CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 52714 OF 2019

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-26-19-20 dated 30.08.2019 passed by the Principal Commissioner, CGST & Central Excise Commissionerate, Jaipur]

PRINCIPAL COMMISSIONER
CGST & CENTRAL EXCISE, **...APPELLANT**
New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur (Rajasthan)-302 005.

Versus

M/s AAKRITI CONSTRUCTION **...RESPONDENT**
121, Devi Nagar, New Sanganer Road,
Sodala, Jaipur (Rajasthan).

And

SERVICE TAX APPEAL NO. 50263 OF 2022

[Arising out of Order-in-Original No. JAI-EXCUS-000-COM-26-19-20 dated 30.08.2019 passed by the Principal Commissioner, CGST & Central Excise Commissionerate, Jaipur]

M/s AAKRITI CONSTRUCTION **...APPELLANT**
121, Devi Nagar, New Sanganer Road,
Sodala, Jaipur (Rajasthan).

Versus

PRINCIPAL COMMISSIONER **...RESPONDENT**
CGST & CENTRAL EXCISE,
New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur (Rajasthan)-302 005.

APPEARANCE:
Shri Vivek Sharma and Ms. Saumya Mehrotra, Advocates for the party.
Shri Aejaz Ahmad, Authorised Representative for the Revenue.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS.51187-51188/2025

DATE OF HEARING: 05.08.2025
DATE OF DECISION: 18.08.2025

BINU TAMTA:

1. M/s Aakriti Construction has challenged the Order-in-Original No. JAI-EXCUS-000-COM-26-19-20 dated 30.08.2019 confirming the demand against the appellant under Section 73(1) of the Finance Act, 1994 with interest under Section 75 and penalties under Section 78 and 771(c) of the Act. The Revenue has also separately filed the appeal challenging the same Order-in-Original on the ground that the demand is required to be confirmed by holding that abatement in terms of Notification No.1/2006-ST., dated 01.03.2006 is not available as the value of free supply of material, which is part of the contract value and which has been charged by the assessee in the bills raised to the service recipients, has not been included in the taxable value.

2. The appellant is engaged in providing construction services and is discharging service tax under "Commercial or Industrial Construction Service" after taking the benefit of abatement under Notification No. 1/2006 dated March 1, 2006.

3. Show cause notice dated October 17, 2014 was issued to the appellant for the period April 1, 2009 to March 31, 2012, invoking the extended period of limitation on the allegations that while taking the benefit of the said notification, the appellant did not include the value of free supply of goods/materials which were used in providing the above

taxable service as the same were provided by the service recipients. As a result, the appellant availed the benefit of 67% abatement under the Notification in respect of the services provided under the category of 'Construction Service'. Secondly, the appellant has undertaken construction activities for educational institutes, hospitals, independent residential houses and did not pay service tax on them. On adjudication, the demand towards service tax of Rs.2,43,36,034/- was confirmed against the appellant with interest and penalty of equivalent amount under Section 78 and Rs.10,000/- under Section 77 of the Act. Being agreed, the appellant has filed the two appeals.

4. Heard Shri Vivek Sharma and Ms. Saumya Mehrotra, Advocates for the party. Shri Aejaz Ahmad, Authorised Representative for the Revenue.

5. The controversy in the present appeal centres around the following points:

a) Issue of abatement under Notification no. 01/2006-ST
b) Service tax was chargeable on construction activities in reference to educational institutes, hospitals, independent residential houses.
c) Demand is completely time barred.

6. On the issue of availing abatement under Notification No. 1/2006 regarding value of free supply of material received from the customers, the submission of the learned Counsel is that the issue is no longer *res-integra* as the Tribunal has decided the issue in the case of **Bhayana Builders Pvt Ltd Vs. CCE**[1], which has been affirmed by the **Apex Court**[2]. The issue was whether the value of goods/material supplied or

[1] 2013(32)STR 49
[2] 2018 (10) GSTL 118(SC)

provided free of cost by service recipient and used for providing the taxable service of construction or industrial complexes to be included in computation of gross amount for valuation of the taxable service under Section 67 of the Act and for availing the benefit of the notifications, was decided in favour of the assessee as under:

> "13) A plain meaning of the expression 'the gross amount charged by the service provider for such service provided or to be provided by him' would lead to the obvious conclusion that the value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the 'gross amount' simply, because of the reason that no price is charged by the assessee/service provider from the service recipient in respect of such goods/materials. This further gets strengthened from the words 'for such service provided or to be provided' by the service provider/assessee. Again, obviously, in respect of the goods/materials supplied by the service recipient, no service is provided by the assessee/service provider. Explanation 3 to subsection (1) of Section 67 removes any doubt by clarifying that the gross amount charged for the taxable service shall include the amount received towards the taxable service before, during or after provision of such service, implying thereby that where no amount is charged that has not to be included in respect of such materials/goods which are supplied by the service recipient, naturally, no amount is received by the service provider/assessee. Though, sub-section (4) of Section 67 states that the value shall be determined in such manner as may be prescribed, however, it is subject to the provisions of sub-sections (1), (2) and (3). Moreover, no such manner is prescribed which includes the value of free goods/material supplied by the service recipient for determination of the gross value."

7. The principle enunciated by the Apex Court is clearly applicable to the issue involved in the present case and accordingly, we hold that the appellant rightly claimed abatement of 67% under Notification No.1/2006. Moreover, the learned Counsel has referred to the decision of the Tribunal in their own case, titled as **Akriti**

Construction Versus CCE & ST, Jaipur–I,[3] in respect of previous period from April 1, 2005 to December 31, 2009, allowing the appeal in favour of the appellant following the decision of the Apex Court in **Bhayana Builders (supra)**. There is no reason to differ from the said decision.

8. On the second issue, of providing construction service to Jaipur National University, Mahima Shiksha Samiti and Bhagwan Mahavir Cancer Hospital, the appellant relied on their own case in **Aakriti Construction,** where the Tribunal considered the provisions of Circular No.80/10/2004-ST dated September 17, 2004, which exempted the institutes established for educational, religious, charitable and philanthropic purposes. Tribunal also observed that these institutes, Jaipur National University and Bhagwan Mahavir Cancer Hospital are educational institute by the Government and is also Charitable Institute for healthcare services. The Circular provides that such constructions which are for the use of organisations or institutions being established solely for educational, religious, charitable, health, sanitation, or philanthropic purposes and not for the purpose of profit are not taxable, being non-commercial in nature. Reliance has also been placed on the earlier decisions in the case of **Banna Ram Chaudhary versus CCE**[4] and **Modern Engineering Construction Versus CCE**[5]. We also find that the issue is also settled by the High Court of Karnataka in **KVR Constructions versus CCE**[6]**, Karnataka,** where it has been held that construction services provided to educational institutes, hospitals, non-commercial

[3] 2019(6) TMI 866 CESTAT-NEW DELHI
[4] Final Order No. 53149 of 2017 dated May 1, 2017
[5] 2018 – TIOL – 3895–CESTAT–MAD.
[6] 2010(17) STR 6 KARNATAKA

construction is not liable to service tax. Thus the conclusion stands that these activities were non-commercial in nature and did not fall under the levy of taxable services.

9. Lastly, on the issue that service tax is not leviable on construction activities related to independent residential houses, the learned Counsel has again relied on the decision of the Tribunal in their own case, **Aakriti Construction**, holding that construction of residential houses were for individuals for their personal use and the same were clearly excluded from 'Construction of Residential Complex Services'. Further, we find that the appellant has placed on record the certificates of various individuals stating that the appellant had either constructed a house for them or the work of renovation and reconstruction of his plot of land was undertaken by the appellant.

10. We take note of the fact pointed out by the learned Counsel that the decision of the Tribunal rendered in their own case has not been challenged and hence findings recorded therein are binding and clearly applicable in the present case involving the same controversy in the subsequent period.

11. Although on merits, we have decided the issues in favour of the appellant and, therefore, the appeal needs to be allowed, however, an objection has been raised that the demand is completely time barred. The submission of the learned Counsel is that it is not open to the Department to invoke the extended period of limitation when the Department has already issued a show cause notice dated October 19, 2010 for the period April 1, 2005 to December 31, 2009,

which shows that the Department was well aware of the facts. Reliance has been placed on the decision of the Apex Court in **Nizam Sugar Factory versus CCE**[7], observing that when first show cause notice was issued all the relevant facts were in the knowledge of the authorities and therefore, while issuing the second show cause notice on same/similar facts, suppression of facts on the part of the assessee could not be taken. The learned Counsel for the appellant has taken us through both the show cause notices in *extenso* and we do not find any difference in the contents thereof. In fact the two show cause notices are verbatim. We, therefore hold that the extended period of limitation cannot be invoked and on this ground alone, the appeals need to be allowed.

12. The appeal filed by the Revenue is mainly on the issue whether in view of the facts and submissions as made in (a) to (d) above, the demand of Service Tax amounting to Rs.2,43,36,034/- (Rupees Two Crores, Forty Three Lakhs, Thirty Six Thousand and Thirty Four only), as raised vide Show Cause Notice dated 17.10.2014, and confirmed by the adjudicating authority under Section 73(2) of the Finance Act, 1994 vide the impugned Order-in-Original No. JAI-EXCUS-000-COM-26-19-20 dated 30.08.2019, was required to be confirmed by holding that abatement in terms of Notification No.1/2006-S.T., dated 01.03.2006 is not available as the value of free supply of material, which is part of the contract value and which has been charged by the assessee in the bills raised to the service recipients, has not been included in the taxable value.

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[7] 2006(4) TMI 127 (SC)

13. In view of our discussion above, we do not find any merit in the Revenue’s appeal (S.T. Appeal No.52714 of 2019) and hence the same is rejected.

14. Resultantly, the impugned order is hereby set aside. The appeal (S.T. Appeal No.50263 of 2022) is, accordingly allowed both on merits as well as on delay in issuing the show cause notice.

[Order pronounced on 18th August, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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