

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

REGIONAL BENCH - COURT No. III

Service Tax Appeal No. 41702 of 2014

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-071-14 dated 06.06.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals) Coimbatore).

And

Service Tax Appeal No. 40483 of 2015

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-011-15 dated 02.01.2015 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals-I) Coimbatore).

Sri Mookambigai Constructions India Pvt. Ltd. Appellant

320, Srinivasa Complex, N.S.R. Road,
Saibaba Colony, Coimbatore 641 011.

VERSUS

Commissioner of GST & C. Ex, Coimbatore Respondent

6/7, ATD Street, Race Course Road,
Coimbatore - 641 018

APPEARANCE :

Shri. J. Shankararaman, Advocate for the appellant
Shri M. Selvakumar, Authorized Representative for the Respondent
Shri Harendra Singh Pal, Authorised Representative for the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER Nos.40988-40989/2024

DATE OF HEARING : 24.07.2024

DATE OF DECISION :30.07.2024

Per Ms. Sulekha Beevi. C.S

The issue involved in both these appeals being same, they were heard together and are disposed of by this common order.

2. Brief facts are that on verification of ST 3 Returns filed by the appellant it was noted that the appellant has not discharged appropriate

service tax for the Construction Services provided by them. It was noted that the appellant has paid service tax under Works Contract Services by availing the option of composition scheme without intimating the department. So also, the appellant had not paid service tax on construction services provided to charitable trusts for construction of educational institutions. Separate show cost notices for the period October 2010 to September 2011 and for the period October 2011 to June 2012 was issued proposing to demand the service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties on both the issues. On appeal before the Commissioner (Appeals), the same was upheld. Hence these appeals.

3. The Ld. Counsel Shri. J. Shankarraman, appeared and argued for the appellant. It is submitted that the appellant had obtained registration under Commercial/Industrial Construction Services, Transport of goods by Road Services, Renting of Immovable Property Services and Works Contract Services. The appellant was discharging service tax under Works Contract Services as per the composition scheme from the year 2008 onwards. They filed periodical returns showing the payment of service tax at the rate 2% composition rate and at the rate 4% during the period 2010-11 and 2011-2012.

4. According to department, the payment of service tax made by the appellant availing the composition rate is not correct for the reason that the appellant has not filed a declaration to the jurisdictional authority intimating the option availed by them to pay service tax under the composition scheme. It is submitted by the Ld. Counsel that the procedure

to file a declaration before the jurisdictional authority, so as to intimate that they are opting the composition scheme, is only procedural for which the benefit of composition scheme cannot be denied to the appellant. The decision in the case of GE T & DE India Limited Versus Commissioner of Central Exercise & ST Chennai 2020 (34) GSTL 176 (Madras) rendered by the jurisdictional high court was adverted to by the Ld. Counsel to submit his argument.

5. The second issue is with regard to the demand of service tax on the consideration received by the appellant for construction services rendered for charitable trusts for construction of educational institutions. The appellant had declared the same in their returns for which they had availed the exemption as clarified by the Board vide Circular No.80/10/2004-ST dated 17.09.2004. The department has taken the view that the said circular has been withdrawn by subsequent Circular 2007 and therefore, the appellant is liable to pay service tax even though the constructions are provided for educational institutions. The decision passed by the Tribunal in the case of RR Tulasi Constructions vide Final Order No.40703/2024 dated 13.06.2024 was relied by the Ld. Counsel to argue that the Tribunal has held that the constructions provided to educational institutions would not come within the levy of service tax for the period prior to 01.07.2012. The decision in the case of M/s KP Constructions Versus CGST & CE Madurai 2024 (6) TMI 16 Cestat Chennai was also relied. The Ld. Counsel prayed that the appeals may be allowed.

6. The Ld. AR Shri. M. Selvakumar and Shri. Harendra Singh Pal appeared and argued for the department and reiterated the findings in the impugned order.

7. Heard both sides.

8. The issues that arise for consideration are

(i), whether the appellant is liable to pay service tax on the entire value of the Works Contract for the disputed period for the reason that they have not filed declaration before the jurisdictional authority intimating that they are opting for composition scheme.

(ii) whether the appellant is liable to pay service tax for construction services provided to educational institutions for the disputed period which is prior to 30.06.2012.

9. The show cause dated 17.04.2012 raising the above issues was issued for the period October 2010 to September 2011. Appeal No. 41702 of 2014 is filed against the confirmation of demand in respect of this show cause notice for an amount of Rs.16,33,582/- along with interest and penalty. Show cause notice dated 19.10.2013 is issued for the period October 2011 to June 2012 against which Appeal No.ST/40483/2015 is filed. The amount involved in this appeal is Rs.12,22,803/- with interest and penalty. The first issue that arises for consideration is whether the demand raised on the entire value of the contract denying the benefit of composition rate alleging that the appellant has not filed a declaration before the jurisdiction authority intimating that they intend to opt for the composition scheme is legal and proper. The said issue stands settled by various decisions. The Jurisdictional High Court in the case of GE T & D India Ltd. (supra) had occasion to consider the issue and held that the demand raised denying the benefit of composition rate alleging that the appellant has not intimated the department cannot sustain. In the case

of Vaishno Associates Vs. CCE & ST, Jaipur – I 2018 VIL 217 vide Final Order No.50871/2018 in Appeal No.ST/57730/2013 the very same issue was considered. Similar view was taken in the case of M/s. Global Build Estate Projects Vs CCE Jaipur vide Final Order No.53576/2018 dated 09.10.2018. After referring to the decision in Vaishno Associates the Hon'ble Jurisdictional High Court decided the issue in favour of the assessee observing that the requirement to file a declaration is only procedural in nature. The benefit of composition scheme cannot be denied on such allegation.

9.1 The Hon'ble High Court of Calcutta in the case of M/s. Larsen & Toubro Ltd., Vs. Asst. Commissioner in MAT No.1668/2016 dated 06.12.2022 had occasion to consider the very same issue. It was held that when an assessee files return reflecting the payment of service tax opting for composition scheme, it would be substantial compliance of the requirement to intimate the department of avilment of option.

9.2 Following the same we are of the view that the demand raised on the entire value of the Works Contract for the disputed periods cannot sustain and requires to be set aside. Order accordingly.

10. The second issue is the demand of service tax for construction services provided to educational institutions. In paragraph 28 of the OIO dated 31.01.2014 the original authority has referred to the Board's Circular dated 17.09.2004. In the said circular, the board has clarified that when constructions, for the use of organizations or institutions established solely for educational, religious, charitable purposes are provided, it cannot be considered as construction services of commercial nature.

Further, the Tribunal in the case of M/s. R.R. Tulasi Builders (I) Pvt. Ltd., Vs. Commissioner of CGST & CE, Salem vide Final Order No.40703/2024 dated 13.06.2024 has considered the issue in detail and held that the demand of service tax for constructions provided to educational institutions cannot sustain. The relevant para of M/s. R.R. Tulasi Builders (I) Pvt. Ltd., is reproduced as under:-

7 The issue to be considered is whether the appellant is liable to pay service tax under "Works Contract Service" for the period 01.10.2008 to 30.06.2012 for construction of educational institutions.

8 It is not in dispute that the appellant has discharged service tax in respect of construction services provided for other than educational institutions. The issue in this appeal is only with regard to the demand raised in respect of construction service for educational institutions. The department is of the view that the appellant has to pay service tax for construction service provided to construct educational institutions. It is the case of the department that even though these educational institutions may be constructed and run by charitable organizations, since these educational institutions collect fees of different nature, they are to be treated as constructions of commercial nature. The Department vide Circular No.80/10/2004-ST dt. 17.09.2004 has clarified that the constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purpose of profit are not taxable being noncommercial in nature. Relevant part of the circular reads as under :

"13. Construction services (commercial and industrial buildings or civil structures) :

13.1 Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil contractor. Estate builders who construct buildings/civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/contractors, the payment made to such contractor would

be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a labourer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.

13.2 *The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used' for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being noncommercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.*

13.3 *In case of multi-purpose buildings such as residential-cumcommercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/municipal laws.*

13.4 *The definition of service specifically excludes construction of roads, airports, railway, transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it is clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy."*

The Board in the above circular has explained that when the building is meant only for educational purpose, the levy of service tax is not attracted. The department does not have a case that the educational institutions constructed by appellant are not used principally and solely for providing education.

9 *The Ld. A.R has attempted to counter the above circular by stating that the Board has withdrawn the said circular dt. 17.09.2004 pursuant to the issuance of Master Circular No.96/7/2007-ST dt. 23.08.2007. The Ld. Counsel has submitted that as per the Master Circular dt. 10.05.2007, though several circulars were withdrawn, the circular dt.*

17.09.2004 was not withdrawn by the Department and is in force during the disputed period. The relevant part of the Master Circular is reproduced as under :

“3. Taking into account the recommendations made in the report submitted by Shri T.R. Rustagi, views/comments/suggestions received from the trade and industry associations, the departmental officers and all material facts, it has been decided that certain service tax circulars/clarifications/instructions which were previously issued with some objectives, but which have since then lost their relevance or have become anachronistic due to changes in law, procedures, etc., should be withdrawn. Accordingly, **the following circulars/clarifications/instructions stand withdrawn with immediate effect,**

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<i>Sl. No.</i>	<i>Circular No./F.No.</i>	<i>Date</i>
1	1/1/94-ST	29-6-1994
2	2/2/94-ST	8-7-1994
3	4/4/94-ST	6-9-1994
4	5/5/94-ST	11-10-1994
5	6/1/95-ST	2-5-1995
6	7/1/96-ST	29-2-1996
7	8/2/96-ST	11-3-1996
8	9/3/96-ST	11-3-1996
9	13/7/96-ST	20-9-1996
10	15/9/96-ST	4-10-1996
11	16/10/96-ST	15-10-1996
12	19/13/96-ST	21-11-1996
13	20/14/96-ST	31-12-1996
14	21/1/97-ST	27-1-1997
15	F. No. B. 43/7/97-TRU	11-7-1997
16	F. No. 148/3/97-CX4	9-9-1997
17	23/3/97-ST	13-10-1997
18	F.No. 354/128/97-TRU	18-12-1997
19	25/2/98-ST	23-7-1998
<i>Sl. No.</i>	<i>Circular No./F.No.</i>	<i>Date</i>
20	26/3/98-ST	10-9-1998
21	27/1/99-ST	19-5-1999
22	28/2/99-ST	4-7-1999
23	30/1/2000-ST	5-6-2000
24	31/2/2000-ST	31-7-2000
25	34/2/2001-ST	30-4-2001
26	36/4/2001-ST	8-10-2001
27	37/5/2001-ST	27-12-2001
28	38/1/2002-ST	7-2-2002
29	39/2/2002-ST	20-2-2002

30	42/5/2002-ST	29-4-2002
31	45/8/2002-ST	30-7-2002
32	48/10/2002-ST	13-9-2002
33	51/13/2002-ST	7-1-2003
34	53/2/2003-ST	27-3-2003
35	54/3/2003-ST	21-4-2003
36	55/4/2003-ST	24-4-2003
37	56/5/2003-ST	25-4-2003
38	57/6/2003-ST	20-5-2003
39	64/13/2003-ST	28-10-2003
40	65/14/2003-ST	5-11-2003
41	70/19/2003-ST	17-12-2003
42	73/3/2004-ST	5-1-2004
43	74/4/2004-ST	23-1-2004
44	77/07/2004-ST	10-3-2004
45	78/8/2004-ST	23-3-2004
46	79/9/2004-ST	13-5-2004
47	F.No. 341/20/2005-TRU	12-5-2005
48	F.No./354/106/2005-TRU	8-8-2005

The above list in Master Circular No.93/04/2007-ST dated 10.05.2007 shows that the Circular No.80/10/2004-ST dt. 17.09.2004 has not been withdrawn by the Department.

10 *When the circular issued by the Board specifically clarified that construction services provided for construction of educational institutions are exempted from levy of service tax we find no reason to hold that these constructions are commercial in nature.*

11 *It also requires to be stated that the Coimbatore Builders and Contractors Association had addressed to the Chief Commissioner of Central Excise, Coimbatore vide letter dt. 19.06.2013 requesting for clarifications with regard to various construction services. One of the clarifications raised in the said letter was whether the Circular No.80/10/2004-ST dt. 17.09.2004 is to be treated as withdrawn or not. The said letter by the Coimbatore Builders and Contractors Association as well as the reply by the Coimbatore Commissionerate is as under :*

19.06.2013

To

The Chief Commissioner of Central Excise,
Coimbatore.

Respected Sir,

A few members of our organisation engaged in Construction activity are facing problems regarding the abatement availed by them while paying Service tax for the period prior to 1/7/2012. It is requested that clarification may please be given on the following issues-


- a. Whether the construction of schools, colleges, hospitals and charitable institutions was liable to Service Tax as the same were not primarily for Commerce or Industry.
- b. If the circular No 80/10/2004 dated 10/9/2004, which clarified what types of construction are not to be treated as Commercial, is to be treated as withdrawn, is there an alternate Circular mentioning that construction of schools, colleges, hospitals and charitable institutions are not exempted.
- c. Having informed the trade in 2008 vide Circular 98/1/2008 dated 4/1/2008 that existing pattern of payment of Service Tax for ongoing projects as on 1/6/2007 should only be under abatement method under Notfn 1/2006 and not under Works Contract, can the Department now demand differential Service Tax even for the ongoing projects as on 1/6/2007 under Works contract.
- d. When Service Tax had been discharged by the Builders availing Notification 1/2006 and tax paid on the abated portion wherever material is used, is it correct for the Department to state that even in these cases the classification should be under Works Contract and demand Differential Service Tax for the past five years.

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- e. When the Builders have filed their ST-3 returns disclosing all the details and their units subjected to frequent audit by the Department in which all the above aspects have been thoroughly examined and no objection raised, can Service Tax now be demanded on the above two issues for the past five years invoking the provisions of Section 73(1) of the Finance Act, 1994.

Your clarifications in this regard will give peace to our members who are apprehending action against them by the Department on the above aspects.

Yours sincerely,
For Coimbatore Builders and Contractors Association


B. Sekar
President

Query :

1. Whether the construction of schools, Colleges, Hospitals and Charitable institutions, was liable to Service Tax as the same were not primarily for Commerce or Industry.
2. If the Circular No.80/10/2004 dated 10.09.2004, which clarified what type of construction are not to be treated as Commercial, is to be treated as withdrawn, is there an alternate Circular mentioning that construction of Schools, Colleges, Hospitals and Charitable Institutions are not exempted.
3. Having informed the trade in 2008 vide Circular 98/1/2008 dated 04/01/2008 that existing pattern of payment of Service Tax for ongoing projects as on 01.06.2007 should only be under abatement method under Notn.01/2006 and not under works contract, can the Department now demand differential Service tax even for the ongoing projects on 01/06/2007 under Works Contract.
4. When Service tax has been discharged by the builders availing Notification 1/2006 and tax paid on the abated portion wherever material is used, is it correct for the Department to state that even in these cases the classification should be under Works Contract and demand differential Service tax for the past Five Years.
5. When the Builders have filed their ST3 returns disclosing all the details and their units subjected to frequent audit by the Department in which all the above aspects have been thoroughly examined and no objection raised, can Service Tax now be demanded on the above two issues for the past five years invoking the provisions of Section 73 (10) of the Finance Act, 1994.

Reply to Query :

1. **As per Board's Circular No.80/10/2004-ST dated 17.09.2004, the constructions which are for the use of organizations or institutions being established solely for educational , religious, charitable, health, sanitation or philanthropic purposes and not for the purpose of profit are not taxable, being non-commercial in nature.**
2. **The said Board's Circular dated 17.09.2004 (not 10.09.2004 as you have mentioned), has not been withdrawn and is in force at present."**

(emphasis supplied)

12 From the above, it can be seen that the department itself has taken the view that the circular dt. 17.09.2004 is still in force and that the construction provided for educational institutions are exempted from levy of service tax. Needless to say, that the Board circulars are binding on the department.

13 The Hon'ble High Court of Karnataka in the case of Commissioner of C.Ex (Appeals), Bangalore Vs KVR Construction – 2012 (26) S.T.R. 195 (Kar.) had occasion to consider the issue of refund of service tax paid by an assessee on construction services provided for construction of educational institutions. The Hon'ble High Court upheld the order passed by the Tribunal that construction of educational institutions is exempt from levy of service tax. Relevant para reads as under :

“12. It is an undisputed fact that total amount of Rs. 1,24,38,991/- was paid as service tax under different TR-6 challans between February 2005 and February 2007. It is not in dispute the clarifications issued in the circular dated 17-9-2004 includes the building constructions which are for the use of organizations or institutions being established solely for the educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purpose of profit, are not taxable being non-commercial in nature. It is also not in dispute that claim of the respondent before the concerned authority seeking refund of the above said amount was based on the above circular dated 17-9-2004 on the ground that the services are rendered for a non-profit organization. The department is also not denying that services rendered by the respondent by putting up constructions of several buildings stated above to the trust, which is a non-profit organization, hence, a non-profit service is not taxable.”

14 In the case of Gujarat Adani Institute of Medical Sciences Vs CCE & ST Rajkot vide Final Order No.A/11309-11310/2023 dated 22.06.2023, the Tribunal considered the very same issue as to whether the demand of service tax raised on construction of educational institutions is sustainable or not. Relevant paras read as under :

“5.3 We also find that in view of the various documentary evidence and certificates and registrations of the Appellants and analysis thereof and also considering the observations of the ld. Commissioner (Appeals) on this, there is no doubt that building constructed by the Contractor is medical college building. From the Resolution No. HSP/1007/3247/PARK2/A dated 27.05.2009, issued by the Government of Gujarat, Certificate dated 26.05.2009 issued by the Registrar under the Registration of the Societies Act, 1860, Certificate dated 26.05.2009 issued under the Bombay Public Trust Act, 1950,

Registration under Section 12AA of the Income Tax Act, 1961 and Memorandum of Association framed under the Act XXI of the Registration of the 1860 for the registration of Literary Scientific and Charitable Society it is clear that the construction of building for which refund claim has been filed is used for educational purpose and the object of the use of the building is not for commercial purpose. The certificates and registrations produced by the Appellant clearly established that Appellant i.e M/s Gujarat Adani Institute of Medical Sciences is a charitable trust registered with public trust under the Bombay Public Trust Act, 1950. With all these facts, it is clear that building constructed by the Appellant is not commercial and industrial construction, therefore does not fall under the category of taxable services, as the same is not used for commercial and industry but it is used for providing education. We also noticed that the Appellant have been granted registration of Trust under Section 12AA of the Income Tax Act which shows that Appellant have been registered for non-commercial purpose. Since the organization of the appellant itself is non-profit purpose, it cannot be said that the building is used for commercial activity. Therefore we do not agree with the finding of the Ld. Commissioner that the activity of running medical college is nothing but a commercial one and same cannot be construed as non-commercial activity/ organization.

5.4 The appellant also argued that, whether, the building is for commercial or otherwise the primary use of such building is required to be seen. We find that this argument is convincing as the similar issue has been considered by this Tribunal in the case of B.G. Shirke Construction Technology Pvt. Ltd. Vs. C.C.E. 2014 (33) S.T.R. 77 (Tribunal – Mumbai), wherein it was held that merely because some amount is charged for using the facility of this stadium the same cannot be commercial construction. The said decision was upheld by the Hon“ble Bombay High Court reported in 2019 (25) GSTL 8 (Bom). The similar issue has been considered in the case of Commissioner of Service Tax Vs. S.M. Sai Construction – 2016 (42) STR 716 wherein the service recipient was charitable trust registered under the Bombay Public Trust Act, 1950. The Tribunal Held that the building constructed was not commercial construction and therefore, Service Tax paid by the recipient was refundable. In an another identical case of Institute of Banking Personal Selection Vs. Commissioner of Service Tax – 2007 (8) STR 579, it was held that an organization does not declare dividend or distribute surplus/profits to its shareholders, trustees and /or members but ploughs back the surplus for the purpose of an object of the organization would be considered as charitable organization. Accordingly, Service Tax would not be charged. It is further held that merely charging of fees will not make position that the appellant institute is not a non-commercial concern.

5.5. In view of the above judgment it is settled that merely by charging fees or higher fees an institution which otherwise, belongs to a Charitable Trust cannot lose its identity as non-commercial entity.

5.6 We note that C.B.E. & C. had issued Circular No. 80/10/2004-S.T., dated 17-9-2004 and in Para 13.2 clarified that the leviability of Service Tax was primarily dependent upon the use of the building or civil structure. Further, it clarified that it was to be ascertained where building or civil structure was used or to be used for commercial or industrial purpose and further required to gather the information as to whether the buildings or civil structures were

being used or to be used for the purpose of making profit or not and clarified that if the building or civil structure was used or to be used not for the purposes of profit then the same are not taxable. When the property in question is not used by Appellant for commercial purpose then it cannot be liable for payment of service tax as is apparent from Circular dated 17-09-2004. It is apparent that C.B.E. & C. circular considered the use of the said property as non-commercial in nature. In these circumstances service tax on construction of said building / property cannot be levied.”

15 In the case of *KMV Projects Ltd. Vs CCE & ST Hyderabad – 2019 (27) G.S.T.L. 388 (Tri.-Hyd.)*, the issue considered by the Tribunal was whether construction of guest house for temples at Srisailam, Kanipakam and also educational institutions would be subject to levy of service tax. Relevant paras of said Tribunal’s decision that the demand of service tax cannot sustain are as under :

“10. The ratio laid down after thorough analysis by the Larger Bench of the definition of the works contract service (WCS) hereinabove would mean that any construction which is for non-commercial or nonindustrial purposes, service tax liability under WCS will not arise. In our view, the construction of guest houses and temple complex (multistoried complex) for the purpose of public use in a religious institution, in the absence of any further evidence to show that these guest houses are allotted to non-pilgrims as a hotel accommodation services, for those visiting the temple, we have to hold that the said services would fall under exclusion clause of works contract services and tax liability does not arise. For the period post 1-7-2012, Mega-exemption Notification No. 25/2012-S.T., dated 20-6-2012 at Sl. No. 13(c) exempts the tax liability on a building owned by an entity registered under Section 12AA of the Income-tax Act, 1961 and meant predominantly for religious use by general public. This exemption clearly covers the case of the appellant post 1-7-2012 as it is undisputed that appellant is registered with the income tax authorities under Section 12AA as a charitable institutions for the period pre and post 1-7-2012. The exemption granted by Notification No. 25/2012-S.T. (13)(c) would apply in full force. Accordingly, the demand of the service tax on the services rendered of works contract services to the religious institution does not survive and are liable to be set aside as we do so.

10. As regards demands raised on the buildings constructed for CDAC, NFC and APHMHIDC, we find from the hand-outs given today by the Learned Counsel as well as produced before the adjudicating authority, the APHMHIDC has been stated to be engaged in creating infrastructure facilities of accommodation for medical institutions and quarters, and maintenance of hospital

buildings, procurement and distribution of drugs, surgical and consumables and equipment and for storage of these items and that the said APHMHIDC is functioning as no profit and no loss basis. The said hand-out also specifically states that it is an enterprise of Govt. of Andhra Pradesh. On perusal of the profile of NFC, it states that it has been established in the year 1971 as a major industrial unit of Department of Atomic Energy, Govt. of India and the complex is responsible for supply of fuel and reactor core components for all the nuclear power reactors operating in India. The said NFC has been clearly indicated as a Unit of Department of Atomic energy, Govt. of India. As regards the C-DAC, it is indicated in the profile of C-DAC that it is a premium R & D organisation of the Ministry of Electronics and Information Technology (MEIT) for carrying out R&D in IT, electronics, and associated areas. It can be seen from the said profiles of 2-3 units that they are all units of Govt. or local authority of Govt. authorities and cannot be considered as primarily engaged for the purpose of commerce or industry. Learned AR relied upon some balance-sheet of C-DAC to state that they were profit making units to press his argument that they are commercial and industrial purposes. We find that such allegations were not there in the show cause notice and not supported also. We find that the Tribunal in the case of Ratan Das Gupta & Co v. CCE, Jaipur [[2017 \(3\) G.S.T.L. 247](#) (Tri. - Del.)] and Commissioner of Service Tax v. S.M. Sai Construction [[2016 \(42\) S.T.R. 716](#) (Tri. - Mum.)] following the Larger Bench decision in the case of Lanco Infratech has categorically recorded that the buildings constructed for non-commercial and non-industrial purposes are not taxable under works contract services. The said ratio squarely applies in favour of appellant for the demand of service tax in the case of buildings constructed for C-DAC, NFC and APHMHIDC, and it has to be held that these buildings constructed by the appellant and the services rendered under works contract services are not taxable pre or post 1-7-2012.

11. *As regards the service tax liability on the buildings constructed for ICFAI, we find that the issue is no more res integra as the Tribunal in the case of Vij Construction Pvt. Ltd. v. CCE, New Delhi [[2018 \(11\) G.S.T.L. 169](#) (Tri. - Del.)] was considering the very same issue of taxability of the services for construction of buildings for ICFAI and in paragraph No. 6 has held that in regard to campus for ICFAI University Dehradun, the buildings are for use of a recognised university for education and the same cannot be considered as commercial buildings. ICFAI University is having pan India presence, operating in various campuses, it has to be considered as an educational institution, as per the ratio of the decision of the Tribunal in the case of Vij Construction Pvt. Ltd. (supra). Accordingly, the service tax liability on the construction of buildings for ICFAI Bangalore, Jaipur and Hyderabad for the period pre and*

post 1-7-2012 is unsustainable and liable to be set aside and we do so.

12. *Learned AR has placed reliance on the judgment of the Hon'ble High Court of A.P. and Hyderabad in the case of Tirumala Tirupathi Devasthanams v. Superintendent of Customs, Central Excise & Service Tax, Tirupathi [[2013 \(30\) S.T.R. 27](#) (A.P.)] to state that the guest houses which are constructed for religious institutions and charitable institutions are liable to tax. We find that the said judgment was delivered by the Hon'ble High Court on the facts of that case inasmuch there the Hon'ble High Court was considering in a writ challenge to a letter issued by the departmental authorities to TTDC for registering themselves as providers of accommodation services. It is to be seen that the Govt. of India by issuing Notification No. 25/2012-S.T. (Sl. No. 13(c) has very clearly recorded that the services rendered to "building owned by an entity registered under Section 12AA of the Income-tax Act and predominantly for religious use of general public are exempted." The Revenue's reliance on the decision of the TTDC case may not carry their case any further as the issue was different in that case.*

13. *Since we have disposed of the appeal on merits itself we are not recording any findings/observations on the various other submissions made by both sides; as also on limitation."*

16 *The Tribunal in the case of Vijayadeepa Constructions Private Ltd. Vs CGST & Central Excise, Coimbatore vide Final Order No.40536/2024 dt. 08.05.2024 had also considered the very same issue and after referring to the Circular issued by the Board set aside the demand. Relevant paras read as under:*

"12. The second issue is with regard to demand under 'Works Contracts Service' provided for construction of Engineering College to M/s.KTVR Siddhammal Charitable Trust. The department does not dispute that the building has been used solely for the purpose of Engineering College. So also, the said college is recognized by the AICTE. The appellant has relied upon CBEC Circular No.80/10/2004ST dt. 17.09.2010 wherein the Board has clarified in para 13.2 as under:

"13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used' for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government

buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.”

13. It is explained by the Board in the aforesaid circular that, when the building is solely used for educational purposes, the levy of service tax is not attracted. We, therefore, find that the building having been used for educational purpose and being non-commercial purpose, the said construction activity cannot be subject to levy of service tax during the disputed period.”

17. In view of the above discussions, we find that the demand of service tax under WCS for the disputed period for construction of educational institutions cannot sustain. The issue on merits is answered in favour of the appellant and against the Revenue.

11. Following the said decision, we are of the opinion that the demand of service tax in respect of the second issue also cannot be sustained and requires to be set aside. Order accordingly.

12. In the result the impugned orders are set aside. The appeals are allowed with consequential reliefs, if any.

(Order pronounced in the open court on 30.07.2024)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI. C.S)
Member (Judicial)