

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50770 of 2022-SM

[(Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-114-21-22 dated 6.9.2021 passed by the Commissioner (Appeals), Central Goods & Service Tax & Central Excise, Bhopal (M.P.)]

M/s. S. Kumar Builders,
Opp. GRC Mess Rampur,
Narmada Road, Jabalpur,
Madhya Pradesh-482 002.

Appellant

VERSUS

**Commissioner of Central Goods &
Service Tax & Central Excise,**
Jabalpur (Madhya Pradesh).

Respondent

APPEARANCE:

Shri Abhishek Jaju, Advocate & Shri Uttam Kumar Nag, Consultant for
the appellant
Shri Gopi Raman, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51031/2022

**DATE OF HEARING: 28.09.2022
DATE OF DECISION: 31.10.2022**

ANIL CHOUDHARY:

The issue in this appeal is whether the service tax has been rightly demanded as short paid or not paid.

2. The appellant is a provider of service under the head "Works Contract Service" and is registered with the Department. The appellant filed their returns regularly and also deposited the admitted tax. Pursuant to show cause notice dated 6.11.2019, service tax has been demanded as short paid/not paid, based on the Income Tax records like Form 26 AS, Income Tax Return, Profit & Loss Account, etc. for the financial year 2014-2015. The proposed

demand of Rs.11,67,226/- was confirmed with equal amount of penalty under Section 78. Further, late fee of Rs.21,000/- has been imposed under Rule 7C read with Section 70. Further, penalty of Rs.10,000/- has been imposed under Section 77(2) for not showing correct gross receipt of services in ST-3 Returns.

3. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide impugned order-in-appeal set aside the demand of Rs.12,047/- (on Euro Bond) in respect of debt settlement and upheld the balance demand of Rs.11,55,179/- along with equal amount of penalty and also upheld both the penalties under Section 70 and 70 (2).

4. Being aggrieved, the appellant is before this Tribunal.

5. Details of demand in dispute is as follows:-

M/s S K Builders FY 2014-15

GROSS RECEIPTS AS PER PROFIT & LOSS ACCOUNT FOR 2014-15

SR. NO.	AMOUNT RECD FROM	AMT.SHOWN AS INCOME	Exempted under NT 25/2012 or not taxable	Taxable Value As Per Bills Considered in ST-3 for 2014-15	S.Tax Demanded By Revenue
1	FROM BALAJI SCHOOL (Venkatesh Shiksha Samiti)	51,15,536	51,15,536	--	2,52,912
2	FROM EURO BOND	97,464	97,464	--	0
3	FROM DADA VIRENDRAPURI EYE HOSPITAL (TRUST)	35,50,000	35,50,000	--	1,75,512
4	SAAKAR HILLS (Sale of Houses)	9,50,000	69,50,000	--	55,620
5	FROM NARMADA GELATINES LTD	42,08,078		15,03,391	64,259
6	OTHER RECEIPTS	47,00,000	47,00,000		5,80,920
	TOTAL AS PER P&L ACCOUNT (A)	2,46,21,078	2,04,13,000		11,29,223

Figures considered from Capital Account of S.K. Builders for S. Tax Calculation by the Revenue.

1	House Rent Received	1,50,000	1,50,000	--	18,540
2	Tower Rent	60,000	60,000	--	7,416
	Total Rent (B)	2,10,000	2,10,000	--	25,956
	Total (A) + (B)			Grand Total	11,55,179

6. Ld. Counsel for the appellant urges that the receipts received from Balaji School (Venkatesh Shiksha Samiti), Service provided is construction service with material, which falls under “Works Contract Service”. The gross amount received is Rs.51,15,536/-.

6.1. It is contended that service receiver is a trust, a charitable trust registered under Section 12 A/12 AA of the Income Tax Act, providing service of education and are not involved in any commercial activities. It is further contended that imparting of education is also in the nature of religious-charitable activities and hence, exempted vide Sl.No.13 of Notification No.25/2012-ST. Similarly, construction services provided to ‘Dada Virendrapuri Eye Hospital’, which is also provided to a trust registered under Section 12 A/12 AA of the Income Tax Act, and being for charitable purpose-cum-relief to the poor and is also in the nature of religious activities and hence, the activity of WCS is exempt under Sl.No.13 of Notification No.25/2012. The Court below has observed that exemption is granted for the services to a trust etc. registered under Income Tax Act in the nature of construction, etc., which are predominantly used by general public. Further, charitable activity in para 2 (k) of the notification has been defined as activities relating to –

- (i) Public health;
- (ii) Advancement of religion or spirituality;
- (iii) Advancement of educational programmes or skill development;
- (iv) Advancement of any other object of general public utility.

6.2. Hence, it was held that benefit of exemption is not available for the activity of the construction of school or hospital buildings.

6.3 Ld. Counsel urges that exemption has been provided for the construction done for charitable institutions registered under Section 12 AA of the Income Tax Act.

6.4 Section 12 AA read with section 12 A of the Income Tax Act provides for process of registration of a trust or institution, where income derived from the property etc. held under trust, is wholly meant for charitable or religious purposes, wherein exemption from income tax is available, subject to certain conditions.

6.5 Further, 'charitable purpose' is defined under Section 2 (15) of the Income Tax Act – 'Charitable purpose' includes relief of the poor, education, yoga, medical relief, preservation of environment, etc. and the advancement of any other object of general public utility.

6.6 Further, in the facts of the case, it is admitted that the service tax has been provided for civil construction of school building or hospital building to a charitable institutions or Trust

registered under Section 12 AA of the Income Tax Act and the said activities are covered under the definition of 'Charitable Purpose' under the Income Tax Act. Further, the exemption notification in clause 13 (C) only states that, services provided by way of construction, erection, alterations, etc. is exempted, if the building is owned by an entity registered under 12 AA of the Income Tax Act and meant predominantly for religious use by public. Thus, education and medical services are also in the nature of religious services. The said activities are exempt under clause 2(k) of Notification No.25/2012-ST.

6.7. Learned Authorised Representative has relied upon on the findings in the impugned order.

6.8 Having considered the rival contentions, I hold that religious use includes providing of education, and medical aid, which reduces human suffering. Accordingly, I hold that the appellant is entitled to exemption with respect to aforementioned works contract service provided to the Trusts registered under Section 12A/12AA of the Income Tax Act. Thus, the demand of Rs.(2,52,912/- + Rs.1,75,512/-) or Rs. 4,28,424/- is set aside.

7. Next ground relates to confirmation of duty of Rs. 55620/- demanded on sale of two numbers of completed houses. From the facts on records, I find that the Adjudicating Authority have recorded in para 10 of the Order-in-Original that the appellant had produced sale **deed** of completed house (s) situated at Saakar Hills. On perusal of the two sale **deeds**, are of completed/ fully furnished house to independent buyers for consideration. However,

as per profit loss account, the appellant have received sale proceeds of Rs.69,50,000/- whereas the cost of construction is Rs. 65 lakhs. Hence, Court below have held liable to pay service tax on differential value of Rs. 4,50,000/-. I find that no service tax is payable on the sale-purchase of property. Admittedly, in the facts of the present case, there is no contract for construction of a house property alongwith material. Rather, admittedly, appellant have sold fully constructed and furnished house property. Hence, I hold that no service tax is payable on the same and the demand of Rs. 55,620/- is set aside.

8. So far the ground, relating to demand of Rs. 64,259/- with respect various civil constructions/maintenance works done for Narmada Gelatine Ltd., the works relates to mainly repairs and maintenance and some of the work also relates to new construction work. The appellant had paid the service tax after availing abatement at 60% with respect to new construction and 40% abatement with respect to repair & renovation work. Further, as the service was provided to corporate entity, the appellant was required to pay only 50% of the tax payable and balance 50% was payable by the corporate entity under Notification. The Adjudicating Authority observed that the appellant have taken irregular abatement and hence, have short paid the service tax. Accordingly, re-worked out, the taxable value on which service tax is payable, have mentioned in para 11&12 in the order-in-original and worked out differential value of Rs. 4,44,249/- on which tax payable was worked out at Rs. 54,909/- being service tax as short paid. Further, the Adjudicating Authority observed that as per profit & loss

account, appellant have shown Rs. 42,08,078/- as income from Narmada Gelatine Ltd., Whereas, they have provided invoices of Rs. 41,32,431/- and accordingly on the differential amount Rs. 75,647/- demanded further tax of Rs. 9,350/- for want of invoice, work order, etc.

8.1. Considering the rival contentions on this issue, I find that the appellant have rightly claimed abatement, accordingly they have paid their service tax liability being 50% of the tax payable. Admittedly, balance 50% of service tax is payable by Narmada Gelatine Ltd. being a corporate entity. Further, I hold that no service tax can be demanded on the differential value as per profit & loss account, of Rs. 75,647/-, as service tax is chargeable on accrual basis i.e. the liability occurs immediately on raising of the bill for the service provided or to be provided, whereas the appellant have maintained their account on cash basis/receipt basis. Accordingly, the demand of Rs. 64,259/- is set aside.

9. So far the demand on other receipts as per profit & loss account Rs. 47 lakhs is concerned, I find that the demand of tax has been made arbitrarily without relating the said receipt to any service provided, only on the allegation that the appellant did not provide any supporting documents with respect to the same and have demanded service tax of Rs. 5,85,920/-. The learned Counsel explains that the said receipt is in respect of construction of individual houses and the same is an exempted activity under the service tax provisions. Accordingly, the demand is hereby set aside. So far the demand of Rs. 18,540/- on house rent is concerned, I find

that no service tax is chargeable on house rent of residential premises. Thus, this demand of Rs. 18,540/- is set aside.

10. So far the demand of Rs. 7,416/- with regard to tower rent is concerned, though the said amount have been shown under the head "tower rent" but in actuality this has been received by way of compensation, and not towards any other service rendered. Thus, the demand of Rs. 7,416/- is set aside.

11. In view of my aforementioned findings and observations, the impugned order is set aside and the appeal is allowed, and the penalties imposed are also set aside. The appellant is entitled to consequential relief, in accordance with law. Appeal allowed.

(Order pronounced on 31.10.2022).

(Anil Choudhary)
Member (Judicial)

Ckp

