CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41087 of 2016

(Arising out of Order-in-Original No. CHN-SVTAX-001-COM-91-2015-2016 dated 28.01.2016 passed by Principal Commissioner of Service Tax I, Newry Towers, No. 2054-I, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. SSS Constructions **...Appellant**
No. 678, T.H. Road,
New Washermenpet,
Chennai – 600 081.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054,
I-Block, II Avenue,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Mr. J. Shankar Raman, Advocate
For the Respondent : Ms. G. Krupa, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40837 / 2026

DATE OF HEARING : 09.03.2026
DATE OF DECISION : 29.06.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal arises out of Order-in-Original No. 91/2015-16 dated 28.01.2016 (hereinafter referred to as "the Impugned Order") passed by the adjudicating authority confirming service tax demand along

with interest and penalties against M/s. SSS Constructions (hereinafter referred to as "the Appellant") for the period from May 2008 to September 2013. The demand primarily pertains to services rendered under the category of Commercial or Industrial Construction Service / Works Contract Service in respect of various projects including construction of buildings for SRM Medical College and Hospital, SRM Engineering Construction Corporation, Tamil Nadu Housing Board, Tamil Nadu Police Housing Corporation and others.

2. It is the case of the Department that the appellant had rendered taxable construction services and failed to discharge applicable service tax liability on the consideration received, leading to issuance of show cause notice proposing demand of Rs.1,82,28,130/-. The said proceedings culminated in Order-in-Original No. 91/2015-16 dated 28.01.2016, wherein the adjudicating authority confirmed substantial demand of service tax along with interest and imposed penalties, including a penalty of Rs.1,79,47,197/- under Section 78 of the Finance Act, 1994, apart from penalty of Rs 10,000/- under Section 77 of the Act.

3. Aggrieved by the confirmation of demand and imposition of penalties, the appellant has preferred the present appeal before this Tribunal.

4. The Ld. Advocate Shri J. Shankar Raman appeared on behalf of the Appellant. The Ld. Authorized Representative Ms. G. Krupa appeared for the Revenue.

5.1 The Ld. Counsel for the Appellant assailed the impugned order and submitted that the entire demand is unsustainable both on facts and in law. It was contended that the declaration filed by the appellant under the Voluntary Compliance Encouragement Scheme, 2013 (VCES), having been accepted by the Department, had attained statutory finality and could not be reopened beyond the prescribed period under the Scheme. It was argued that the proceedings initiated long after expiry of the statutory period are without jurisdiction and contrary to the object of the amnesty scheme.

5.2 The Learned Counsel further submitted that a substantial portion of the demand pertains to construction services rendered to educational institutions such as SRM Medical College and Hospital, which cannot be treated as

commercial construction merely because incidental revenue-generating activities exist and reliance was placed on decisions including SRM Engineering Construction Ltd. v. Commissioner of Service Tax and other Tribunal decisions holding that buildings constructed predominantly for educational institutions do not fall within Commercial or Industrial Construction Service.

5.3 It was further submitted that several projects were executed for Government bodies such as Tamil Nadu Housing Board and Tamil Nadu Police Housing Corporation involving public welfare activities including housing and infrastructure projects, which are not commercial in nature and therefore not liable to service tax under the taxable categories alleged in the notice.

5.4 The Ld. Counsel also argued that the Department had wrongly treated composite construction contracts as mere labour supply or manpower services, whereas the contracts involved execution of complete works using materials, machinery, equipment and construction infrastructure. Reliance was placed on the principle that indivisible composite contracts cannot be artificially dissected for taxation purposes.

5.5 It was further submitted that in several contracts the appellant acted only as a subcontractor and where the principal contractor had discharged service tax liability, so no separate tax could be demanded from the appellant. It was argued that the Department had also ignored the statutory reverse charge mechanism applicable under Notification No. 30/2012-ST as well as CBEC Circular No. 138/7/2011-ST governing subcontractor liability.

5.6 The Learned Counsel finally submitted that the demand is barred by limitation as the appellant had maintained proper books of account, filed statutory returns and paid service tax wherever applicable. It was argued that there was no suppression of facts or intention to evade payment of tax and consequently the extended period of limitation and penalties imposed under the Finance Act, 1994 are wholly unsustainable. The Learned Counsel therefore prayed that the impugned order be set aside in entirety and the appeal be allowed with consequential relief.

6. *Per Contra*, the Ld. Authorized Representative Ms. G. Krupa reiterated the findings of the Impugned Order.

7. We have carefully considered the rival submissions, the records of the case, the impugned order, the provisions of the Finance Act, 1994, the Voluntary Compliance Encouragement Scheme, 2013 and the judicial precedents relied upon by both sides.

8. Upon consideration the following questions arise.

i. Whether the service tax demand on the alleged services rendered to SRM Medical College and Hospital, SRM Engineering Construction Corporation Limited; Tamil Nadu Housing Board – Slum Tenements at Vellakuttai Eri, Salem; Tamil Nadu Police Housing Corporation Ltd., Mahalakshmi Plaza and GVN Nursing College, Short paid tax due to difference in P & L and ST-3 in 2012-2013 are liable to service tax?

ii. Whether the declaration filed under the Voluntary Compliance Encouragement Scheme, 2013 could validly be reopened and whether the services rendered by the appellant are liable to service tax under Commercial or Industrial Construction Service / Works Contract Service?

iii. Whether the demand is sustainable on limitation and whether penalties are imposable?

9. We now proceed to examine the issues arising for determination in the present appeal, one by one, seriatim.

Issue No. (i) Whether the service tax demand on the alleged services rendered by the appellant are liable to service tax?

10. A substantial portion of the demand pertains to construction works undertaken for SRM Medical College and Hospital. The Revenue has sought to characterize the institution as commercial merely because certain activities generated revenue and because certain facilities were also used for scientific and related services. We find no merit in such reasoning. The materials on record show that SRM Medical College functions as an educational institution administered by a recognized charitable trust engaged principally in education and healthcare services. Merely because fees are collected or incidental revenue is generated cannot convert such institution into a commercial establishment.

11. In this context, reliance placed by the appellant on *SRM Engineering Construction Ltd. v. Commissioner of Service Tax, Chennai, 2018 (11) G.S.T.L. 174 (Tri.-Chennai*) is well founded. The Tribunal in the said decision

categorically held that construction undertaken predominantly for educational institutions does not become taxable under Commercial or Industrial Construction Service merely because incidental revenue generating activities exist. Similar principles were laid down in *Era Infra Engineering Ltd. v. Commissioner of Service Tax, Delhi, 2018 (19) G.S.T.L. 52 (Tri.-Del.), Ratan Das Gupta & Co. v. Commissioner of Central Excise, 2017 (3) G.S.T.L. 247,* and *Anand Construction Co. v. Commissioner of Central Excise, 2013 (32) S.T.R. 451 (Tri.-Mumbai).* We also note that CBEC Circular No. 80/10/2004-ST dated 17.09.2004 specifically clarifies that construction undertaken for educational institutions, hospitals and similar non-commercial establishments would fall outside the ambit of taxable commercial construction service. Revenue cannot ignore its own binding circular while determining tax liability.

12. Further, the Tribunal Chennai in the case of *M/s. Shree Mahalakshmi & Co. Vs. Commissioner of GST and Central Excise [F.O.No. 40443/2025 dated 17.04.2025]* has held as under: -

> *"10. Unlike a statutory exemption notification issued in exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, prescribing conditions, the circulars issued by CBEC are under Sec. 37B of the Central Excise Act, 1944, as applicable for the purposes of service tax vide Sec. 83 of Finance Act, 1994 and are instructions*

and directions issued to the central excise officers for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties. The Hon'ble Supreme Court has held in CCE, Bolpur v Ratan Melting & Wiring Industries, 2008 (231) ELT 22 (SC), inte-alia, that so far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions.

11. Therefore, unlike an exemption notification with conditions stipulated therein to claim the exemption, the benefit of which when claimed puts the burden of proof on the claimant to satisfy firstly that it comes within the ambit of the exemption notification and then to satisfy that it had fulfilled the conditions stipulated therein to secure the benefits, there are no such requirements when the appellant contests taxability, on a belief stemming from the contents of Board Circular. On issues of taxability, to bring the prospective assessee within the ambit of the levy, the burden of proof is always on the revenue and that cannot be shifted onto the assessee. It is necessary to note the fundamental distinction between burden of proof and onus of proof. The burden of proof lies with the person who has to prove a fact and it never shifts, but the onus of proof shifts. Onus means the duty of adducing evidence. Thus, if the Revenue seeks to tax the assessee under " Works Contract Service" and particularly under clause (ii)(b) of the explanation, then the burden of proof is on the Revenue to show at first that the construction which the assessee has undertaken is of a building or civil structure or part thereof, primarily for the purposes of commerce or industry. Once the Revenue is able to discharge its burden of proof, then if the assessee is contesting the taxability, the onus shifts on to the assessee to prove that it is not so. In the instant case when the appellant is under a belief that it is not within the ambit of the taxable service, unlike an exemption notification which has mandated conditions which the appellant would have the burden to prove that it has fulfilled, the burden of proof on the appellant is only to show wherefrom such belief has stemmed. Once the appellant discharges its burden of proof in this regard, then the onus would shift on the Revenue to prove that the belief of the appellant is incorrect."

13. The same reasoning equally applies to projects executed for Tamil Nadu Housing Board and Tamil Nadu

Police Housing Corporation. We find from the records that Tamil Nadu Police Housing Corporation is a Government-owned undertaking functioning under administrative control of the State Government and entrusted with construction of police quarters, training institutions and welfare infrastructure. Such projects are clearly public welfare oriented and cannot automatically be treated as commercial construction merely because consideration is received under contractual arrangements.

14. The appellant has contended that the description of work containing the shopping complex as a small part of the construction to facilitate the incumbents and trainees to get the refreshment and canteen services within the campus. Since the academy is located in the outskirts of the city there is no shopping facility nearby to enable the police personnel to get the basic essential requirements. The facility of refreshment and canteen is not meant for common public and is not for any commercial purpose. The facility is available only for the police personnel within the campus undergoing the training and commodities are provided there at the subsidized rate by the government of Tamil Nadu. They also provided a Certificate dated 29.04.2016 in this

regard which indicates non-commercial in nature. These contentions remain unrebutted.

15. The Department has proceeded on the assumption that the Tamil Nadu Police Housing Corporation project acquired commercial character because a small portion of the project contained shopping or canteen facilities. We find such reasoning fundamentally flawed. The records indicate that the overwhelming portion of the project related to police quarters, police academy infrastructure and welfare facilities whereas only an insignificant portion related to ancillary facilities. Incidental facilities cannot alter the dominant character of the project.

16. In this regard, reliance placed by the appellant on *M/s. VRP Constructions Versus Commissioner of CGST & Central Excise, Salem 2025 (3) TMI 1346 - CESTAT CHENNAI* deserves acceptance. The Tribunal in the said decision held that construction undertaken for Government institutions such as Police Housing Corporation and Police Training Academy cannot be subjected to service tax under Commercial or Industrial Construction Service since the essential character of such projects remains public welfare and not commerce or industry.

17. Likewise, we also find that the construction of 180 slum tenements at Vellakuttai Eri, Salem as part of the welfare measure implemented by the Government of Tamil Nadu has also been supported with the Certificate dated 29.04.2016 issued stating that it is a welfare measure of the Government of Tamil Nadu. It is also pertinent that the appellant had undertaken works contract for Tamil Nadu Housing Board as a sub-contractor of M/s. Sellam Associates.

18. The appellant specifically relied upon Notification No. 30/2012-ST under which tax liability in works contract stood apportioned under reverse charge mechanism between service provider and service recipient. The Department has completely ignored this statutory framework and proceeded as though the appellant alone bore entire tax liability.

19. We also note that CBEC Circular No. 138/7/2011-ST clarifies that the same transaction cannot be subjected to double taxation merely because execution is undertaken through subcontracting arrangements. Taxability depends upon the nature of the underlying project and not merely upon whether execution is through principal contractor or subcontractor. If the principal project itself is

non-commercial in character, the same character necessarily continues through subcontracting arrangements.

20. As regards, SRM Engineering Construction Corporation Limited, we do not find merit in the appellant's contention that the Department has erroneously attempted to characterize certain contracts as mere labour supply or manpower service. In this regard, we find that the Ld. Counsel for the appellant has in the written synopsis filed conceded that there was no transfer of property and that in respect of the supply of manpower agency services rendered, since appellant has discharged only service tax at the rate of 50%, the appellant is liable to pay balance 25% in terms of Sl.No. 8 of Notification No. 30/2012 dated 20.06.2012 subject to limitation. We find that the appellant is liable to pay service tax to this extent as admitted along with applicable interest. Ordered accordingly.

Issue No.(ii) Whether the VCES Declaration Attained Finality and Whether the Impugned Services are Taxable under the Finance Act, 1994?

21. The principal foundation of the impugned order is the conclusion that the declaration filed by the appellant under the Voluntary Compliance Encouragement Scheme,

2013 (VCES) was "substantially false" within the meaning of Section 111 of the Finance Act, 2013 and consequently liable to be reopened, leading to confirmation of service tax demand for the VCES period. The main question which therefore arises is whether the Department could legally reopen a declaration already accepted under the Scheme and whether the services rendered by the appellant were taxable in the manner alleged in the impugned proceedings.

22. At the outset, it is necessary to appreciate the legislative object underlying the introduction of the Voluntary Compliance Encouragement Scheme, 2013. The Scheme was enacted as a one-time amnesty measure intended to encourage assessees to voluntarily disclose past tax liabilities and obtain immunity from further proceedings. The very success of such a scheme necessarily depends upon certainty, finality and closure. Once a declarant makes disclosure, discharges the declared tax dues and the declaration is accepted by the designated authority, the legislative intent is to bring quietus to past disputes except in narrowly defined exceptional circumstances expressly contemplated under the statute.

23. Section 111 of the Finance Act, 2013 permits reopening only where the declaration is found to be "substantially false". In our considered view, the expression "substantially false" cannot be interpreted in an expansive manner so as to confer unrestricted power upon the Department to revisit accepted declarations merely because it subsequently forms a different legal view regarding taxability or computes a higher tax liability. Such interpretation would defeat the very object of the Scheme itself. The provision is clearly intended to address cases involving deliberate and conscious false declaration and not situations where the Department subsequently adopts a different interpretational view. Beneficial amnesty schemes must receive strict construction consistent with legislative intent and cannot be rendered meaningless by subsequent administrative reassessment.

24. In the present case, the entire reasoning adopted in the impugned order proceeds on the assumption that since the Department subsequently computed service tax liability higher than what was disclosed by the appellant, the declaration automatically became substantially false. We are unable to accept such reasoning. A declaration cannot become substantially false merely because the Department

later adopts a different view on taxability. If such interpretation is accepted, every tax dispute would become a ground for reopening concluded declarations under the Scheme, rendering the statutory immunity promised under VCES meaningless and wholly illusory.

25. We also find considerable force in the appellant's submission regarding the statutory limitation built into the Scheme itself. In terms of Section 106 read with the statutory framework governing VCES and CBEC Circular No. 170/05/2013-ST dated 08.08.2013, where the designated authority proposes to reject a declaration on the ground that it is false or not admissible, such action must necessarily be initiated within the prescribed statutory period of 30 days. The legislative object behind prescribing such strict timeline was to ensure certainty and finality, which formed the very foundation of the amnesty scheme.

26. The records show that the appellant had filed revised declaration under VCES on 28.12.2013 and the same was accepted by the Department. It is not disputed that no proceedings questioning the declaration were initiated within the statutory period contemplated under the Scheme. The show cause proceedings seeking to reopen the declaration

were initiated only subsequently, long after expiry of the statutory period. Once the declaration stood accepted and the Department failed to act within the prescribed period, the proceedings attained finality.

27. This legal position stands reinforced by the decision of the Tribunal in Aqua Bases Container Services Pvt. Ltd. v. Commissioner of Service Tax, Chennai, Final Order No. 42606/2017, wherein it was held that proceedings initiated beyond the prescribed statutory period to reject a VCES declaration are unsustainable in law. Similar view was taken in *Siddhi Vinayaka Enterprises Pvt. Ltd. v. Commissioner of Service Tax, Delhi, 2016 (43) S.T.R. 474 (Tri.-Del.),* wherein the Tribunal held that once the Department fails to act within the period prescribed under the Scheme, the declaration attains finality and subsequent proceedings cannot survive. The same principle has been reiterated in *JMD Ltd. v. Commissioner of Central Excise, 2024 (14) Centax 138 (Tri.-Del.).* These decisions , in our considered view, directly support the appellant’s case.

28. Even otherwise, we find that the conclusion reached by the Department that the declaration was substantially false is itself unsustainable on merits. The

period involved spans both the positive list regime prior to 30.06.2012 and the negative list regime introduced with effect from 01.07.2012. The Department has proceeded on the broad assumption that every construction activity undertaken by the appellant automatically falls within taxable service categories. Such approach overlooks the settled principle that taxability must be examined project-wise by considering the nature of service provided, the recipient of service and statutory exemptions applicable during the relevant period.

29. The Department has essentially proceeded on the assumption that because a higher tax liability was subsequently computed, the declaration filed under VCES automatically became substantially false and all construction activities undertaken by the appellant necessarily became taxable. In our considered view, such an approach overlooks both the statutory finality attached to declarations accepted under VCES and the settled principles governing taxability of construction activities undertaken for educational institutions, State Government corporations and composite works contracts.

30. For all the aforesaid reasons, we hold that the adjudicating authority was not justified in treating the

declaration filed by the appellant under the Voluntary Compliance Encouragement Scheme, 2013 as substantially false. We specifically hold that once the declaration stood accepted and no proceedings questioning such declaration were initiated within the statutory period prescribed under the Scheme, the Department lacked jurisdiction to reopen the declaration thereafter.

Issue No. (iii) Limitation and penalty

31. Regarding the difference in P & L and ST-3 returns, we find merit in the appellant's contention that the service tax liability was computed on consideration received and reconciled with audited balance sheet for the year 2012-2013 which was submitted to the department during the course of audit and also during investigation by the DGCEI providing the detailed computation in the appeal grounds. It is observed from the above statement that there is meager difference that is to say only rounding off difference and the appellant did not ignore or leave out any part of the taxable service consideration received for the purpose of calculation of the tax and entire service tax due has been discharged for the 2012-2013 well before the issue of show cause notice.

32. Thus, the demand raised merely based on the difference in P & L and ST-3 is unsustainable as there is no

deliberate or positive act of suppression invoked with intent to evade payment of tax relied upon in the Show Cause Notice, the applicability of Section 73(3) of Finance Act, 1994 ought to have been examined by the Department, which is not seen to be done.

33. We find merits in the contention that extended period of limitation ought not to have been invoked as there is no deliberate or positive act of suppression invoked with an intent to evade payment of tax. We also find that in these circumstances, the benefit of Section 80 is to be extended to the appellant as held in the case of *ETA Engineering Ltd. Vs. CCE, Chennai [2004 (174) ELT 19 (Tri.-LB)]* which is as under: -

> *"Since they were under the bonafide doubt regarding their activity whether covered by service tax or not, therefore, there was a reasonable cause on their part in not depositing the service tax in time. Therefore, we are of the view that notwithstanding anything contained in Sections 76 and 77 of the Finance Act, 1994, the appellants are entitled for the benefit of Section 80 of the Finance Act and accordingly, we hold that no penalty should be imposed on the appellants".*

34. In view of the above findings, we hold that the impugned order cannot be sustained insofar as demands relating to construction services rendered to educational institutions, Government welfare projects and issues arising out of reopening of the VCES declaration are concerned.

However, in respect of services rendered to SRM Engineering Construction Corporation Limited, the appellant having admitted liability under the reverse charge mechanism prescribed under Notification No. 30/2012-ST dated 20.06.2012, the demand to that limited extent alone is upheld subject to limitation which is required to be paid along with interest as applicable. Except to the said extent, the remaining demands and consequential penalties are set aside. The appeal is accordingly partly allowed.

(Order pronounced in open court on 29.06.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK