. 22245 of 2015

(Arising out of Order-in-Original No.VIZ-EXCUS-003-COM-003-2015-16 dt.07.05.2015 passed by Commissioner of Central Excise, Customs & Service Tax, Nellore)

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Appellant**

VERSUS

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 **......Respondent**

WITH

Service Tax Appeal No. 30276 of 2016

(Arising out of Order-in-Original No. VIZ-EXCUS-003-COM-014-2015-16 dt.21.01.2016 passed by Commissioner of Central Excise & Service Tax, Nellore)

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 **......Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Respondent**

WITH
Service Tax Appeal No. 30122 of 2017
(Arising out of Order-in- Original No. VIZ-EXCUS-003-COM-008-2016-17 dt.04.08.2016 passed by Commissioner of Central Excise & Service Tax, Nellore)

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 ......**Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 ......**Respondent**

WITH
Service Tax Appeal No. 30682 of 2018
(Arising out of Order-in-Original No.GUN-EXCUS-000-COM-007-17-18-ST dt.16.02.2018 passed by Commissioner of Central Tax, Guntur)

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 ......**Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 ......**Respondent**

WITH
Service Tax Appeal No. 30524 of 2019
(Arising out of Order-in-Original No.GUN-EXCUS-000-COM-026-18-19-ST dt.22.02.2019 passed by Commissioner of Central Tax, Guntur)

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 ......**Appellant**

VERSUS

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 ......**Respondent**

WITH
Service Tax Appeal No. 30141 of 2020
(Arising out of Order-in- Original No.GUN-EXCUS-000-COM-22-18-19 dt.24.01.2019 passed by Commissioner of Central Tax, Guntur)

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 ......**Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 ......**Respondent**

WITH
Service Tax Appeal No. 30545 of 2022
(Arising out of Order-in- Original No.GUN-EXCUS-000-COM-004-22-23-S.Tax dt.24.06.2022 passed by Prl. Commissioner of Central Tax, Guntur)

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 **......Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Respondent**

AND
Service Tax Appeal No. 30546 of 2022
(Arising out of Order-in-Original No.GUN-EXCUS-000-COM-005-22-23-S.Tax dt.24.06.2022 passed by Prl. Commissioner of Central Tax, Guntur)

Green Ivy Ventures Pvt Ltd
S.No.540, Chemudugunta (V), Sri Potti Sriramulu
Nellore, Andhra Pradesh – 524 320 **......Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
PB No.331, CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Respondent**

Appearance
Dr. L. Venkateswara Rao & Shri K. Bala Kishan Raju, Consultant for the Assessee.
Shri C. Dhana Sekharan, AR (Spl Counsel) for the Revenue.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30474-30482/2026

Date of Hearing: 20.07.2026
Date of Decision: 27.08.2026

[Order per: ANGAD PRASAD]

M/s Green Ivy Ventures Pvt Ltd, earlier known as Narayana Learning Pvt Ltd., (hereinafter referred to as the appellant) have come in appeals against seven OIOs, whereby the adjudicating authority has confirmed certain demand on various grounds, for the period ranging from 2011-12 up to June, 2017. The department has also come in appeal against certain OIOs passed to the extent in favour of M/s Green Ivy Ventures Pvt Ltd. The details of these appeals filed by the appellant, as also by the department are, as under:

S.No.	Appeal No.	Appeal filed by	OIO No. & Date	Issue
1.	ST/22164/2015	Appellant	VIZ-EXCUS-003-COM-003-2015-16 dt.07.05.2015	Short payment of service tax on the gross amount charged and collected during the year 2012-13
2.	ST/22245/2015	Department		Non-payment of service tax on the gross amount charged and collected during the year 2012-13
3.	ST/30524/2019	Department	GUN-EXCUS-000-COM-026-18-19-S.Tax dt.22.02.2019	Non-payment of service tax on the gross amount charged and collected during the year 2003-04 to 2007-18 and 2009-10
4.	ST/30682/2018	Appellant	GUN-EXCUS-000-COM-007-17-18-ST dt.16.02.2018	Service Tax liability on the amount collected towards sale of applications, additional income, reservation fee, exam fee, hostel fee and miscellaneous income for the period 2011-12 to 2014-15
5.	ST/ST/30545/2022	Appellant	42/2013-ST dt.16.12.2013	Non-payment of service tax on the gross amount charged and collected during the year 2011-12
6.	ST/30276/2016	Appellant	VIZ-EXCUS-003-COM-014-2015-16 dt.21.01.2016	Non-payment of service tax on the gross amount charged and collected during the year 2013-14
7.	ST/30122/2017	Appellant	VIZ-EXCUS-003-COM-008-2016-17 dt.04.08.2016	Non-payment of service tax on the gross amount charged and collected during the year 2014-15
8.	ST/30141/2020	Appellant	GUN-EXCUS-000-COM-22-18-19 dt.24.01.2019	Non-payment of service tax by suppressing certain consideration against the provision of taxable service during the period from 04/2015 to 06/2017
9.	ST/30546/2022	Appellant	GUN-EXCUS-000-COM-005-22-23-ST dt.24.06.2022	Non-payment of service tax on the gross amount charged/ collected under CTCS during the period from 04/2015 to 06/2017.

2. These OIOs have decided the issue in respect of appellant pertaining to different periods. However, the issues involved in all these appeals are more or less identical. In order to ascertain the factual matrix of these appeals, the lead appeal taken for analysis is ST/22164/2015, whereby the adjudicating authority has passed order dt.07.05.2015 in respect of SCN dt.09.05.2014.

3. The brief facts of the case are that the department noticed that the appellants are, inter alia, engaged in providing coaching to the students mainly for AIIMS, EAMCET, AIEEE and other competitive examinations for admission into medical and engineering courses through their 35 branches. According to the department, the Government of India has introduced service tax on 'Commercial Training and Coaching Service' (CTCS) as taxable service w.e.f. 01.07.2003 and for the period post 01.07.2012 also, since this category would not fall under the negative list and hence, said service would be falling under the category of CTCS up to 30.06.2012 and as 'service' defined in the Act from 01.07.2012. The department noticed that certain amounts have been collected by the appellant from the students in the name of 'other fee', 'study material', 'hostel fee', 'tuition fee', 'mess fee', etc., whereas the appellants were paying service tax only on the amount shown as tuition fee collected from students instead of paying service tax on the gross amount collected. The department also felt that the contention of the appellant that hostel fee is not relatable to CTCS and that there is no nexus between hostel fee and services rendered by them and hence, no service tax can be charged, is not correct. The department felt that tax payable on the said CTCS is on the gross amount charged and collected in terms of section 67 of the Finance Act, 1994, and there is no provision for deduction or exclusion by way of hostel fee, mess fee, study materials, etc. It was also noticed that as per Rule 4A of the Service Tax Rules, 1994 and as per Point of Taxation Rules, 2011 w.e.f. 01.04.2011, the point of taxation shall be the time when the invoice for the service (provided or agreed to be provided) is issued and therefore, the fact of billing/booking the amount under the heads 'tuition fee', 'other fee' and 'study material' in their books of accounts and reflecting the same in their Profit & Loss account in the same year establish that there is a contract for service provided or agreed to be provided and that the service is continuous. Thus, as per Rule 3 of the

Valuation Rules, the amounts billed and taken in their books of accounts towards the service provided or agreed to be provided are subject to service tax during the year of billing/booking itself. On this basis also, after going through P&L account, certain short payments of service tax were noticed during certain period.

4. On adjudication, the adjudicating authority has examined the scope of the term CTCS, both before 01.07.2012 and post introduction of negative tax regime. The appellants, inter alia, had submitted before the adjudicating authority that the SCN has not examined the nature of various activities with reference to the exclusion portion in the definition of service as per clause (44) of section 65B of the Finance Act, 1994 as well as various entries/activities in the negative list as defined under section 66D. It was also submitted that he has not examined various exemptions available prior to introduction of negative tax regime. Their essential submissions were that there is no liability of service tax on the value of books sold, on the mess fee and the hostel fee as they were not relatable to coaching activity. Insofar as leviability of service tax on study materials is concerned, these study material, books being sold by them were falling under the State VAT Act, 2005 and hence it was in the nature of goods and leviable to local VAT. They also submitted that transaction and sale of books and study materials were being carried out independently and were recorded in account separately and therefore, transaction of sale of books and transaction of providing coaching were two independent contracts/transactions and that the transaction was not composite one. Therefore, once there is sale of study material by them attracting VAT, service tax cannot be levied on the same transaction. They relied on certain judgments including BSNL Vs UOI [2006 (2) STR 161 (SC)] and Imagic Creative Pvt Ltd Vs CCT [2008 (9) STR 227 (SC)]. They also rebutted on the reliance placed by the department on section 67 for the purpose of charging service tax on the gross value inclusive of various elements holding that the valuation provision cannot go beyond levying section and tax something which is not a taxable activity or is otherwise excluded from the purview of service. By way of additional submission, they also submitted that even if the study materials are not excluded from the gross value, they would still be entitled for benefit under notification 12/2003-ST dt.20.06.2003 for the period prior to 01.07.2012. It

was also submitted that separate value of books, invoices/bills are issued. For the period post 01.07.2012, the same gets excluded in terms of section 65B(44)(a) of the Finance Act. In this regard, they have submitted that the Ministry, vide their Education Guide at para 2.6.4, has clarified that rescinding of notification 12/2003 in the negative tax regime has already been given effect by way of exclusion from the purview, the value of goods, which are being sold by a service provider for which there is documentary proof as to make the sale distinct and separate transaction.

5. Insofar as service tax on mess fee is concerned, it was essentially argued that mess service is not a service in relation to CTCS and there has to be a nexus between amount collected and service rendered. It was also pointed out that for the period up to 2011, the service tax department themselves have concluded that activity of mess is not having any nexus with the output service of coaching. Insofar as service tax on other fee (hostel fee) is concerned, again the same argument was taken and also relied on the earlier judgment of the department where it was held that activity of providing accommodation is not includable in the gross value. As an alternative argument, they also submitted that the hostel fee would be covered more appropriately under the category of 'Renting of Immovable Property Service', where, however, this is applicable only in respect of specified service providers, whereas, they do not fall under the said category and hence not liable to pay. Moreover, the definition itself excludes, inter alia, buildings used for the purpose of accommodation including hostels, boarding houses, holiday accommodation, tent, camping facilities, etc. They have also relied on the judgment of M/s Vikas Coaching Centre Vs CC & ST, Guntur [2011 (22) STR 650 (Tri-Bang)], wherein, inter alia, it was held that hostel and mess charges, which are optional, cannot be added to the gross receipts for imposing service tax as provider of CTCS.

6. Insofar as short payment of service tax on tuition fee is concerned, their argument is that while they had reported tuition fee of Rs.52,78,60,702/- in the ST3 returns filed, however, they had reported Rs.53,52,84,057/- as tuition fee in the financial statements and therefore, department has proposed to charge service tax on the difference which has been recorded as income receivable entry in their books of accounts. However, said differential service tax on the difference amount also stands

paid in the subsequent month i.e., April 2013. It was also argued that they have not been extended the benefit of cum-tax as available under section 67(2) while computing the demand.

7. Insofar as penalties are concerned, they have relied on catena of judgments in support that they have not paid service tax on the alleged categories under the bonafide belief that such incomes are not leviable to service tax and hence no penalty can be imposed. They also submitted that their case would also merit waiver of penalty under section 80 of the Finance Act.

8. The adjudicating authority has considered these submissions and, inter alia, held that insofar as claiming benefit under notification 12/2003-ST is concerned, which governs only first three months of the demand, since there was no sale of goods and the fact that the study materials in question were prepared by the appellant and tailor-made for the coaching to be imparted by them and therefore, this would form part of the value of the service rendered by them. He also felt that the concept of 'sale' has been pleaded only in order to cover their case within the ambit of notification 12/2003 as an afterthought that there is nothing on record indicting that study materials are standard textbooks and the materials and were priced and sold item-wise separately and that the VAT was paid thereon. He relied on certain judgments including Fiit Jee Ltd Vs CST, Delhi [2012 (25) STR 24 (Tri-Del)], Career Launcher India Ltd Vs CST, Delhi [2012 (26) STR 55 (Tri-Del)] & Sayaji Hotels Ltd Vs Commissioner [2011 (24) STR 177 (Tri)] and distinguished the case laws relied upon by the appellant on the grounds that the facts are distinguishable as in such cases, there was independent sale of books. For the period beyond 01.07.2012, the said notification was not available and therefore the study materials would form integral part of the commercial coaching service as no independent sale was involved. As regard liability on amount collected towards 'mess fee', he, inter alia, observed that this issue was already decided by his predecessor vide OIO No. 42/2013-ST dt.16.12.2013 in respect of previous SCN for earlier period pertaining to same appellant, wherein, it was, inter alia, held that mess charges would not form part of coaching services and he agreed with the said view. Similarly, in respect of the amount collected as 'other fee', he held that this was the responsibility of the appellant to furnish evidence to show that the

said collection of fee was not related to commercial coaching and that there was no nexus between other fee and CTCS and hence, held that 'other fee' is liable to be subjected to service tax.

9. On the issue of short payment on account of correct application of Point of Taxation Rules, 2011 also, he held that as per the Rules, they were required to pay the tax in respect of amount received in the month of March and did not agree with the appellant's contention that the said amount reflected certain payment up to April, 2013. As far as the claim of cum-tax value in terms of section 67(2), the Commissioner held that they are eligible for the same. He also upheld penalty under section 76 and 77 of the Act and did not consider this case fit for waiver of penalty in terms of section 80.

10. Heard both sides and perused the records.

11. We find that the issues covered in all these appeals can be summarized under the following categories:

a) Demand of service tax on the value of study material.
b) Demand of service tax on hostel fee.
c) Whether the consideration shown as 'other fee' by the appellant represents 'hostel fee'.
d) Demand of service tax on 'mess fee'.
e) Demand of service tax on sale of applications, additional income, material fee, reservation of seat, other income, caution deposit, dhobi charges, pocket money, library deposit, BITSAT, sale of N-SAT applications, periodical exam fee, admission fee and sale of ID cards.
f) Whether the appellant had availed Cenvat credit of Rs.1,04,90,088/- during April, 2009 to September, 2009 and Rs.19,92,697/- during October, 2009 to March, 2009 on inputs and violated condition (b) of notification 12/2003-ST dt.20.06.2003 (amended by Notification 12/2004-ST dt.10.09.2004) for the year 2009-10 and hence eligible for benefit of notification.

12. Insofar as the issue of demand of service tax on study material is concerned, we find that in terms of definition of service under section 65B(44) of the Finance Act, certain categories are not included under the definition of services. This exclusion includes deemed sale within the

meaning of clause (29A) of article 366 of the Constitution. We also find that as per section 2(16) of the APVAT Act, the activity of sale of books is covered within the ambit of APVAT Act and the same are liable to sales tax/VAT. We also find that as per the appellant, sale of study material is specifically exempt from VAT vide S.No.5 of Schedule-I of APVAT Act. We have perused the said schedule and we find that books, periodicals and journals, charts, etc., are exempted from VAT under section 7. Therefore, there is no dispute that the books are leviable to VAT but exempted in terms of applicable VAT laws. Therefore, obviously when the goods are leviable to VAT then, even though exempted, they cannot be brought under the category of service. For the period prior to negative tax regime, exemption notification 12/2003 was available to exclude the value of such goods from gross value of service. In this case, the appellants were providing study materials, books, etc., and have claimed that they issue bills indicating separately for tuition fee, study material fee, mess fee and other fee. Insofar as non-meeting of condition to the effect that credit on duty paid on such goods and materials should not be availed, it has been clarified by the appellant that no credit on input was availed by them.

13. We find that the adjudicating authority has not accepted the argument mainly on the ground that there are no details like number of books/ materials supplied, price of books and they have only collected lumpsum which points out absence of any genuine transaction of sale. The adjudicating authority has also tried to bring the entire activities under bundled service, as also, holding that sale of study material is integral part of coaching. We find that he has not disputed that a lumpsum fee was being collected on invoice indicating that these fees were towards, inter alia, study material/books etc. It is also not disputed that books of account have shown and accounted income separately towards study materials. We also find that this issue was also before the Tribunal in their own matter for previous period, wherein it was held that books sold were not liable for service tax though subject to verification of condition under notification 12/2003 dt.20.06.2003. Thus, sale of books as a distinct activity cannot be denied nor it can be said that merely because such books/materials were not individually billed or priced, it cannot be treated as sale. We have also perused some sample invoices submitted by the appellant showing the

breakup of fee under the category of mess fee, hostel rent/other material fee, for the month of April, 2012 and February, 2013. Thus, it is obvious that income reflected in books of accounts towards study material is emanating out of sale of goods, which is leviable to VAT. Non-payment of VAT, on account of its being exempted, cannot alter this position of its being an activity of sale. We also find that reliance on additional ground by adjudicating authority in support of his argument to levy service tax on study material is not tenable as there is no indication in SCN that department alleged that such supply of study material is an integral part of coaching or is part of bundled service. Such reliance is beyond the scope of SCN, hence not tenable.

14. We also find that though there was a circular issued by the department to include the value of study materials sold in the gross value for charging service tax under the category of CTCS, the coordinate benches have held that that circular is illegal and contrary to the statutory exemption notification 12/2003-ST dt.20.06.2003. Reliance has been placed by the appellant on the judgment of Cerabral Learning Solutions Pvt Ltd Vs CCE, Indore [2013 (32) STR 379 (Tri-Del)]. We find that in this case, the coordinate bench, while examining the scope of exemption notification 12/2003 also considered circular dt.20.06.2003, keeping in view the judgments of other coordinate benches in the case of Chate Coaching Classes Pvt Ltd Vs CCE, Aurangabad [2013 (29) STR 138 (Tri-Mum)], Pinnacle Vs CCE, Chandigarh [2011 (24) STR 453 (Tri-Del)], as also the case of Sayaji Hotels Ltd Vs CCE, Indore (supra), inter alia, held that the value of goods and materials sold is exempted from gross value of taxable service. This judgment was taken to Hon'ble Supreme Court by the department reported at [2022 (1) Centax 7 (SC)], wherein, the Hon'ble Supreme Court, inter alia, observed that they were in complete agreement with the view taken by the learned Tribunal. We also find that sale of study material to the students is distinct activity as compared to the provision of coaching and training and even though it may have certain remote nexus with the training itself, however, they are still separate transactions and need to be assessed separately.

15. Insofar as non-compliance of additional condition under notification is concerned, we find that the appellants have submitted Chartered

Accountant's Certificate in support that they had not taken any credit in respect of input i.e., study material and therefore, on this count, the department cannot deny them the benefit of exemption notification. Learned Special Counsel has objected to filing of CA certificate at a much later date and in response thereto, learned Advocate has submitted that they came to know about the non-acceptance of their ST3 return for the year 2009-10 only during December, 2019, once the appeal was filed by the department and therefore, by that time the period for seeking revision of said return had already expired. Moreover, the matter was subjudice before this Tribunal in Appeal No.ST/30524/2019. We find that appellants have very well explained the reasons for late submission of CA certificate, which had certified that they had not taken any credit in respect of input and therefore, on this ground, Revenue cannot deny them the benefit of exemption notification. We also note that the certificate issued by Shri VVS Ramakrishna Prasad has been issued after verification of financial statements of the appellant comprising of Profit & Loss accounts, balance sheets, books of accounts, ledgers, ST3 returns, etc. Thus, we find that said CA certificate produced by the appellant in support that they had not taken any credit in respect of input stands supported by the certification by the CA and merely because they had inadvertently referred to the credit of input instead of input service, it could not be a ground for denying them the benefit of the notification for the period prior to 30.06.2012.

16. As regards liability of service tax on mess fee and hostel fee is concerned, we find that in the past also, several SCNs were issued by the department during the year 2003-04 to 2010-11. The adjudicating authority vide OIO No. 17/2012 dt.29.02.2012 adjudicated these SCNs and, inter alia, held that the gross amount should have nexus with taxable service and in the instant case, the taxable service provided is of coaching classes service, whereas, assessee is also providing some other non-taxable service of lodging and boarding to students of coaching classes. Accordingly, as per adjudicating authority, out of total amount, gross charges collected for tuition fee alone would have nexus with the taxable service of CTCS and the amount collected towards food/ accommodation or for supply of other provisions cannot be part of taxable value. Therefore, insofar as issue of providing food i.e., mess charges and accommodation i.e., hostel charges is

concerned, the department has already considered that they are not having nexus with the CTCS and the amount for these cannot be clubbed with the tuition fee for the purpose of charging service tax. We also find that even the Commissioner, vide his order dt.22.02.2019, on re-adjudication, dropped the demand on account of study material holding that the appellant has satisfied the condition of Notification 12/2003-ST and as against that, department is in appeal, vide Appeal No.ST/30524/2019. We also find that appellants have relied on catena of judgments, as under, on the ground that mess charges and hostel fee are not consideration received for rendering service of CTCS.

a) Aditya College of Competitive Exam Vs CCE, Visakhapatnam [2009 (16) STR 154 (Tri-Bang)]
b) Scott Wilson Kirkpatrick (I) Pvt Ltd Vs CST, Bangalore [2007 (5) STR 118 (Bang)]

17. In the case of Aditya College of Competitive Exam Vs CCE, Visakhapatnam (supra), the Coordinate Bench again, inter alia, held that mess charges cannot be brought under the category of CTCS. The appellants have also submitted that they are not offering any residential course and many students are not even opting for hostel and therefore, this hostel and mess, etc., are independent facilities. By way of additional submission, they have also submitted that accommodation in hostel would more appropriately fall under Renting of Immovable Property service, wherein, hostels have been specifically exempted. Therefore, even by way of an alternative argument, the hostel fee could not have been included in the gross value. Insofar as amount shown as 'other income', the appellant's submission is that it is essentially hostel fee as is evident from certain specimen invoices shown by them. We also find that one, Shri Puneeth, Authorized Signatory, filed an affidavit stating that amount shown in 'other fee' is towards provision of hostel facility to the students and the same has been also supported by CA certificate. Thus, since 'other income' is relatable to hostel fee and not coaching, the same would also not be liable for inclusion in the gross value.

18. Insofar as the issue of short payment of service tax on tuition fee is concerned, in Appeal No. ST/30276/2016, the appellants have clarified that

the differential tax amount had arisen on account of difference in amounts, which the appellant had passed as income receivable entries/journal vouchers (last or 4th instalment) in the months of March, 2013 & March, 2014 and for those amounts, neither any service has been completed nor advances were received nor invoices were issued. In any case, service tax on differential amounts has since been paid in the month of April, 2013 and April, 2014 itself. We find that this accounting system of income receivable and the explanation given by the appellant and the fact that in any case, the entire amount stands paid in the subsequent month, and therefore, there is apparently no escape of any service tax in respect of income received or shown as receivable towards tuition fee. Therefore, grounds for raising differential demand based on financial and accounting system adopted by the appellant alone cannot be sustained

19. Insofar as service tax on appellant's declared income of Rs.10 crores is concerned, the explanation given by the learned Advocate is that in fact, they had actually suffered a loss during the relevant period, however, due to insistence of Income Tax department, they had declared additional income of Rs.10 crores for the said period and showed profit of Rs.8,10,80,206/- and on that they had paid applicable income tax, which was reflected as other income. The adjudicating authority has not accepted this explanation as there is no evidence that this was not on account of provision of taxable service CTCS. The appellants have mostly contended that onus is on the department to prove the taxability of any activity or transaction and in the present case, there is no activity that pertains to provision of any taxable service. Reliance has been placed on the following case laws.

a) CCE, Ludhiana Vs Mayfair Resorts [2011 (21) STR 589 (Tri-Del)]
b) Kipps Education Centre Vs CCE, Ludhiana [2009 (13) STR 422 (Tri-Del)]

20. We find that, be the case as it may, this amount has been reflected as income, which the appellants have not been able to explain as relatable to any particular service. The said income has been accepted by the income tax authorities as income for the purpose of income tax only, however, for the purpose of service tax, the department needs to establish that this income arose on account of provision of any taxable service, which the department

has not been able to do and instead they insisted that the appellant has to prove that the said income is on account of any other non-taxable activity. We find that there is not enough material on record to sustain this finding of the adjudicating authority that this income was on account of any taxable service, which in this case would be tuition fee only, as rest of the fees and amounts, which have been proposed for inclusion in the gross value are held to be not includable. Similarly, multiple other income for which demand has been raised can also not be sustained, as department has not been able to establish that they were all relatable to any taxable service or CTCS and on the contrary, from the explanations given by the appellant in respect of said income, it would appear that they would not be otherwise liable for inclusion in the gross value for the purpose of charging service tax under the category of CTCS. Moreover, we find that some of the items on account of miscellaneous income like sale of applications, additional income, material fee, reservation of seat, other income, caution deposit, dhobi charges, pocket money, library deposit, BITSAT, sale of N-SAT applications, periodical exam fee, admission fee and sale of ID cards, etc., are either in the nature of sale of goods or have no nexus with CTCS. Department has not adduced that these were related to CTCS.

21. Insofar as applicability of extended period is concerned, we find that appellants have contested that this issue has been covered under previous SCNs in the past and therefore, they cannot invoke extended period on same/similar facts and also allege suppression of facts. They have relied on Nizam Sugar Factory Vs Collector [2006 (197) ELT 465 (SC)]. They have also relied on certain judgments of the coordinate benches that they were regularly filing their ST3 returns and hence, extended period cannot be invoked. One of the grounds taken by the department for invoking extended period is that they have claimed notification 12/2003-ST despite having not met the conditions. We find that in this regard, the appellant had already clarified that this was done inadvertently and that there is no bar on taking input credit on service and that cannot be the basis for alleging suppression, especially when they have produced CA certificate and other evidence in support that this was an inadvertent mistake.

22. The adjudicating authority has distinguished the case of Nizam Sugar Factory (supra) by observing that in the present appeal, the notices which

were issued are based on information/financial record furnished by the noticee themselves from time to time and also the fact that noticee themselves have accepted that their financial records were not free from discrepancies and have even declared additional taxable income of Rs.10 Crores before Income Tax authorities during the year 2013-14 and discharged income tax liability. It was also observed that the entries in the books of account appear to have been camouflaged under different heads rather than in their appropriate heads/entries. The adjudicating authority also noted that in the earlier SCNs, the issue was non-inclusion of certain amount viz., value of study material, mess fee in the taxable value based on audit objections, whereas, in respect of issues post 01.07.2012, the major provisions of the Finance Act have undergone paradigm shift. Such presumptions by the appellant that they have become exempted or otherwise under the new provisions may not be legally sustainable. He has essentially relied on the payment of income tax on Rs.10 Crores, which was not part of audit objections, being distinct issue, which was not covered in the earlier SCNs.

23. It is an admitted fact that appellants have disclosed income of Rs.10 Crores before Income Tax authorities and this fact has never been considered by the department and came to their notice only on going through their books of accounts for the subsequent period, we find that though adjudicating authority has doubted the veracity of the financial documents, he has not been able to highlight, except for the disclosure made with the income tax authorities, any other instance where there has been any deliberate or intentional entries made. If there is doubt about entries in the financial record, then the entire demand made by the department, which is based on the entries appearing on that said record itself will suffer from infirmities, inasmuch as demand has been made on amount reflected in books of accounts, which is being doubted. Therefore, we do not agree with this view that their books of account were not correct or are doubtful. Insofar as stand-alone issue of disclosure to the income tax authorities, we find that this is a disclosure made under a different statutory provisions under different statutory law and there is nothing on record that income tax authorities found anything wrong in accepting the tax paid by them on the said income. Further, department has never been able to

establish that the said amount is emanating on account of any particular taxable service. Therefore, in the absence of any specific allegation that the said Rs.10 Crores is on account of a particular taxable service or on the grounds that the appellants have not been able to prove that this is on account of non-taxable service, demand cannot be sustained. Merely because of its disclosure, the department cannot take a stand that this was a new fact and therefore, the judgment of Nizam Sugar Factory (supra) will not be applicable.

24. Further, it is also an admitted fact that the issue of their not paying service tax on certain component of the gross value was a matter of prolonged litigation and demand, both before 01.07.2012 and thereafter. The change in provision of law is only with regard to the definition of 'service' and some related provisions but the fact remains that the core issue was that if there is any sale of goods or if there is any deemed sale, the same cannot be subjected to service tax, both before negative tax regime and thereafter. The concept of gross value has remained more or less same, both before negative tax regime and thereafter. Hence, when the whole issue was subject matter of litigation prior to 01.07.2012, then it cannot be considered as if it was a new issue and therefore, not part of litigation. It is also to be noted that the disclosure of Rs.10 Crores to the income tax authorities was made by the appellant themselves and it was not withheld or suppressed by them. We also find that this issue also involves issue of interpretation as to whether certain activities for which amounts were being collected can be considered as sale of goods or otherwise. We do not find any cogent and specific grounds exists for invoking extended period in the impugned orders where extended period has been sustained. The reliance placed by the appellant on CCE Vs Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)] is relevant. We also find force in the reliance placed by the appellant on various case laws including Jaiprakash Industries Ltd Vs CCE [2002 (146) ELT 481 (SC)], Cosmic Dye Chemical Vs CCE [1995 (75) ELT 721 (SC)], Tamil Nadu Housing Board Vs CCE [1994 (74) ELT 9 (SC)], Gopal Zarda Udyog Vs CCE [2005 (188) ELT 251 (SC)] in support that mere non-payment of duty itself does not mean that appellant has suppressed information. Therefore, in the factual backdrop, invoking extended period is bad in law.

25. Further, if the extended period is not invokable in the facts of the case, penalty under section 78 is also not payable as held in the case of Prathiba Processors Vs UOI [1996 (88) ELT 12 (SC)].

26. We find that there is no denial that appellants were paying service tax to the extent it was attributable to tuition charges. The department has merely tried to demand service tax on the entire income/revenue by holding that gross value has to be taken as base for charging service tax and did not consider the explanation given by the appellant that certain expenses were clearly not taxable and hence, cannot be part of the gross value. Further, as discussed supra, we have already found that service tax cannot be levied on the amount attributable to sale of books and material, hostel fee, mess fee, other fee and even in respect of voluntary disclosure of an income under income tax law in the absence of any specific charge that such income is emanating from provision of taxable service. Therefore, in the facts of the case, whatever short-paid duty has been noted, it is because of certain bonafide belief that the same was not leviable to service tax as per their interpretation. Therefore, we find that the reasons for non-payment of certain alleged short payment of service tax can be considered as reasonable cause for failure to pay service tax and hence the appellants would be entitled for benefit under section 80 also, as it existed during material time, in the given factual matrix. Reliance has been placed on CST Vs Motor World [2012 (27) STR 225 (Kar)] and Akbar Travels of India (P) Ltd Vs CCE [2015 (38) STR 957 (Ker)]. This will however be for the period prior to 14.05.2015.

27. As regards non-payment of service tax on building rent received during 2013-14, appellants have submitted that the property has been rented to M/s Narayana Education Society, which is an educational institution and hence not covered under service tax in terms of section 66D(1) of the Finance Act and in terms of S.No.9(6) of Notification 25/2012-ST dt.20.06.2012. They have further clarified that Narayana Senior College was being operated by M/s Narayana Education Society. We note that this premises was rented out to an educational institution and hence, the same cannot be subjected to service tax in terms of statutory provisions and notifications, cited supra.

28. To sum up,

a) Demand of service tax on books and study material is not sustainable both before 30.06.2012 and under negative tax regime.
b) Demand of service tax on hostel fee is not sustainable.
c) Demand of service tax on other fee is not sustainable to the extent it is relatable to study material, hostel fee, mess fee or to the extent there is no nexus of such fee with the core activity of coaching provided by the appellant.
d) Demand of service tax on mess fee is not sustainable.
e) Demand of service tax on sale of applications, material fee, reservation of seat, other income, caution deposit, dhobi charges, pocket money, library deposit, BITSAT, sale of N-SAT applications, periodical exam fee, admission fee and sale of ID cards is not sustainable.
f) Demand of differential service tax on tuition fee is not sustainable.
g) Demand on rental income is not sustainable.
h) Appellant is entitled for the benefit of notification 12/2003-ST dt.20.06.2003, as amended by notification 12/2004-ST dt.10.09.2004, up to 30.06.2012.
i) Extended period is not invokable in the facts of the case.
j) Penalty under section 78 is not invokable in the facts of the case.
k) Penalty under section 76 & 77 are waived in terms of section 80 of the Act.
l) Cum-tax benefit has already been extended, however, where it has not been extended, the same will be extended as per the provisions of law.
m) Wherever service tax is payable on redetermination of quantum of demand, interest will be payable.

Departmental Appeals:

ST/22245/2015:-

29. Insofar as departmental appeals are concerned, we find that in Appeal No. ST/22245/2015, they are in appeal against OIO dt.07.05.2015 to the extent of observation of adjudicating authority holding that the activities relating to provision of food through mess will not form part of activity of

commercial coaching as these activities do not have nexus with commercial coaching and also that there are no allegations in the SCN that food was supplied in air conditioned mess and, as such, mess charges are exempted from levy of service tax. According to the department, keeping in view the Board Circular No. 172/7/2013 dt.19.09.2013, the mess would fall under auxiliary education service. It has also been pointed out that said auxiliary education service was exempted only when services were provided by education institution, whereas, the appellants are not an educational institution. We find that this aspect was never there in either SCN or in the OIO. The adjudicating authority had dropped the demand taking into account the exemption under S.No.19 of Notification No. 25/2012 dt.20.06.2012. Whereas, now the department is contesting the same that it is covered under S.No.9 of the cited notification. We find that the adjudicating authority has not considered the said activity i.e., mess fee, was liable for service tax keeping in view the decision of his predecessor, vide OIO No. 42/2013-ST dt.16.12.2013 and even for the period post 01.07.2012, they have no nexus with commercial coaching. It is only as an additional observation, he has mentioned that there are no allegations in the SCN that food was supplied in air conditioned mess and as such, mess charges are exempted from levy of service tax. Therefore, essentially, it was not included in the gross value as it was not held to be having any nexus with the activity of commercial coaching. Therefore, we do not find any merit in the appeal filed by the department and the appeal is dismissed. The observations are only further arguments to support that no service tax can be levied on mess bill.

ST/30524/2019:-

30. In this case, the department has come against dropping of demand of service tax on the study material for the period 2009-10. This was on the ground that the exemption notification 12/2003-ST dt.20.06.2003, as amended, was conditional and certain conditions were not fulfilled. We find that the issue of eligibility of notification in the facts of the case has already been discussed in detail in the foregoing paras, while examining the appeals filed by the appellant and it has been held that they would be entitled for benefit of the exemption notification as the sole ground of their not having taken credit in respect of input stands vindicated by virtue of CA certificate.

Therefore, the appeal filed by the department is not sustainable and is accordingly dismissed.

ST/22164/2015 –

a) Demand of service tax under the category of CTCS for the amount received towards tuition fee is upheld.
b) Demand in respect of amount received towards other fee is set aside.
c) Demand of service tax towards study material is set aside.
d) Demand of service tax towards mess fee is set aside.
e) Penalty under section 76 & 77 are waived in terms of section 80 of the Finance Act.

ST/30276/2016 –

a) Out of total demand of Rs.3,65,41,751/-, demand of service tax on the amount received towards tuition fee is upheld.
b) Demand of service tax towards study material and mess fee is set aside.
c) Demand of service tax on account of other fee is set aside and remanded back for re-determination of demand keeping in view the observations and findings in para 28.
d) Demand of Rs.19,58,063/- towards Renting of Immovable Property service is set aside.
e) Penalty under section 76 & 77 are waived in terms of section 80 of the Finance Act.

ST/30122/2017 –

a) Demand of service tax under the category of CTCS for the amount received towards tuition fee is upheld.
b) Demand of service tax on account of other fee is set aside and remanded back for re-determination of demand keeping in view the observations and findings in para 28.
c) Demand of service tax towards study material is set aside.
d) Demand of service tax towards mess fee is set aside.
e) Demand of Rs.25,74,083/- towards Renting of Immovable Property service is set aside.

f) Penalty under section 76 & 77 are waived in terms of section 80 of the Finance Act.

ST/30682/2018 –

a) Demand of service tax on additional income declared before Income Tax authorities is set aside.
b) Demand of service tax on account of other fee is set aside and remanded back for re-determination of demand keeping in view the observations and findings in para 28.
c) Demand of service tax towards study material is set aside.
d) Extended period is not invokable.
e) Benefit of cum-tax is admissible.
f) Penalty under section 78 is set aside.
g) Benefit of section 80 is admissible.

ST/30141/2020 –

a) Demand of service tax to the extent of hostel fee is set aside.
b) Demand of service tax on account of other fee is set aside and remanded back for re-determination of demand keeping in view the observations and findings in para 28.
c) Demand of service tax towards study material is set aside.
d) Penalty under section 76 & 77 are waived in terms of section 80 of the Finance Act.

ST/30546/2022 –

a) Demand of service tax to the extent of tuition fee under the head CTCS is upheld.
b) Demand of service tax towards study material is set aside.
c) Demand of service tax towards mess fee is set aside.
d) Penalty under section 76 & 77 are waived in terms of section 80 of the Finance Act.

ST/30545/2022 –

a) Demand of service tax to the extent of tuition fee under the head CTCS is upheld.
b) Demand of service tax towards study material is set aside.

c) Demand of service tax towards mess fee is set aside.
d) Penalty under section 76 & 77 are waived in terms of section 80 of the Finance Act.

31. In view of the above, the appeals of appellant are partly allowed and the impugned orders are modified to the extent discussed above. Departmental appeals are dismissed.

(Pronounced in the Open Court on 27.08.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda