

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
MUMBAI**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 86403 of 2017**

(Arising out of Order-in-Original No. PUN-SVTAX-000-COM-057-16-17 dated 22.03.2017 passed by the Commissioner of Service Tax (Audit), Pune.)

**Shiv Chhatrapati Kreedapeeth**

Mumbai - Bangalore Highway  
Mahalunge, Balewadi,  
Pune - 411 045.

**.... Appellant**

Versus

**Commissioner of Service Tax-I, Pune**

Pune Service Tax Commissionerate  
41-A, ICE House, Opp. Wadia College  
Sasoon Road, Pune - 411 001.

**.... Respondent**

APPEARANCE:

Ms. Padmavati Patil, Advocate for the Appellant

Shri Shashank Kumar Yadav, Authorized Representative for the Revenue

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO.      A/86896/2025**

Date of Hearing:      06.08.2025

Date of Decision:      05.12.2025

**Per: M.M. PARTHIBAN**

This appeal has been filed by Shiv Chhatrapati Kridapeeth, Pune, a sports stadium represented by Deputy Director, Sports & Youth Services, Department of Youth Affairs & Sports, Government of Maharashtra (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. PUN-SVTAX-000-COM-057-16-17 dated 22.03.2017 (herein after, referred to as "the impugned order") passed by the Commissioner of Service Tax (Audit), Pune.

2.1 The brief facts of the case are that the respondent Shiv Chhatrapati Kridapeeth, is *inter alia*, engaged in the business of providing the stadium and open space for marriage, other commercial activities and provide part of the land parcel situated within the premises for lease of rental basis.

These activities were interpreted by the Department as the appellants had provided the taxable service of 'mandap keeper' and 'renting of immovable property' Chapter V of the Finance Act, 1994. On the basis of intelligence gathered which indicated that the appellants had not obtained service tax registration and carried on provision of taxable services without payment of service tax, the Department had conducted enquiry about the activities of the appellants and initiated show cause proceedings. During the course of enquiry, the Department had found that the facilities available in the sports stadium premises were being utilised by various organisations, associations against receipt of valuable consideration by the appellants. Further, the appellants had also entered into a 'concession agreement' with M/s BW Highway Star Private Limited to build up a hotel on BOT (Built Operate Transfer) basis in the premises of the appellant for running hotel business. Furthermore, statements were recorded from persons concerned, including Assistant Director of sports complex and information was also collected from such BOT operator. On completion of the enquiry, the Department had issued Show Cause Notice (SCN) dated 07.02.2013.

2.2 The said SCN 13.11.2013 proposing for demand of service tax under the taxable category of 'mandap keeper' for Rs.1,04,18,389/- and under the category of 'renting of immovable property' for Rs. 77,00,881/- under Section 73(1) of the Finance Act, 1994 along with interest and for imposition of penalty on the appellants under Sections 76, 77, 78 ibid. The matter arising out of the SCN dated 13.11.2013 was adjudicated by the Commissioner vide Order-in-Original dated 23.10.2015 in confirmation of all the proposals made in the SCN. Being aggrieved with the said order dated 23.10.2015, the appellants had preferred an appeal before the Tribunal, which was disposed of by way of remand to the adjudicating authority vide Final Order A/2239-2240/15/STB dated 13.07.2015. The relevant paragraphs of the said order of the Tribunal is quoted below:

*"3. Considering the submissions made by both sides, we find that basically the issue involved in these cases relating to service tax liability on the various amounts collected by the appellant, i.e., Director of Sports & Youth Service, Pune (Government of Maharashtra).*

*4. It is the case of the learned Counsel that these amounts collected are towards the fee and facilities which are available in the sports complex. At this juncture, we asked a specific question to the learned Counsel as to why the details were not put before the adjudicating authority, in response to which it was claimed that they have all the details and will do so before the adjudicating authority. Since the issue needs to be disposed of, based on the factual matrix, the appreciation of evidence, we find that the matter*

*needs reconsideration by the adjudicating authority. We also direct the appellant to file a detailed reply to the adjudicating authority within 4 weeks from the receipt of certified copy of this order. On receipt of such a reply from the appellant, the adjudicating authority will reconsider the issue afresh after following the principles of natural justice. We make it clear that we have not expressed any opinion on the merits of the case and kept all issues open.*

5. *Appeals are loaded by way of remand to the adjudicating authority."*

2.3 In the *de novo* proceedings, learned Commissioner after perusal of the reply submitted by the Appellant vide their letter dated 17.01.2017 and after giving a personal hearing on 17.01.2017, had proceeded in issue of Order-in-Original dated 22.03.2017 in confirmation of service tax demands made in the SCN to the extent of Rs.75,92,214/- on mandap keeper service and Rs.77,00,881/- on renting of immovable property service, and dropped the demand in respect of reservation fees, room rent collected for facilities available at the sports complex. Feeling aggrieved with the impugned order dated 22.03.2017, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that the appellants being part of the Government of Maharashtra, Ministry of Education and Sports, had constructed a Sports Stadium namely Shiv Chhatrapati Kreedha Peeth at Mahalunge, Balewadi, Pune. The land on which stadium had been constructed, the stadium by itself and all the facilities available in the stadium are owned by Government of Maharashtra and are entirely controlled by Dept. of Youth Affairs and Sports, Govt. of Maharashtra and operate as a non-commercial project. The facilities at the stadium were upgraded in 2007-2008 for conducting Commonwealth Youth Games 2008 and subsequently for other sports events. Funding for the said stadium was arranged by Government of Maharashtra and Planning Commission of Government of India as per Commonwealth Games Plan. The main objective of the appellants in creation of such facility is to promote sports and provide infrastructure and facilities to players. The appellants allowed the usage of the stadium space and facilities thereof like Badminton Court, Swimming pool, Table tennis, Gymkhana, hostel facilities for players and sportsmen against certain charges.

3.2 She submitted that the detailed description of the nature of facilities provided and the charges collected by the appellants are as tabulated below:

Sr. No.	Particulars	Value of services (in Rs)
1	Reservations for facilities available in Shivchhatrapati Kreedapeeth Balewadi (Sports complex)	63,85,935
2	Rent for facility available at Sports Complex	7,31,61,419
3	Rent Collected from the players and employees for Using Hostel Facility	1,45,35,624
4	Fee collected for using Swimming pool	25,26,950
5	Fee collected for using facilities for playing Tennis	4,64,050
6	Fees collected for using facility for playing Table Tennis	11,61,100
7	Fees collected for using facility for paying Badminton	18,51,150
8	Rent collected from players on daily basis for using Hostel Facility during III Common Wealth Programme	96,91,305

As regards the total receipts on account of various facilities, it is submitted by the learned Advocate that during the de novo proceedings, the learned Commissioner had considered the rent collected from the players and the employees using the hostels, rent collected for the sports complex from players on daily basis, and fees collected for using the facilities of sports complex as detailed in Sr. No. 3 to 8, and dropped the proceedings for demand of service tax. It is only in respect of reservation charges and rent facility for sports complex, the demand of service tax for Rs.75,92,214/- was confirmed. Further, in respect of the amount of Rs.63,85,935/- collected under the nomenclature 'Reservation of facilities at Sports stadium', comprising of charges for '*Suvidha Aarakshan*' and '*Suvidha Vapar Bhade*' service tax demand of Rs.7,02,475/- has been confirmed. Since, these are only in the nature of 'advance amount' collected for using the sports facility which are refundable, when the booking is cancelled; and transferred to the head of relevant 'income' when the sports facilities are actually provided, these are not separate receipts and is not in the nature of an income for provision of service. In other words, such confirmation of tax would amount to double taxation of the same amount as 'advance' and when the same is accounted as 'income' upon transfer of it when the facility is used.

3.3 Furthermore, She stated that '*Suvidha Vapar Bhade*' amounting to Rs.7,31,61,419/- collected are actually charges for providing sports facilities at sports complex to individual players, sports associations, schools, colleges etc. In terms of Section 65(67) the Finance Act, 1994, 'mandap keeper' means a person who allows temporary occupation of a

mandap for a consideration for organising any official, social or business function; that as per section 65(66) 'mandap' means any immovable property as defined under section 3 of Transfer of Property Act and includes furniture fixtures, light fittings, floor coverings let out for a consideration for organising any official, social or business function; services provided by mandap keeper in relation to use of mandap in any manner including facilities provided in relation to such use are taxable under the head 'Mandap keeper services' as per section 65(105)(m) *ibid*. Further, during the disputed period of 2008-09 and 2009-10, the stadium has not been given for any activity other than sports and hostel for sportsmen. Therefore, going by the nature of charges collected for use of sports complex, it is clear that the same are collected for usage of facilities available at sports stadium and not for organising any function; that sports activities cannot be equated to 'function'. Therefore, he stated that confirmation of service tax of Rs.68,89,739/- by treating the same as renting for commercial purpose is factually incorrect.

3.4 Learned Advocate also stated that, sports stadium is used for public purpose and merely because some amount is charged for using the facility at the stadium, providing such facility cannot be termed as commercial activity and hence, cannot be brought under the levy of service tax. In this regard, he relied upon the decision of the Tribunal in the case of *B.G. Shirke Construction Technology Private Limited Vs. Commissioner of Central Excise, Pune-III* - 2014 (33) S.T.R. 77 (T) and as upheld by Hon'ble Bombay High Court in the judgement delivered on 15.03.2019 as reported in 2019 (25) G.S.T.L. 8 (Bom).

3.5 Learned Advocate further submitted that appellants had entered into an agreement dated 18.08.2007 with BW Highway Star Ltd. for leasing 24685 square meters of open land (vacant land) for project implementation under Build, operate and transfer [BOT], on which BW Highway Star would construct, operate and maintain 400 rooms hostel and 14176 square meters of open land (vacant land) for parking and landscape gardens for period of 60 years. In this regard, he stated that the activity of vacant land given on lease basis for construction of building used solely for residential purposes and building used for the purpose of accommodation including hotels, hostels, boarding houses, holiday accommodation, tents, camping facility which has been excluded from the tax net of service tax under 'Renting of Immovable Property service' as per section 65(105)(zzzz) read with explanation 1 thereto. Further, that the activity of giving vacant land

on lease or licence basis for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce has been brought under the tax net as 'Renting of immovable property service' w.e.f. 1.7.2010; that for the disputed period prior thereto i.e., 1.4.2008 to 30.6.2010, such an activity was not leviable to service tax. Moreover, she stated that undisputedly, the appellants are a government body and facilities provided/services provided by government are not leviable to service tax in terms of Section 66D(a) of Finance Act, 1994, except those provided by inter-alia Department of Posts, transport of goods or passengers etc.; that in cases of support services provided by government to business entities, the recipient business entities are liable to pay service tax as per Notn.No.30/2012-ST. Therefore, learned Advocate submitted that the demand of serviced tax in the impugned order is not sustainable and the appeal filed by the appellants may be allowed.

3.6 In support of their stand, learned Advocate had relied upon the following orders passed by this Tribunal and such order affirmed by the Hon'ble Bombay High Court:

(i) *B.G. Shirke Construction Technology Private Limited Vs. Commissioner of Central Excise, Pune-III* - 2014 (33) S.T.R. 77 (T) and upheld by Hon'ble Bombay High Court in the judgement delivered on 15.03.2019 as reported in 2019 (25) G.S.T.L. 8 (Bom).

(ii) *Commissioner of Central Excise, Ludhiana Vs. Municipal Council* - 2011 (24) S.T.R. 705 Itri. Del.)

(iii) *Commissioner of Central Excise & Customs, Raipur Vs. Chhattisgarh State Industrial Development Corporation Limited* - 2018 (17) G.S.T.L. 593 (Chhattisgarh)

(iv) *Jharkhand State Cricket Association Vs. Commissioner of Central Excise & Service Tax, Jamshedpur* - Final Order Nos. 76933-76934/2024 dated 05.09.2024.

4. Learned Authorized Representative (AR) appearing for Revenue, reiterated the conclusions arrived at by the learned Commissioner in the impugned order. Further, he had submitted that since the appellants had undertaken commercial activities of renting the vacant land and collected fees for the sports facility, the impugned order confirming the service tax demand is sustainable and stated that the appeal filed by party may be rejected.

5. Heard both sides and perused the case records along with paper books and case law citations submitted in this case.

6. The short issue for decision before the Tribunal is to determine the following:

(i) whether the appellants are liable to pay service tax on the reservation charges for facilities available in the sports stadium rent collected for the facility available at sports complex as 'mandap keeper'; and

(ii) whether the appellants are liable to pay service tax on vacant land given on lease by the appellants for use as parking and landscape gardening of the sports complex and partly for building hotel under the category of 'renting of immovable property'

(ii) whether the appellants are liable for imposition of consequential penalty under Sections 77, 78 of the Finance Act, 1994

The period of dispute involved in the present case is from 01.04.2008 to 31.03.2012.

7. Considering that the present appeal has come up for hearing before the Tribunal in second round of dispute, after the matter in the earlier round was examined and the same was remanded for *de novo* adjudication by the original authority, we had carefully brought out the entire facts of the case as submitted by the learned Advocate in the earlier paragraphs, right from the stage of enquiry proceedings and issue of SCN to the impugned order which is appealed against in the present appeal.

8. In the impugned order dated 27.05.2016, learned Commissioner had examined the issues under dispute and had recorded his findings as follows:

"28.3. The assessee has collected the following amount on account of providing services:-

**Table I**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Value of Services</b>
<i>i</i>	<i>Reservations for facilities available in the stadium</i>	<i>63,85,935/-</i>
<i>ii</i>	<i>Rent for facility available at Sports Complex</i>	<i>7,31,61,419/-</i>
<i>iii</i>	<i>Fee collected for using Swimming Pool</i>	<i>25,26,950/-</i>
<i>iv</i>	<i>Fee collected for using facilities for playing Tennis</i>	<i>4,64,050/-</i>
<i>v</i>	<i>Rent collected from the players and employees for using hostel</i>	<i>1,45,35,624/-</i>
<i>vi</i>	<i>Fees collected for using facility for playing Table Tennis</i>	<i>11,61,100/-</i>
<i>vii</i>	<i>Fees collected for using facility for playing Badminton</i>	<i>18,51,150/-</i>
<i>viii</i>	<i>Rent collected from players on daily basis</i>	<i>96,91,305/-</i>

**28.4 Reservation for facilities available in the stadium and Rent for facility available at sports complex**

On going through the definition of Mandap Keeper service as discussed in para 28.1 and the activities of the assessee as discussed in para 28.2, I find that the activities mentioned above at para 28.3 (i) & (ii) of the assessee are clearly covered under the definition of 'Mandap Keeper' for the following reasons-

(a) that the assessee is allowing temporary occupation of the Sports Complex and the various facilities within it to Groups/individuals, against commercial consideration.

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(f) The assessee in his submission dt. 17.1.2017 has submitted that in very few cases, facilities in sports complex was given on rent for social, cultural or business functions, however, their pre-dominant activity is to provide sports facilities without any commercial motive. Further, I also find that although the assessee have contended that the charges collected for providing sports facilities at the Sports Complex are mainly to individual players, sports associations, schools, colleges, coaching academy, etc. and that it also includes charges collected from other Departments of Government of Maharashtra to conduct various programmes, they have not denied the fact that they had given their facilities to conduct seminars and functions to various organizations and persons on commercial consideration. Consequently, I find that the fact that the facilities in the stadium are being allowed to be utilized for commercial consideration stands proved and therefore, in the absence of any other evidence to the contrary, I have no hesitation in holding that the assessee have provided Mandap Keeper services as defined under Section 65(67) of the Finance Act, 1994, during the period from 01-04-2008 to 31-03-2012, and hence they are liable to pay service tax amounting to **Rs.68,89,739/-** on the same.

(g) Further, I find that the assessee have booked an amount of Rs.63,85,935/- on the income side, which according to them pertains to the reservations for facilities available in Shiv Chhatrapati Kreedapeeth, Balewadi (sports complex). In this regard, they have contended that these are booking charges collected as a deposit, from persons who intend to use facilities available in sports complex; that these charges are refundable when booking is cancelled and transferred to main income head when facilities are actually provided; that since, these are in the nature of deposits for using the sports facility and the same is covered as income in subsequent period, no Service Tax is payable on Rs.63,85,935/-collected as deposit in the year 2008-09.

Further, as per Section 65(105)(m) of the Finance Act, 1994 "**taxable service**" means any **service provided or to be provided** -

to any person, by a "**Mandap keeper**" in relation to the use of Mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer. This means that even if deposits are received from the recipients for services '**to be provided**' by the assessee, the same would be chargeable to service tax in terms of Section 67(3) of the Act, which stipulates that '**The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.**'

I find that Rs. 63,85,935/- collected by the assessee as deposit in the year 2008-09, cannot escape service tax liability. Therefore, I hold that the assessee is also liable to pay service tax amounting to **Rs.7,02,475/-**, in respect of the aforesaid amount of Rs.63,85,935/- collected by them.

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**28.6 "Niwas Shulk"-(Rs 1,45,35,624/-) and "Indian Camp Niwas Bhade"-(Rs 96,91,305/-)-Hostel Fees**

As regards rent collected from the players and employees for using hostels and rent collected from players on daily basis, I agree with the assessee that this amount is the rent collected from the players and employees for using the hostel and employee quarters and cannot be subject to service tax under Mandap Keeper Services since none of these activities can be treated as social, official or business function. Also, assessee has submitted that the hostel charges collected were in the range of Rs. 450/- to Rs. 500/-. From the sample bills/receipts submitted by the assessee I could find that the daily rent collected is less than Rs.1000/- per day. Therefore, I hold that no service tax is payable on the same as per CBEC letter, vide DOF.No.334/3/2011-TRU dt. 28.02.2011 which clarified that no service tax will be charged if the daily tariff of the accommodation is less than Rs. 1000/- and, therefore, I hold that the Niwas Shulk and Indian camp Niwas Bhade shall not be subject to service tax.

28.7. In view of the above, I find that the assessee will not be liable to pay service tax amounting to Rs.28,26,175/- as per the worksheet below (i.e. Rs. 1,04,18,389/- as demanded in the S.C.N. minus Rs. 75,92,214 /- as held to be payable in para 28.5 & 28.6 above), on the 'Mandap Keepers' services provided by them for the period from 01-07-2012 to 31-03-2013, and I hold accordingly:-

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28.8 Consequently, I hold that out of the total demand of Rs. 1,04,18,389/- as raised in the subject S.C.N., in respect of the 'Mandap Keeper' services provided by the assessee during the period 01-09-2008 to 31-03-2012, they are liable to pay service tax totally amounting to Rs.75,92,214/- (Rs. Rs.68,89,739/- + Rs. 7,04,275/-,) as discussed in para 28.4 above and as per the worksheet below.

Sr. No.	Particulars	Value of Services	Taxable Value	Service Tax
i	Reservations for facilities available in the stadium	63,85,935	57,89,606	7,02,475
ii	Rent for facility available at Sports Complex	73,16,419	66,32,482	6,88,739
<b>Total</b>				<b>75,92,214</b>

**RENTING OF IMMOVABLE PROPERTY SERVICES:**

Before getting into the merits, I would like to reproduce the relevant statutory provisions relating to the taxability of this service, which are as under:-

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29.4 On going through the Schedule- "A" of the aforesaid agreement, it is observed that around 6.10 Acres (i.e. 24685 Sq. Mtrs.) has been leased out to build a Hotel of 400 rooms. Apart from this, around 3.50 Acres land has also been leased out for development of parking and Landscape Garden at a rent of Rs.1/- per square meter per annum. It was also observed that in terms of para 5.1 (xx), an annual premium as stipulated in Schedule-"B" of the said agreement was fixed for 60 years @ Rs.259.70 Lakhs per annum, for leasing out the land to build a hotel on BOT basis. Against this lease agreement, the assessee have already received rent of Rs.8,24,66,700/- for the period 2009-10, 2010-11 and 2011-12, as is evident from the Income and Expenditure account for the period 2008-09 to 2011-12 submitted by them."

9.1 In order to deal with the issues under dispute as specified in paragraph 6 above, and to examine the adjudged demands confirmed by the learned Commissioner in upholding the levy of Service tax on 'Mandap Keeper' service and 'Renting of immovable property' service, we need to refer to the relevant provisions of the Finance Act, 1994.

**Finance Act, 1994**

**"Definitions.**

**Section 65.** *In this Chapter, unless the context otherwise requires,—*

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**(66)** *"mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 (4 of 1882) and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organising any official, social or business function*

*Explanation.—For the purposes of this clause, social function includes marriage;*

**(67)** *"mandap keeper" means a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function.*

*Explanation.—For the purposes of this clause, "social function" includes marriage;*

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**(105)** *"taxable service" means any service provided <sup>1</sup>or to be provided, \_*

**(m)** *to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided or to be provided to <sup>1</sup>such person in relation to such use and also the services, if any, provided or to be provided as a caterer;*

**(zzzz)** *to any person, by 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 furtherance of, business or commerce.*

*Explanation 1.—For the purposes of this sub-clause, "immovable property" includes-*

*(i) building and part of a building, and the land appurtenant thereto;*

*(ii) land incidental to the use of such building or part of a building;*

*(iii) the common or shared areas and facilities relating thereto;*

*(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,*

<sup>2</sup>*(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, but does not include—*

*(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;*

*(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;*

*(c) land used for educational, sports, circus, entertainment and parking purposes; and*

<sup>1</sup> Substituted for "the client" by the Finance Act, 2008, w.e.f. 16-5-2008.

<sup>2</sup> Inserted by the Finance Act, 2010, w.e.f. 01-7-2010.

*(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.*

*Explanation 2.—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;”*

9.2 On careful reading of the definition of taxable service, under Section 65(66)&(67) *ibid* read with Section 65(105) (m) *ibid*, as applicable for the period prior to 01.07.2012, it is clearly provided therein that the services under the taxable category is ‘Mandap Keeper service’ and such services are brought in the scope of service tax levy as taxable category of service if such services, which are provided or to be provided, by any person to a client in relation to ‘official, social or business’ function. Subsequently, w.e.f. 16.05.2008, the word ‘client’ was substituted to refer to such person to whom services were provided. In the definition of ‘Mandap Keeper Service’ the various activities for which the ‘mandap’ is let out is covered under the scope of official, business and social function, including marriage. In common parlance meaning, any ‘function’ relates to an event hosted by someone and which is attended by the persons who have been invited to attend such function. As per the definition, such event display that it is official, business or social in nature. As regards ‘sports’ or ‘sporting event’ is concerned, the activities or events are conducted for promoting a particular branch of sport or athletics; there is no official or business or social nature in such events. Even though certain sports events may be conducted by the Government agencies or Sports federations or bodies, that too are for promoting sports and are not meant for official or business function. Further, there is no specific evidence forthcoming in the impugned order for claiming that the Government of Maharashtra has conducted various programmes or let out the stadium facility for conducting seminars and functions by other organizations on commercial consideration. Therefore, we are of the considered opinion that the scope of conducting sporting activities or sports events in a stadium complex cannot be categorized as a ‘official, business or social function’ for charging service tax thereon.

9.3 In the impugned order, learned Commissioner had agreed to the contention of the appellant that the amount of rent collected from the players and employees for using the hostel and employee quarters cannot

be subject to service tax under Mandap Keeper Services since none of these activities can be treated as social, official or business function. However, for the purposes of use of the vacant land appurtenant thereto, which have been used for parking and landscape gardening of the sports complex and partly for building hotel, he had confirmed the service tax demand under the category of 'renting of immovable property' service.

9.4 In this regard, we find that on the aforesaid issues of taxability to service tax in respect of vacant land of the sports stadium has been dealt with by the Co-ordinate Bench of the Tribunal in the case of Jharkhand State Cricket Association (supra), where the department had appealed against the dropping of demand by original authority, and it was held by the Tribunal that the service tax demand has been rightly dropped by the Commissioner of Central Excise in that referred case. The relevant paragraphs of the said Order is extracted and given below:

*"7.6. From the above, we observe that all the services rendered by the appellant are naturally bundled together with the game of cricket. In the present case, we observe that promoting the game of cricket is the primary objective of the cricket association/JSCA and all the services rendered are in association with promoting the game of cricket. When matches are not played, all the services become irrelevant and JSCA earns money only when these services are provided during the course of cricket matches. Accordingly, we hold that JSCA has rendered 'bundled services' in connection with promoting the game of cricket.*

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*8.2. Regarding the dropping of demand under the category of 'mandap keeper service', we observe that JSCA had leased corporate boxes, hospitality boxes, etc., to corporate houses for viewing international matches for a specified period (not for all matches). This amount collected is in the nature of 'entry fee' booked in advance to privileged buyers and hence, the said activity could not be treated as a 'service' under the category of 'mandap keeper service'. JSCA also submits that there is no exclusive letting out of the said corporate boxes, hospitality lounges, etc.; in the instant case, JSCA is neither a 'mandap keeper' nor are the corporate boxes 'mandaps'. Accordingly, we hold that the Id. adjudicating authority has rightly dropped the demand under this category.*

*8.3. Regarding the dropping of demand under 'renting of immovable property service', we observe that the 'letting out' of its ground was for playing cricket matches only with the aim of promoting the game of cricket in the State of Jharkhand; playing cricket cannot be considered as 'furtherance of business or commerce' as defined under Section 65(105)(zzzz) read with Section 65(90a) of the Act. Service Tax is leviable on rent received for letting out of immovable property for furtherance of commercial activities only; Further, land used for sports is not a commercial activity and letting out of such land cannot be subjected to Service Tax under the category of 'renting of immovable property service'. Accordingly, we hold that the service rendered in this regard by JSCA is not liable to service tax prior to 30.06.2012. W.e.f. 01.07.2012, under the category of 'declared services', the ground rent received for playing cricket, which is*

*not in furtherance of business, is not taxable. In respect of the other services wherein demands were dropped by the Id. adjudicating authority, we do not find any infirmity in the dropping of the demand by the Id. adjudicating authority."*

9.5 Further, we also find that on the issue of levy of service tax on the sports stadium of the self-same appellants treating it as commercial or industrial construction in the case of *B.G. Shirke Construction Technology Private Limited* (supra), the Tribunal has examined the issues and held that the appellants are liable to service tax. The relevant paragraphs of the said order are quoted below:

**"3.3** *From this circular, it is clear that if in the records maintained by the local authorities, it is not to be used for commercial purposes, then Service Tax liability is not attracted. Further, even if construction built for non-commercial purposes and primarily not used for commercial or industrial purposes, renting out the same later for commercial purpose would not make the construction as commercial or industrial construction. In the light of this, he submitted that the activity undertaken by the appellant does not come within the purview of the Commercial or Industrial Construction Services as defined under Section 65(25b) of the Finance Act, 1994. The only ground/basis on which the demand has been confirmed is a letter dated 5-9-2008 written by C.B.E. & C. to the Director of Sports & Youth Services, State Government of Maharashtra. In the said letter it has been stated that "Commercial or industrial construction service' and 'works contract service' for construction of stadium are leviable to Service Tax provided that such services are primarily for the purposes of commerce or industry. It was further directed in the said letter in Para 5 that in case any further clarification is needed on the issue, the jurisdictional Commissioner may kindly be approached. In view of this letter, the learned Commissioner had confirmed the duty demand.*

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**6.** *We have carefully considered the rival submissions.*

**6.1** *The question involved herein is whether the Sports Complex Stadium constructed for the purpose of holding games can be considered as a commercial or industrial construction, merely on the ground that the stadium is allowed to be used by the public and others later on, on payment of user charges. In our view, the Sports Stadium is a public facility for the recreation of the public and it does not come under the category of commercial or industrial construction.*

**6.2** *In the case of B.B. Nirman Sahakari Samiti v. State of Rajasthan - AIR 1979 Raj. 209, a question arose as to what is a Public Utility? The Hon'ble High Court held that 'public utility' means any work, project which is going to be useful to the members of the public at large. The public benefit aimed at or intended to be secured need not be to the whole community but to a considerable number of people. In American Law, the word 'Public facility' has been defined as under :-*

*"Public facility' means the following facilities owned by a State or local government, such as :-*

- (a) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.
- (b) Any other Federal and street road or highway.
- (c) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.
- (d) Any park."

**6.3** *The Sports Stadia is used for public purpose. Merely because some amount is charged for using the facility, it cannot become a commercial or industrial construction. Even in a Children's Park, entry fee may be levied for maintenance of the Park. Merely because some amount is charged for using the Park, it cannot be said that it is a commercial or industrial construction. Adopting the same logic, the Sports Stadia in the present case is also a non-commercial construction for use by the public. Therefore, we are of the considered view that the Sports Stadium constructed for conducting Commonwealth Games, is a non-commercial construction.*

**7.** *In view of the foregoing, who hold that Shiv Chhatrapati Sports Complex constructed by the appellant, M/s. B.G. Shirke Construction Technology Pvt. Ltd., is a non-commercial construction and, therefore, it is not liable to Service Tax under the category of 'Commercial or Industrial Construction Service'. Accordingly, we allow the appeal.*

9.6 The above order of the Tribunal was appealed against before the Hon'ble High Court of Bombay by the department. In the judgement dated 15.03.2019, the Hon'ble High Court of Bombay has upheld the order of the Tribunal and dismissed the appeal filed by the department. The relevant paragraphs of the said judgement is extracted and given below"

*"13. There is no dispute that the plot of land on which the stadium is constructed is owned by Government of Maharashtra. The record maintained by the local authorities would indicate that the plot is for public welfare use and not for residential or commercial purpose. The question that arises for consideration is whether, user of the stadium area to the extent of 1/3rd of the total area for commercial purpose would tantamount to 'commercial or industrial construction service' as defined by Section [65(25b)] of the Finance Act, 1994. It is not even the case of the appellant that the stadium is exclusively used for commercial purpose. Relying on materials which indicate that 1/3rd of the area of the stadium can be utilized for commercial purpose, other than sports, the appellant wants us to arrive at a conclusion that construction is commercial construction service as defined under Section 65(25b) of the Finance Act, 1994. No doubt, various rates are specified for different facilities in the sports complex. As observed earlier, it is not even the case of the appellant that sports complex is exclusively or even primarily used for commercial purpose.*

*14. It may be that various rates are specified for different facilities in the sports complex. This by itself is not sufficient to establish that the sports complex is exclusively or primarily used for commercial purpose. The agreement itself permits the Committee to use the area to the extent of 1/3rd of the total area for commercial purpose.*

15. Let us consider the definition of the term 'commercial or industrial construction service' which is extracted hereinbefore. Clauses (a) to (d) of the definition provides for various types of construction and allied works including glazing, plastering, painting etc. and also repair, alteration, renovation etc on which service tax can be levied. This construction of the allied works ipso facto does not attract the levy of the service tax as further part of the definition would indicate. The said construction, in order to attract service tax, will also have to satisfy the conditions laid down by subsequent part of the definition i.e.

- (i) used, or to be used, primarily for; or
- (ii) occupied, or to be occupied, primarily with; or
- (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry.....

*(emphasis supplied by us)*

16. The language employed in the definition clause is clear and unambiguous. The plain meaning as can be understood from the definition clause, more particularly, the clarification contained in clauses (i), (ii), (iii) is that the construction ipso facto is not leviable to service tax, but it is only when it is used, or to be used, primarily for "commerce" or "industry" or work intended for "commerce" or "industry" that service tax can be levied. Thus, it is only that construction which is to be used or primarily to be used for commerce that is subject to levy of service tax.

17. In the present facts, we find that dominant user of the sports complex is non-commercial. The definition uses the words "used or to be used primarily for commerce or industry" clearly indicating that the user is to be exclusively for commercial purpose or at least it must be primarily for commercial purpose. The definition leaves us in no manner of doubt that if the predominant user of the "sports stadium" is not commercial, then the same cannot be subjected to levy of service tax. Thus, in the facts of the present case, though an area to the extent of 1/3rd is used for commercial purpose prescribing separate rates for such user, this by itself is not sufficient to attract service tax.

18. Even the circulars issued by the Board dated 17-9-2004 and 10-2-2012 would indicate that only if such constructions are for commercial purposes, like, local government bodies constructing shops for letting them out, such activities would be commercial and builders would be subjected to service tax. The Director of Sports and Youth Services, Pune in his Affidavit filed before the authorities on earlier occasion has deposed that the stadium will be continued to be used for the non-commercial purposes even after the Commonwealth Youth Games, 2008 are over. The materials on record do not satisfy the test that the stadium is used or used primarily for commercial purpose. It is the stand of the respondent that while pursuing their object of popularizing sports by selecting best available means, they incidentally charge for the usage and the said revenue will not convert the activities into commercial use. The stand is reasonable.

19. We therefore do not find this to be a fit case to interfere with the order passed by the CESTAT in exercise of our further Appellate jurisdiction. The order under challenge is neither perverse nor vitiated by an error apparent on the face of the record."

10. In view of the foregoing discussions and on the basis of the orders passed by the Co-ordinate Bench of the Tribunal and the judgement of the Hon'ble High Court of Bombay, we do not find any merits in the impugned order dated 22.03.2017 passed by the learned Commissioner in confirmation of the adjudged demands.

11. In the result, the impugned order dated 22.03.2017 is set aside and the appeal filed by the appellants are allowed in their favour.

(Order pronounced in the open court on 05.12.2025)

**(S.K. MOHANTY)**  
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**  
**MEMBER (TECHNICAL)**