

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40540 of 2017

(Arising out of Order-in-Original No. CBE/ST/31/2016-Commr. dated 30.11.2016 passed by Commissioner of Customs, Central Excise and Service Tax, 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Smrithi Constructions

No. 70, Tatabad, 1st Street,
Sivananda Colony,
Coimbatore – 641 012.

...Appellant

Versus

Commissioner of GST and Central Excise

Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course Road,
Coimbatore – 641 018.

...Respondent

APPEARANCE:

For the Appellant : Ms. P. Varshini, Advocate

For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 41117 / 2026

DATE OF HEARING : 27.07.2026

DATE OF DECISION : 28.10.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by M/s. Smrithi Constructions, Coimbatore, hereinafter referred to as "the appellant", against Order-in-Original No.31/2016-Commr. dated 30.11.2016 passed by the Commissioner of Central Excise, Coimbatore, hereinafter referred to as "the

impugned order". By the impugned order, Service Tax demand of Rs.3,31,08,127/- was confirmed for the period from 01.04.2010 to 31.03.2015 in respect of construction activities undertaken for educational institutions and a hospital, together with interest and penalties. The demand comprises of Rs.90,00,801/- for the period from 01.04.2010 to 30.06.2012 and Rs.2,41,07,326/- for the period 01.07.2012 to 31.03.2015 (Negative list regime).

2. The facts, briefly stated and gleaned from the appeal records, are that the appellant, registered under the Service Tax law on 28.04.2008, was engaged in construction of schools, hostels, office buildings and a hospital for Arul Jothi Charitable Trust, KMC Educational Trust, Sri SNS Charitable Trust, Chiranjeevi Educational Trust, Vidya Nethrra Educational Trust and Shree Sivaa Hospital Private Limited. Show Cause Notice No.19/2015 dated 14.09.2015 was issued alleging non-payment of Service Tax on the said activities. The demand comprises of Rs.90,00,801/- for the period upto 30.06.2012, wherein the appellant's reliance on Board's Circular No.80/10/2004-S.T. was rejected, and Rs.2,41,07,326/- for the period from 01.07.2012 to 31.03.2015, wherein tax was demanded on the entire consideration after denying the benefit of Serial No.12 of

Notification No.26/2012-S.T. The record further shows that the appellant had paid Service Tax and interest on the post-01.07.2012 receipts, of which the impugned order records appropriation of Rs.93,61,784/- towards tax and Rs.14,68,364/- towards interest. The appeal records contain the relevant construction agreements, VAT records, payment particulars and Income-tax certificate and other related documents. Aggrieved by the impugned order, the appellant is before this Tribunal.

3.1 The Ld. Advocate Ms. P. Varshini for the appellant, submitted that the construction activities upto 30.06.2012 were undertaken for educational and health-care institutions and did not satisfy the requirement of being used or intended to be used primarily for commerce or industry. Reliance was placed on Board's Circular No.80/10/2004-S.T. dated 17.09.2004 and the decisions in *Banna Ram Choudhary*, 2017(3)G.S.T.L.338(Tri.-Del.), *Modern Engineering Constructions*, 2018 (7) TMI 90 (CESTAT Chennai), *J.M. Constructions*, Final Order No.41196/2025 dated 29.10.2025, *Sabari Builders*, Final Order No.40777/2025 dated 30.07.2025, *R.R. Thulasi Builders (I) Pvt. Ltd.*, Final Order No.40703/2024 dated 13.06.2024 and other jurisdictional and coordinate Bench decisions. The reliance of

the Department on *Bangalore Water Supply & Sewerage Board v. R. Rajappa*, AIR 1978 SC 548, was stated to be misplaced as that decision was concerned with the Industrial Disputes Act. Reliance was also placed on *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 and *Queen's Educational Society v. CIT*, (2015) 8 SCC 47 to submit that reasonable surplus does not, by itself, establish a profit-making object.

3.2 With regard to the period from 01.07.2012, it was submitted that the Department had wrongly treated the appellant as a pure labour contractor. The agreements and VAT records establish composite works contracts involving materials and transfer of property in goods. The appellant did not press the benefit of Serial No.12 of Notification No.26/2012-S.T., but contended that the service portion of the composite contracts has to be determined under Rule 2A. Reliance was placed on *Larsen & Toubro Ltd.*, 2015 (39) S.T.R. 913 (S.C.), *Real Value Promoters Pvt. Ltd.*, 2018 (9) TMI 1149 (CESTAT Chennai), *Jain Housing & Construction Ltd.*, Final Order Nos.40077-40079/2023 dated 24.02.2023, the Supreme Court order reported at 2023 (9) TMI 816 and *Haresh Kishor*, Final Order No.41244/2025 dated 06.11.2025.

3.3 On limitation, it was submitted that the extended period was not invocable since the appellant was registered w.e.f. 28.04.2008, maintained accounts and VAT records, relied upon the Board's Circular and had made payments for the post-01.07.2012 period. Reliance was placed on *Sabari Builders, Right Resource Management Service, 2023 (11) TMI 100 (CESTAT New Delhi), Clean Care Services, 2025 (8) TMI 75 (CESTAT Chennai)*, and the principles laid down in the cases of Cosmic Dye Chemical, Pushpam Pharmaceuticals, Continental Foundation, Anand Nishikawa, Chemphar Drugs and Nizam Sugar Factory.

4. The Ld. Authorized Representative Shri M. Selvakumar supported the impugned order. It was submitted that private educational institutions collect fees and generate income over expenditure and therefore their buildings cannot automatically be treated as non-commercial. Reliance was placed upon Bangalore Water Supply & Sewerage Board v. R. Rajappa and upon the reasoning of the adjudicating authority. For the post-01.07.2012 period, it was submitted that the appellant had itself stated that it was providing labour/service and that materials were supplied by the recipients. The benefit under Notification No.26/2012 was therefore denied and the entire gross consideration was

treated as taxable. The extended period was defended on the ground that the ST-3 returns for the entire period were filed only on 09.06.2015 after departmental summons and that the tax liability came to light only during the investigation.

5. We have carefully considered the submissions made by both sides and examined the impugned order, the Show Cause Notice, the construction agreements, VAT records, purchase and sales records, payment particulars and the Income-tax registration/certificate documents placed on record. Upon consideration of the rival submissions and the material available on record, the following questions arise for determination: -

- i. Whether the demand of Rs.90,00,801/- for the period from 01.04.2010 to 30.06.2012 in respect of construction services provided to educational and health-care institutions is sustainable, having regard to the applicable statutory provisions and Board's Circular No.80/10/2004-S.T. dated 17.09.2004?
- ii. Whether the activities undertaken by the appellant during the period 01.07.2012 to 31.03.2015 constitute works contract services and, consequently, whether the demand of Rs.2,41,07,326/-, determined on the entire gross consideration under Section 66E(b), is

sustainable when the agreements and VAT records indicate composite contracts involving transfer of property in goods and the service portion of a works contract is separately governed by Section 66E(h) read with Rule 2A of the Service Tax (Determination of Value) Rules, 2006? And,

- iii. Whether the extended period of limitation under the proviso to Section 73(1) is invocable and, consequently, whether the interest under Section 75 and penalties imposed under Sections 77(2) and 78 are sustainable?

6. We shall now proceed to consider the aforesaid three questions sequentially.

Issue No. (i): Whether the demand of Rs.90,00,801/- for the period from 01.04.2010 to 30.06.2012 is sustainable?

7. At the outset, we may observe that the relevant statutory provisions applicable to the respective periods have already been set out/abstracted in the Show Cause Notice/Impugned Order. We, therefore, do not consider it necessary to reproduce the same verbatim again, for the sake of brevity. For the period upto 30.06.2012, the

appellant's liability has to be examined with reference to Section 65(25b) and Section 65(105)(zzq) of the Finance Act, 1994. Section 65(25b), as applicable during the relevant period, defined "commercial or industrial construction" to mean construction of a new building or civil structure or a part thereof, and specified other construction activities, which are used, or to be used, primarily for, or occupied, or to be occupied, primarily with, or engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry. Section 65(105)(zzq) made taxable a service provided by one person to another in relation to commercial or industrial construction service. Thus, the requirement that the building or civil structure should be used or intended to be used primarily for commerce or industry was an essential ingredient of the taxable entry.

8. The expression "primarily for commerce or industry" is therefore the starting point of the enquiry. The issue cannot be decided merely by looking at the legal form of the recipient, the fact that it is a private institution, or the fact that it collects fees. What has to be established is that the particular building or civil structure constructed by the appellant is meant to be used, or intended to be used, primarily for commerce or industry. The statutory test

relates to the character and purpose of the construction and not merely to the source from which the recipient derives its income.

9. Board's Circular No.80/10/2004-S.T. dated 17.09.2004 is directly relevant to this issue. Paragraph 13.2 of the Circular states: "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." The Circular further distinguishes commercial use of government buildings, such as shops constructed for letting out. Thus, the Board itself directed the field formations to examine the purpose and actual use of the building rather than presume commerciality from the identity of the institution.

10. The continued relevance of the Circular assumes importance in the present case. In *R.R. Thulasi Builders (I)*

Pvt. Ltd., Final Order No.40703/2024 dated 13.06.2024, noticed that the Board's Circular and the subsequent clarification issued by the Coimbatore Commissionerate in response to the Coimbatore Builders and Contractors Association recording that Circular No.80/10/2004-S.T. dated 17.09.2004 had not been withdrawn and remained in force. The appellant's reliance upon the Circular was therefore not an afterthought developed during adjudication but was founded upon a Board's clarification which remained operative during the relevant period.

11. In *Sabari Builders v. Commissioner of GST & CE, Coimbatore, Final Order No.40777/2025 dated 30.07.2025*, the jurisdictional Bench considered a similar controversy concerning construction activities undertaken for educational institutions. It is pertinent to note that, in that case, the learned Authorised Representative for the Revenue had relied upon the decision of the Supreme Court in *Bangalore Water Supply & Sewerage Board v. R. Rajappa* and contended that the burden was upon the appellant to establish that the educational institutions were being run without profit motive. The Tribunal specifically rejected this approach and held that, where the Revenue seeks to bring the construction within the taxable entry on the ground that the building or civil structure was constructed primarily for

the purposes of commerce or industry, the burden of proving that essential ingredient rests upon the Revenue. The Tribunal further held that where the assessee's belief regarding non-taxability stemmed from CBEC Circular No.80/10/2004-ST, the assessee was required only to demonstrate the basis of such bona fide belief; once that was shown, the onus shifted to the Revenue to establish that the belief was incorrect. In the facts of that case, the Revenue failed to adduce evidence that the buildings constructed for the educational institutions were primarily for the purposes of commerce or industry and, accordingly, the demand for the period upto 01.07.2012 was set aside.

15. The same principle is reinforced by the decision relied upon by the appellant in *M/s. J.M. Constructions v. Commissioner of GST & Central Excise, Coimbatore, Final Order No.41196/2025 dated 29.10.2025*. In that case, the jurisdictional Bench considered construction undertaken for an educational institution and held that merely because an educational institution collects fees and generates a surplus, it does not follow that the institution is primarily established for the purposes of commerce or industry. The Tribunal applied the test of the predominant object of the institution and observed that, inter alia, it could be examined whether

the bulk of the income or surplus was utilised for non-educational purposes, whether the object of the institution was to make profit as opposed to imparting education, whether the surplus was reinvested for achieving the educational objectives and whether the institution had been declared to be a commercial institution by the Government. The Tribunal made it clear that these factors were not exhaustive. Having regard to the absence of any such enquiry by the Department, it held that the Revenue had failed to discharge its initial burden of establishing that the construction was primarily for the purposes of commerce or industry.

16. The decision of the jurisdictional Bench in *Seetha Builders v. Commissioner of GST & Central Excise, Madurai*, *Final Order No.40737/2024 dated 25.06.2024*, is also directly relevant. The Tribunal held that classification of a service is a matter relating to chargeability and that, where the Department seeks to classify the service under a particular taxable category, the burden of proof rests upon the Revenue to adduce proper evidence in support of such classification. Applying this principle to construction undertaken for educational institutions, the Tribunal held that mere collection of fees or generation of surplus does not

establish that the institution is primarily engaged in commerce or industry. It applied the predominant-object test, examining, inter alia, whether the surplus was utilised for non-educational purposes, whether the object was profit-making rather than imparting education, whether the surplus was reinvested in furtherance of educational objectives and whether the institution had been declared commercial by the Government. Since the Department had not undertaken such an enquiry or discharged its initial burden, the demand was held unsustainable.

17. The above principle is also consistent with *Banna Ram Choudhary*, 2017 (3) G.S.T.L. 338 (Tri.-Del.), *Modern Engineering Constructions*, 2018 (7) TMI 90 (CESTAT Chennai), *Harsh Constructions Pvt. Ltd.*, 2014 (12) TMI 283 (CESTAT Mumbai), *Vishnu Saran & Co.*, 2014 (5) TMI 649 (CESTAT New Delhi), *URC Constructions*, 2017 (50) S.T.R. 147 (Tri.-Chennai), *R.R. Thulasi Builders*, 2024 (7) TMI 1067 (CESTAT Chennai), and *SRM Engineering Construction Ltd.*, 2018 (11) G.S.T.L. 174 (Tri.-Chennai), all of which reinforce the necessity of examining the actual educational use and the statutory requirement of primary commercial or industrial use. In *SRM Engineering*, incidental activities such as renting of space or manpower-related activity were held

insufficient, by themselves, to establish that the building was primarily used for a commercial purpose.

18. We are unable to accept the Revenue's reliance upon *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, AIR 1978 SC 548, as determinative of the issue before us. The said decision was rendered in the context of the expression "industry" occurring in Section 2(j) of the Industrial Disputes Act, 1947, where the Court examined the concept of industry from the standpoint of industrial relations and the scope of labour legislation. The question before us is materially different, namely, whether the construction undertaken by the appellant falls within the statutory expression "commercial or industrial construction" under the Finance Act, 1994. The statutory expression and the legislative scheme governing Service Tax must necessarily be examined in their own context, and the meaning attributed to "industry" under the Industrial Disputes Act cannot, without further analysis, be transplanted into the distinct taxing provision under consideration. Significantly, in *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645, the Supreme Court itself considered reliance upon *Bangalore Water Supply* for treating educational activity as an industry and observed that the observations in that case had been

made while considering what constitutes an “industry” under the Industrial Disputes Act and were made in a different context.

19. T.M.A. Pai Foundation v. State of Karnataka, (*Supra*) further recognised that there should be no profiteering in the field of education, while holding that the fee structure may legitimately enable an educational institution to generate a reasonable surplus for future development and expansion and augmentation of educational facilities. *Queen's Educational Society v. CIT*, (2015) 8 SCC 47, similarly held that the mere fact that an educational institution generates a surplus does not, by itself, establish that the institution exists only for the purpose of profit. The relevant test is the predominant object of the institution, and an incidental surplus arising from educational activity does not, by itself, alter its educational character. These decisions are not being treated as creating any exemption under the Finance Act, 1994. They are relevant only for countering and examining the reasoning adopted by the adjudicating authority that the fact that income exceeded expenditure, by itself, established that the educational institutions were engaged in commercial activity.

20. The OIO has principally relied upon the income and expenditure figures of Arul Jothi Charitable Trust and has noticed that the Trust generated income over expenditure in each of the years 2009-10 to 2014-15. However, the OIO has not recorded any finding that such surplus was distributed as profit or diverted towards non-educational commercial activity, nor has it undertaken any specific examination to establish that the dominant object of the institution was profit-making. The OIO itself observed that earning of profit and application of profit are distinct aspects. In these circumstances, the mere arithmetical fact that income exceeded expenditure cannot, by itself, substitute for the statutory requirement of establishing that the building was used or intended to be used primarily for commerce or industry.

21. The Income-tax records placed before us contain Section 12A/12AA registration or related status documents concerning Arul Jyothi Charitable Trust, KMC Educational Trust, Sri SNS Charitable Trust, Chiranjeevi Educational Trust and Vidya Nethrra Educational Trust. These documents do not, by themselves, constitute an exemption from Service Tax under the Finance Act, 1994 and we do not treat them as conclusive of Service Tax liability or otherwise. They are

nevertheless relevant contemporaneous evidence concerning the character and stated objects of the educational recipient institutions. This assumes significance in the present case because, apart from relying upon the income and expenditure figures of Arul Jyothi Charitable Trust, the Revenue has not produced corresponding evidence demonstrating that the institutions were in fact established or operated with a predominant commercial or profit-making object. The mere fact that one of the institutions had an excess of income over expenditure cannot, by itself, establish the statutory requirement of primary use for commerce or industry. The Income-tax certificates placed on record therefore constitute corroborative evidence, but not conclusive proof, of the character of the recipient institutions.

22. The position concerning Shree Sivaa Hospital Private Limited requires separate consideration. There is no Section 12AA certificate for the hospital in the documents placed before us and, therefore, the reasoning applicable to the five educational trusts cannot simply be extended to it by analogy. However, the conclusion in the OIO that, “as the name itself suggests,” a private hospital is necessarily commercial cannot be accepted as satisfying the statutory

requirement. The corporate or institutional form of the recipient, by itself, does not establish the actual use of the hospital building or that the building was used or intended to be used primarily for commerce or industry. The Board's Circular itself expressly refers to health institutions in the context of determining whether construction is commercial or non-commercial. The Revenue was therefore required to examine and establish, on the basis of relevant evidence, the actual purpose and use of the hospital building rather than rely merely upon the description "private hospital."

23. On a cumulative consideration of the evidence, we find that the construction undertaken for the five educational institutions was for educational use and that the appellant's understanding of the taxability of such construction was supported by Board's Circular No.80/10/2004-S.T. The Revenue has not discharged the burden of establishing that the buildings were used or intended to be used primarily for commerce or industry. In respect of the hospital also, the conclusion of commerciality is founded upon the status of the recipient rather than evidence satisfying the statutory test. Accordingly, Question No.(i) is answered in favour of the appellant and against the

Revenue. The demand of Rs.90,00,801/- for the period 01.04.2010 to 30.06.2012 is set aside.

Issue No. (ii): Whether the post-01.07.2012 activities constitute works contract service and whether the demand of Rs.2,41,07,326/- on the entire consideration under Section 66E(b) is sustainable?

24. The legal position underwent a change with effect from 01.07.2012. Section 65B(54) defines "works contract" as follows: "Works Contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. The earlier requirement that construction should be primarily for commerce or industry did not form part of this new definition.

25. Section 66B constituted the charging provision from 01.07.2012. Section 66E(b) declared "construction of a complex, building, civil structure or a part thereof, including

a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority” to be a declared service. Section 66E(h), separately and specifically, declared the “service portion in the execution of a works contract” to be a declared service. Rule 2A of the Service Tax (Determination of Value) Rules, 2006, as substituted with effect from 01.07.2012, expressly provided that the value of the service portion in the execution of a works contract referred to in clause (h) of Section 66E shall be determined in the prescribed manner. Clause (i) provided for the actual-value method, namely gross amount charged less the value of property in goods transferred. Clause (ii)(A) prescribed, in the case of works contracts entered into for execution of original works, Service Tax on forty per cent of the total amount charged, subject to the provisos applicable where the amount charged included the value of goods as well as land or undivided share of land. The Explanation defined “original works” to include all new constructions.

26. We first examine the factual foundation on which the impugned order proceeded. The adjudicating authority proceeded on the basis that the appellant had undertaken

only labour work and that the materials required for construction were supplied by the recipients. The construction agreements placed on record do not support such a blanket characterisation of the contracts as labour-only contracts. The agreement bundle contains contractual provisions requiring the contractor, in the relevant contracts, to arrange and supply materials required for construction, together with detailed specifications and schedules of construction work. In particular, the schedule to the agreement contains the heading "UNIT RATE FOR EXECUTION OF WORKS – INCLUDING LABOUR & MATERIALS" and sets out rates and specifications for various construction activities and materials, including cement, steel, bricks, sand, RMC and other construction inputs. The KMC Educational Trust agreement likewise contains a stipulation requiring the contractor to arrange supply of materials and is accompanied by a detailed schedule of works and basic material rates. It is true that the agreements also contain provisions under which electricity and water at the site were to be supplied by the client and that, in respect of certain specified existing materials, the client was to supply such materials. These provisions, however, do not establish that the entire contractual activity was merely the supply of labour. On the contrary, they indicate that the contractual

arrangements contemplated execution of construction works involving labour as well as materials, with the responsibility for particular inputs being allocated between the contractor and the client. The fact that certain utilities or specified existing materials were to be provided by the client cannot, by itself, convert the entire construction contract into a pure labour contract.

27. The documentary evidence in the form of various contracts entered into is further corroborated, though not conclusively established, by the contemporaneous VAT records placed on record. The appeal papers contain VAT monthly returns, purchase schedules, sales/deemed-sales schedules, input-tax-credit particulars and purchase ledgers. The records for January 2013, for instance, disclose purchases of construction-related goods and an input-tax credit of Rs.4,00,096/- against total purchases recorded at Rs.45,88,128/-. The accompanying purchase annexures contain numerous transactions relating to cement, ready-mix concrete and other construction materials, including purchases from Chettinad Cement and RMC Ready Mix suppliers. The February 2013 records similarly disclose purchases of ready-mix, cement and other construction inputs. These contemporaneous statutory records are

therefore inconsistent with the proposition that the appellant's activities during the relevant period can, as a matter of fact, be characterised wholesale as the rendering of labour alone. We do not consider the VAT records, by themselves as sufficient to establish that every item of material appearing therein was incorporated in each of the disputed contracts. They nevertheless constitute material corroborative evidence that the appellant was itself procuring and dealing in construction-related materials during the relevant period. The statement of Shri M. Saravanan, on which the adjudicating authority principally relied, therefore had to be examined in conjunction with the written agreements and the contemporaneous VAT and purchase records. When the documentary evidence is considered as a whole, the conclusion that the appellant was merely a labour contractor and that the construction materials were invariably supplied by the recipients is not supported by available records.

28. We therefore find that the contracts undertaken by the appellant during the post-01.07.2012 period are composite contracts involving transfer of property in goods and consequently answer the statutory description of works contracts under Section 65B(54). This conclusion is

consistent with *Commissioner of Central Excise & Customs, Kerala v. Larsen & Toubro Ltd.*, 2015 (39) S.T.R. 913 (S.C.), wherein the Supreme Court recognised works contract as a distinct species of contract. The position was reaffirmed in *Total Environment Building Systems Pvt. Ltd. v. Deputy Commissioner of Commercial Taxes*, 2022 (63) G.S.T.L. 257 (S.C.). *Real Value Promoters Pvt. Ltd. v. Commissioner of GST & Central Excise, Chennai*, 2018 (9) TMI 1149 (CESTAT Chennai), held that after 01.06.2007 a composite contract falls within Works Contract Service and that Commercial or Industrial Construction Service continues to apply to services simpliciter. *Jain Housing & Construction Ltd. v. Commissioner of Service Tax, Chennai*, Final Order Nos.40077-40079/2023 dated 24.02.2023, followed Real Value Promoters and Larsen & Toubro. *Haresh Kishor v. Commissioner of GST & Central Excise, Chennai*, Final Order No.41244/2025 dated 06.11.2025, was also relied upon by the appellant.

29. The next question is whether, having found the contracts to be composite works contracts, the demand of Rs.2,41,07,326/- can nevertheless be sustained under Section 66E(b) on the entire gross consideration. The answer must be in the negative. The Show Cause Notice specifically proposed that the post-01.07.2012 services should be

assessed under Section 66E(b). It did not propose the demand under Section 66E(h) as the service portion in the execution of a works contract. The distinction is substantive. Section 66E(b) declares construction of a complex, building or civil structure as a declared service, whereas Section 66E(h) separately declares the service portion in execution of a works contract. Rule 2A is expressly linked to the latter.

30. The adjudicating authority proceeded on the factual premise that the appellant had undertaken only labour/service contracts and that the materials required for construction were supplied by the recipients. It was on this premise that the benefit claimed under Serial No.12 of Notification No.26/2012-S.T. was denied and the entire consideration was brought to tax. We find that this premise adopted has not been established on proper appreciation of the documentary evidence. The agreements placed on record contain specifications and schedules relating not merely to labour but also to execution of construction works involving materials. The agreements record include detailed items and rates concerning cement, steel, bricks, sand, ready-mix concrete and other construction materials, and, in material particulars, contemplate procurement and use of construction materials by the contractor. The fact that

certain site facilities such as water and electricity were to be provided by the client cannot, by itself, lead to the conclusion that the entire contract was a labour-only contract. The supply of site utilities by the client and the obligation to procure and use construction materials in execution of the work are distinct matters.

31. This contractual evidence receives further corroboration from the contemporaneous VAT records placed on the appeal record. The records contain purchase and sales schedules, monthly VAT returns, input-tax-credit particulars and details of purchases of construction-related goods. The January 2013 records, for instance, disclose purchases under different VAT rate categories and specifically contain entries relating to blue metals, bricks, river sand, steel, cement, ready-mix and other materials. The supporting VAT purchase statements also contain numerous entries relating to cement and other construction materials. These contemporaneous statutory records could not have been discarded without examination merely on the basis of the statement of Shri M. Saravanan. The statement has to be appreciated along with the written agreements and the VAT records as a whole. In these circumstances, the material on record does not support

the blanket characterisation of the appellant as a pure labour contractor for the disputed construction activities.

32. The principle that the adjudicating authority cannot travel beyond the foundation of the Show Cause Notice is well settled. Real Value Promoters held that where composite contracts are proposed under Commercial or Industrial Construction Service or Construction of Complex Service, the demand cannot be confirmed under Works Contract Service at the adjudication or appellate stage, as that would amount to travelling beyond the notice. The same principle was applied in URC Constructions, Logos Construction and Jain Housing. Larsen & Toubro and Total Environment Building Systems establish that the distinction between the respective taxable entries is substantive and not merely nomenclatural. Therefore, the Tribunal cannot convert the present Section 66E(b) demand into a Section 66E(h) demand merely for applying Rule 2A.

33. The appellant had claimed Serial No.12 of Notification No.26/2012-S.T. The Ld. Counsel has placed it on record that the appellant has collected service tax on 30% of the gross amount charged and paid service tax to the tune of Rs.93,61,784/- along with interest of Rs.14,68,364/-

for the period from 01.07.2012 onwards. We agree that the said entry concerns with construction of a complex, building or civil structure intended for sale to a buyer and cannot be applied merely because the activity is construction. The appellant therefore cannot sustain its original payment solely on the basis of Serial No.12. But rejection of that notification benefit does not authorise Revenue to tax 100% of the consideration without applying the statutory scheme applicable to the actual nature of the contract. If the contracts are works contracts, the valuation of the service portion has to follow Rule 2A in a properly proposed Section 66E(h) proceeding.

34. Rule 2A(ii)(A) of Service Tax (Determination of Value) Rules, 2006, in the case of works contracts entered into for execution of original works are allowed abatement on total amount charged, subject to the relevant provisos. It therefore cannot be said that absence of the benefit of Serial No.12 of Notification No.26/2012 automatically results in the entire composite consideration becoming taxable as service. *Commissioner of Service Tax v. Bhayana Builders (P) Ltd.*, 2018 (10) G.S.T.L. 118 (S.C.), and *Jayhind Projects Ltd. v. Commissioner of Service Tax, Ahmedabad*, 2024 (388) E.L.T. 39 (S.C.), further establish that free supplies by the service recipient, for which no price is charged by the service

provider, cannot be artificially added to the gross amount charged. These principles reinforce the requirement of determining the taxable service portion in accordance with the statutory mechanism.

35. We therefore hold that the post-01.07.2012 contracts are composite works contracts and that the Department's factual finding that the appellant was a pure labour contractor is unsustainable. More importantly, the demand was proposed under Section 66E(b) on the entire consideration and not under Section 66E(h) as the service portion in execution of works contract. The Tribunal cannot cure this foundational defect by converting the demand into a different taxable entry and applying a different valuation mechanism. Such a course would alter the very basis of the demand and would travel beyond the Show Cause Notice.

36. Accordingly, the demand of Rs.2,41,07,326/- for the period 01.07.2012 to 31.03.2015, as framed in the Show Cause Notice and confirmed in the impugned order under Section 66E(b) on the entire gross consideration, is unsustainable. There is consequently no surviving demand requiring recomputation under Rule 2A. A remand merely to enable Revenue to issue or reconstruct a demand under Section 66E(h) would amount to permitting a new basis of

levy after the conclusion of the adjudication. No such remand is warranted. Question No.(ii) is accordingly answered in favour of the appellant and against the Revenue.

Issue No. (iii): Whether the extended period, interest and penalties are sustainable?

37. Since the substantive demands have failed on merits, limitation is not determinative of the tax liability. Nevertheless, as the impugned order invokes the extended period and imposes penalties, we consider the issue briefly. The appellant was registered under Service Tax from 28.04.2008, maintained books, VAT records and construction agreements and had discharged Service Tax and interest for the post-01.07.2012 period. The dispute thus essentially concerns interpretation, classification and valuation and cannot be equated with a clandestine activity concealed from the Department. Though the ST-3 returns for April 2010 to March 2015 were filed belatedly on 09.06.2015, delayed filing by itself does not establish wilful suppression with intent to evade. The Supreme Court in *Cosmic Dye Chemical v. CCE*, 1995 (75) E.L.T. 721 (S.C.), *Pushpam Pharmaceuticals Co. v. CCE*, 1995 (78) E.L.T. 401 (S.C.), *Continental Foundation Joint Venture v. CCE*, 2007 (216) E.L.T. 177 (S.C.), *Anand Nishikawa Co. Ltd. v. CCE*, 2005

(188) *E.L.T. 149 (S.C.), Chemphar Drugs & Liniments, 1989*
 (40) *E.L.T. 276 (S.C.)* and *Nizam Sugar Factory v. CCE, 2006*
 (197) *E.L.T. 465 (S.C.)* consistently require something more than mere omission, error or non-payment for invoking the extended period.

38. The same principle is directly supported by *Sabari Builders v. Commissioner of GST & CE, Coimbatore, Final Order No.40777/2025 dated 30.07.2025*, where, despite non-registration, non-filing of returns and departmental investigation, the jurisdictional Bench found that the assessee's *bona fide* belief based on the Board's Circular was held as plausible and that the ingredients for extended limitation were not established and so Sections 78 and 77(2) penalties were consequently set aside. *Clean Care Services, 2025 (8) TMI 75 (CESTAT Chennai)*, similarly held that, in the absence of positive evidence of wilful misstatement or suppression with intent to evade, the extended period and consequential Section 78 penalty could not be sustained. We have also considered the controversy under Section 73(6). *Right Resource Management Service, 2023 (11) TMI 100 (CESTAT New Delhi)*, held that where a return was not filed by the due date, the due date becomes the relevant date and subsequent belated filing does not

alter it. A contrary view was taken by the Patna High Court in *Indian PAC Consulting Pvt. Ltd. v. Union of India, 2023 (10) Centax 396 (Pat.)*, which treated the actual filing date as relevant where a return was filed, even belatedly. We need not resolve this controversy here, since on either approach the Revenue has failed to establish the ingredients of the proviso to Section 73(1).

39. The Finance Act, 2016 amendment extending the normal limitation from eighteen to thirty months came into force on 14.05.2016, after the present SCN dated 14.09.2015, was issued and therefore cannot govern it. In any event, the recorded agreements, VAT records and payment particulars do not establish suppression merely because the appellant claimed the benefit of the Notification No. 26/2012. J.M. Constructions is distinguishable as the assessee there was unregistered, had not filed returns or paid Service Tax until investigation, unlike the present appellant who was, registered since 28.04.2008, who had also paid Service Tax and interest for the post-01.07.2012 period. The extended period is therefore not invocable; consequently, the penalties under Sections 78 and 77(2) cannot survive. *Dharamendra Textile Processors, 2008 (231) E.L.T. 3 (S.C.)*, does not dispense with the statutory

ingredients for invoking penalty, while Sabari Builders and Right Resource Management Service support the conclusion on the facts of the present case.

40. Interest under Section 75 being consequential upon a legally sustainable tax liability, the consequential interest also cannot survive once the substantive demands are set aside. The amount of Rs.14,68,364/- recorded as appropriated shall, subject to verification of the original challans and its linkage to the present proceedings, be dealt with in accordance with law. Question No.(iii) is accordingly answered in favour of the appellant. The extended period is not invocable, the penalties under Sections 77(2) and 78 are set aside and the demand of consequential interest cannot survive.

41. For the period from 01.04.2010 to 30.06.2012, the Revenue has failed to establish that the buildings were used or intended to be used primarily for commerce or industry; generation of surplus by an educational institution, by itself, does not establish commerciality. The Board's Circular, decision in the cases of T.M.A. Pai Foundation, Queen's Educational Society and the relevant Tribunal decisions support this conclusion. For the period from

01.07.2012 to 31.03.2015, the agreements and VAT records establish the composite works-contract character of the activities, whereas the SCN invoked the provisions of Section 66E(b) on the entire consideration and did not invoke Section 66E(h) read with Rule 2A. The demand cannot, at the appellate stage, be converted from Section 66E(b) to Section 66E(h) merely to apply Rule 2A. The demands therefore fail as framed.

42. Accordingly, the Order-in-Original No.31/2016-Commr. dated 30.11.2016 is set aside to the extent it confirms the demand of Rs.3,31,08,127/-, comprising Rs.90,00,801/- for 01.04.2010 to 30.06.2012 and Rs.2,41,07,326/- for 01.07.2012 to 31.03.2015, together with consequential interest and penalties. The amounts already paid or appropriated shall be verified from the original challans and dealt with in accordance with the law. The appeal is allowed with consequential relief, if any.

(Order pronounced in open court on 28.10.2026)

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

MK

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