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

REGIONAL BENCH – COURT No. III

## Service Tax Appeal No. 40931 of 2015

(Arising out of Order-in-Original No. MAD-CEX-000-COM-11/2014 dated 08.12.2014 passed by Commissioner of Central Excise, Central Revenue Building, Lal Bahadur Shastri Marg, Madurai – 625 002)

**M/s. Deccan Construction Company** **...Appellant**
64-New Pankajam Colony,
Kamarajar Salai,
Madurai – 625 009.

***Versus***

**Commissioner of GST and Central Excise** **...Respondent**
Madurai Commissionerate,
Central Revenue Building,
Lal Bahadur Shastri Marg,
Bibikulam,
Madurai – 625 002.

**APPEARANCE:**

For the Appellant : Mr. M. Kannan, Advocate
For the Respondent : Mr. O.M. Reena, Authorised Representative

**CORAM:**
**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

## FINAL ORDER No. 41433 / 2025

DATE OF HEARING : 22.07.2025
DATE OF DECISION : 05.12.2025

**Per Mr. VASA SESHAGIRI RAO**

This appeal is directed against Order-in-Original No. MAD-CEX-000-COM-11-14 dated 08.12.2014 passed by the Commissioner of Central Excise, Madurai (hereinafter referred to as the 'Impugned Order'), which held that M/s Deccan Constructions Company, Madurai (hereinafter

referred to as "the Appellant") had wrongfully claimed exemption on construction of buildings for educational/charitable institutions by treating them as non-commercial in nature, with the intent to evade payment of Service Tax on services classified under "Commercial or Industrial Construction Service" for the period from 01.04.2008 to 31.03.2012.

1.2 The Appellant is registered under the category of "Commercial or Industrial Construction Service and engaged, inter alia, in construction of buildings and civil structures for various clients, including educational institutions such as schools and colleges. They filed ST-3 returns for the relevant period.

1.3 During scrutiny of ST-3 returns by the Range Officer, it was noticed that while the Appellant had discharged service tax on certain construction contracts, they had not paid service tax on amounts received towards construction of buildings for educational institutions, treating such activities as non-taxable.

1.4 Consequently, the Show Cause Notice No. 12/2013-ST dated 24.10.2013 was issued which was contested by the Appellant, and the adjudicating authority,

*vide* Order-in-Original No. 11/2014 dated 08.12.2014, confirmed as follows: -

- Service tax demand of Rs. 1,20,20,608/- with interest and imposed equivalent penalty under Section 78 of the Finance Act, 1994; and also a
- Demand of Rs. 1,43,045/- for 2010–11 with interest and equal penalty under Section 78 for short payment. A penalty of Rs 10,000/- was further imposed under Section 77(2) of Finance 1994.

2. Being aggrieved, the Appellant has preferred the present appeal before this Tribunal only in respect of the major demand of Rs.1,20,20,608/- on construction service provided for educational institutions with interest and penalty. The Appellant is not contesting the smaller demand of Rs.1,43,045/- relating to short payment for 2010–11.

3. The Ld. Advocate Mr. M. Kannan appeared on behalf of the Appellant and advanced detailed submissions in support of the appeal and the Ld. Authorized Departmental Representative Ms. O.M. Reena appeared for the Revenue and defended the Impugned Order.

4. The contention of the Ld. Advocate Mr. M. Kannan are summarized as follows: -

4.1 That the Appellant had provided construction service to educational institutions.

4.2 That the demand of service tax of Rs.1,20,20,608/- was confirmed for the period from 01.04.2008 to 31.03.2012 on the ground that construction service received by educational institutions are for commerce since fees are collected by these educational institutions.

4.3 Para 13.2 of CBEC Circular No.80/10/2004-ST dated 17.09.2004 clarified that buildings meant for education, religious and charitable institutions cannot be considered as for commerce or industry and said circular specifically clarified that construction services provided for educational/religious/charitable institutions being non-commercial in nature are not taxable, there could be no reason to hold that these constructions are commercial in nature.

4.4 Further, the department does not have a case that the educational/ charitable institutions constructed by appellant are not used principally and solely for providing education.

4.5 It was submitted that the period involved is April 2008 to March 2012 and the SCN was issued on 24.10.2013

and the period beyond the normal period of 18 months. During the period of dispute, classification of construction services and availing exemptions are interpretational issues, and the details of services claimed as exempted were declared in the periodical ST-3 returns. Thus, extended period cannot be invoked.

4.6 The Ld. Advocate submits further that without prejudice to the above submissions, the demand has to be restricted to normal period after allowing abatement in the value of service including cum tax benefit and waiver of penalty under section 80 of the Finance Act, 1994 may be extended to the appellant.

4.7 It was finally prayed that Hon'ble Tribunal may please allow the appeal and thus render justice.

5.1 *Per contra* the Ld. AR Ms. O.M. Reena strongly supported the Impugned Order and submitted that educational institutions charging fees are commercial enterprises, as clarified by the Explanation inserted retrospectively in Commercial Training or Coaching Service (Finance Act, 2010). The same logic applies to construction services rendered for such fee-charging institutions.

5.2 She submits further that once Circular 80/10/2004-ST was withdrawn by Master Circular 96/07/2007-ST, the Appellant cannot rely on it. With the withdrawal, the only applicable test is commercial use of the building, which was clearly the case.

5.3 The Appellant never disclosed the nature of these works nor furnished break-ups of taxable vs. exempt services in their ST-3 returns. The Department detected the non-payment only upon detailed verification. Hence, suppression is proved and extended limitation is justified.

5.4 Penalties are correctly imposed because the Appellant is an established, registered assessee well aware of legal requirements and had wrongly availed abatement/exemption.

6. We have carefully heard the submissions advanced by both the sides, examined the appeal records in detail, considered the statutory provisions, notifications and circulars and the case Laws cited.

7. Upon such comprehensive consideration, the following issues arise for our determination in this appeal as to: -

i. Whether construction of buildings for educational institutions such as schools and colleges during 2008–2012 is taxable under Commercial or Industrial Construction Service and whether educational institutions charging fees can be considered "commercial" for purposes of Section 65(25b)?
ii. Whether the request for cum Tax benefit can be extended in this case?
iii. Whether the extended period of limitation under the proviso to Section 73(1) of FA 1994 has been rightly invoked?
iv. Whether penalties under Sections 77 and 78 of FA are sustainable?
v. Whether the waiver of penalties under Section 80 of FA 1994 is justified in this case?

8. Before we advert to the issues that arise for determination, it is necessary to examine the definition of 'Commercial or Industrial Construction Service' ('CICS') under Section 65 of the Finance Act, 1994. The taxability of any activity must flow strictly from the language of the charging section read with the specific taxable service definition, and therefore, a clear understanding of these provisions is a prerequisite for deciding the present dispute.

8.1 Definition of "Commercial or Industrial Construction" – Section 65(25b) (as applicable during 1.4.2008–31.3.2012)

"Commercial or industrial construction" means—

(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit;

which is –

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

**commerce or industry, or work intended for commerce or industry**, but does not include such services provided in respect of roads, airports,

railways, transport terminals, bridges, tunnels and dams.

8.2 The Notification No. 1/2006-ST dated 1.3.2006 provides for 67% abatement for CICS, subject to the condition that the value of goods/materials was included in the gross amount charged.

9. We take up the issues in seriatim

9.1 The impugned issue is primarily about the Taxability of construction services provided to the educational institutions

Section 65(25b) defines "Commercial or Industrial Construction Service" to mean, inter alia, construction of a building or civil structure "used or to be used primarily for commerce or industry". The emphasis is thus on the nature of use of the building.

9.2 We find that the impugned Order has placed emphasis on Master Circular No. 96/7/2007-ST dated 23.08.2007 which stated that earlier clarifications on technical issues stand withdrawn and has proceeded as if withdrawal of the circular itself creates taxability. It is trite law that circulars cannot override or amend statutory

provisions. The Supreme Court in *CCE v. Ratan Melting & Wire Industries, 2008 (231) E.L.T. 22 (S.C.)* held that circulars contrary to the statute have no legal existence, and that withdrawal of a circular does not change the scope of the levy. We also note that even after 23.08.2007, the statutory definition under Section 65(25b) was not amended; buildings used for education without commercial profit motive do not become commercial merely by withdrawal of a circular. The taxability depends on the statute, not on the continued existence of an administrative clarification.

Therefore, we are of the view that the withdrawal of Circular 80/10/2004-ST cannot, by itself, render the Appellant's construction services taxable under CICS.

9.3 At the outset, we are unable to agree with the reasoning adopted by the Adjudicating Authority in Para 30 of the impugned order that the Explanation inserted in Finance Bill, 2010 for "Commercial Training or Coaching Service" (CTCS) can be imported into the definition of "Commercial or Industrial Construction Service" (CICS) under Section 65(25b). This interpretative approach is fundamentally flawed.

We find that the Explanation relied upon by the Commissioner was legislated only for Section 65(105)(zzc) (Commercial Training or Coaching Service) and has no

cross-application to Section 65(25b). The Finance Act, 1994 creates distinct taxable services, each with specific, self-contained definitions. In the absence of a legislative amendment extending that Explanation to CICS, the LAA 's attempt to apply it to construction services is beyond the scope of the statute and cannot be sustained.

9.4 We note that the LAA has held that educational institutions are commercial because they collect fees. But we find that The Supreme Court in *Queen's Educational Society v. State of Uttarakhand (2015) 16 SCC 749* has held that mere generation of surplus or collection of fees does not make an educational institution commercial, so long as the surplus is ploughed back into the institution and not distributed for private profit. The Department has not recorded any finding to that effect that surplus is siphoned off and benefitted trustees or few individuals. We are unable to accept the findings on this account and that the educational institutions in question are profit-distributing commercial ventures. The mere assertion that fees is collected is insufficient to classify their buildings as "commercial" within the meaning of Section 65(25b).

9.5 We find that Para 13.2 of CBEC Circular No. 80/10/2004-ST has correctly captured this nuance by

clarifying that construction for organisations established solely for educational, religious, charitable, health or philanthropic purposes and not for profit would be non-commercial and hence not liable under CICS.

9.6 In view of the above, the finding of the Adjudicating Authority that construction for educational institutions is "commercial" lacks statutory support, is contrary to binding jurisprudence, and proceeds on an incorrect importation of an Explanation meant for a different service category. The construction activity in the present case is squarely outside the scope of "Commercial or Industrial Construction Service," and the levy fails at the threshold.

9.7 We also observe that the Appellant has relied upon the decision of *The Karnataka High Court in CCE (A), Bangalore v. KVR Construction, 2012 (26) S.T.R. 195 (Kar.)* which considered the very same Circular and held that construction of buildings for a charitable educational institution would not attract service tax under CICS. The Appellants have also relied upon the following decisions of this Tribunal.

i. *M/s. RGP Construction Vs. Commissioner of CGST & Central Excise, Salem 2024 (7) TMI 1168 -CESTAT Chennai.*
ii. *M/s. Shree Mahalakshmi & Co Vs. Commissioner of GST and Central Excise, Coimbatore 2025 (4) TMI 1067 - CESTAT Chennai*

9.8 We have perused the aforesaid decisions and, in the case of *M/s. Shree Mahalakshmi & Co Vs. Commissioner of GST and Central Excise, Coimbatore 2025, (4) TMI 1067 - CESTAT Chennai* which has consistently followed this principle, it has been held in Paras 19 to 22 that: -

> ***"19**. Thereafter, reproducing from the Master Circular in para 9, this tribunal stated in para 9, 10 and 11 as under:*
>
> > *"9….. 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:"*
>
> ***20**. After reproducing the said letter by the Coimbatore Builders and Contractors Association as well as the reply by the Coimbatore Commissionerate, this Tribunal then finds in para 12 as under:*
>
> > *"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."*
>
> ***21**. Thereafter, this Tribunal has reproduced the relevant portions of the decisions in Commissioner of C.Ex (Appeals), Bangalore Vs KVR Construction,2012 (26) S.T.R. 195 (Kar.), Gujarat Adani Institute of Medical Sciences Vs CCE & ST Rajkot vide Final Order No.A/11309-*

*11310/2023 dated 22.06.2023, KMV Projects Ltd. Vs CCE & ST Hyderabad, 2019 (27) G.S.T.L. 388 (Tri.-Hyd.), and this Tribunal decision in Vijayadeepa Constructions Private Ltd. Vs CGST & Central Excise, Coimbatore vide Final Order No.40536/2024 dt. 08.05.2024 and after considering the same, gone on to further hold as under:*

> *"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."*

***22**. We find that the said decision has since been followed by this Tribunal in M/s. RGP Construction versus The Commissioner of CGST & Central Excise, Salem, 2024(7) TMI 1168-CESTAT CHENNAI. Therefore, in view of our discussions supra and considering the aforesaid decisions of this Tribunal which are binding on us, we hold that the demand of service tax on the works contract services rendered by the appellant to educational institutions that has been upheld in the impugned OIO cannot sustain and is therefore hereby set aside. Likewise, on perusal of the appeal records we find that the construction of Government Buildings, such as Divisional Office Building in Highways Office Campus, Trichy Road, Coimbatore, cannot be considered a building primarily of commerce or Industry so as to be exigible to service tax as has also been stated in the CBEC Circular dated 17.09.2004. We hold that the demand on this count cannot sustain and is also thus set aside."*

9.9 In view of the foregoing analysis and the binding judicial precedents referred to above, we are constrained to hold that the proposed levy under Commercial or Industrial Construction Service fails at the very threshold and cannot be sustained. The demand is therefore liable to be set aside and as such which we do so.

10. Since we have disposed off the Appeal on merits itself, we are not recording any finding /observations on the various other submissions made by both the sides and also on the issue of limitation and penalties.

11. Finaly, the Appeal is allowed with consequential benefits as per the Law.

(Order pronounced in open court on 05.12.2025)

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

Sd/-
**(P. DINESHA)**
MEMBER (JUDICIAL)

MK