IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76795 of 2017

(Arising out of Order-in-Original No.15/PR.COMMR/ST-I/KOL/2017-18 dated 09.06.2017 passed by Principal Commissioner of Service Tax-I, Kolkata.)

Commissioner of CGST & CX, Kolkata North Commissionerate
(GST Bhawan (2nd Floor), 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)
...Appellant

VERSUS

M/s. Lumino Industries Limited
.....Respondent
(307, Swaika Cnetre, 4A, Pollock Street, Kolkata-700001.)

APPEARANCE

Shri A. Roy, Authorized Representative for the Appellant (s)
Shri Puneet Agrawal & Shri Yuvraj Singh, Advocates for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO. 75029/2022

DATE OF HEARING : 27 October 2021
DATE OF DECISION : 11 January 2022

P.K.CHOUDHARY :

The present appeal has been filed by the Revenue being aggrieved with the Order-in-Original dated 09thJune, 2017 passed by the learned Commissioner, whereby the demand of Service Tax ofRs.8,67,02,265/- for the period 2010-11 to 2014-15 as proposed in the Show Cause Notice (SCN) dated15th October 2015 has been dropped by the Ld. Commissioner.

2. Briefly stated, the facts of the case are that the Respondent *inter alia* is engaged in the provision of Erection, Commissioning and Installation Services, Works Contract Services and Goods Transport

Agency Services and are engaged in execution of turnkey contracts for various power distribution authorities in relation to various rural electrification projects awarded to them. An investigation was conducted by the DGCEI (now DGGI) wing of the department as regards non-payment of Service Tax on the entire turnkey project by the Respondent as they were discharging Service Tax only on a part of the contract by treating the contracts as two separate contracts i.e. one for supply of goods and another for supply of service and thereby discharging Service Tax only on the service component whereas, as per the department, the entire turnkey contract would be subjected to Service Tax under 'Works Contract Service' as defined and the Respondent had to follow the provisions of Rule 2A of the Service Tax (Determination of Value) Rules, 2006. After the process of investigation was done, the Respondent was issued with a Show cause cum demand notice dated 15/10/2015 demanding service tax from the Respondent for the period April 2010 to March 2015 by treating the said services as provision of works contract service. The said show cause notice was adjudicated by the learned Commissioner wherein the entire proceedings were dropped as the learned Adjudicating authority held that though the services in question would qualify as a works contract service, however the SCN has curtailed the option regarding quantification of tax liability available to the Respondent in terms of the statutory provisions by not giving them the option of deduction of value of goods as envisaged in the Valuation Rules and only providing them the option of abatement. It was also held by the learned Commissioner that the Respondent had the option either to consider the entire amount involved in the work order and pay tax after availing abatement or they can pay tax only on the service components at full rate if the same is clearly discernible in the work orders which was the case of the Respondent and hence the SCN has failed to survive on merits. The terms of the contracts were also noted while passing the Order-in-Original by the

learned Adjudicating authority. Hence the present appeal by the department against the captioned Order-in-Original.

3. Shri A.Roy, learned Authorized Representative appearing for the Revenue department justified the order of the review authority and stated that the learned Adjudicating authority has merely dropped the demand on the ground that the SCN has not provided option of valuation for works contract service to the Respondent. He further stated that when the classification of the service as per the SCN has been accepted by the learned Adjudicating authority then dropping of demand on the ground that proper valuation has not been considered by the department while issuing the SCN is bad in law and hence the demand should have been confirmed as the Respondents have mis-declared their classification of services. He thus relied on the grounds of appeal filed by the department.

4. Shri Puneet Agarwal, learned Advocate appeared on behalf of the Respondent. He contended that the order of the learned Adjudicating authority is a detailed order covering all aspects of taxation of work orders in dispute and the learned Commissioner has rightly dropped the demand of Service Tax as in the present case the Respondent has correctly paid Service Tax on the entire service component of the contract as defined in the work order. He further submitted following judgments in his favour:

a. Commissioner of Central Excise & Customs, Kerala Vs Larsen and Toubro Ltd (2016) 1 SCC 170

b. Federation of Indian Hotel and Restaurant Association of India C UOI 2016 (44) STR 3 (Del)

c. CCE Vs Pragati Edifice Pvt. Ltd. 2019 (31) GSTL 241 (Tri- Hyd)

d. Nagarjuna Construction Co. Ltd. Vs. UOI &Anr (2013) 1 SCC 721

5. He further submitted that what is chargeable to Service Tax is the service component alone and the transfer in property of goods involved in execution of works contract cannot be taxed by the Parliament by levying Service Tax on the same and the same is also defined under the scheme of Service Tax both pre and post negative list regime w.e.f. 01/07/2012.

6. He also submitted that since the contracts itself provide for Supply and Erection contracts values separately, then the question of taking the value of supply contract also for the purpose of valuation of Service Tax does not arise and the same is against the scheme of the act.

7. He thus states that the departmental appeal is devoid of merits and the order of the learned Adjudicating authority should be upheld.

8. Heard both sides through video conferencing and perused the appeal records.

9. The only question to be decided in the present Appeal is whether the valuation mechanism as per Rule 2A of the Service tax (Determination of Value) Rules, 2006 provides for optional methods or not. On the perusal of the contract papers which has been extracted at pages 48-50 of the Order-in-Original, it is seen that the contract provides for separate values for supply of materials and there being transfer of property in goods from the Respondent to the intended beneficiary, the same cannot form part of value for the purposes of Works Contract Service and since the value is clearly determinable in the invoice raised by the Respondent, the same is to be allowed as deduction from the value of the entire contract leading to the conclusion that only the Erection and Commissioning job of the contract would be leviable to Service Tax at full rate, which in our view has been paid by the Respondent and also accepted by the Revenue during the investigation proceedings. It is not the case of the Revenue that the Respondents have short paid Service Tax on the

erection job rather the allegation is short payment of Service Tax by treating the supply component also in valuation of Service Tax.

10. We also find that the issue is squarely settled by the judgment of Tribunal in the case of Pragati Edifice (*supra)* wherein it was held by the bench as-

> ***"11.*** *We have considered the arguments on both sides and perused the records. The demands in all these cases are under the works contract. There is no dispute that in all these cases the appellant not only supplied materials but also rendered services related to the works contract. Therefore, these are all composite works contracts. It is not in dispute that the appellant has not sought or followed the procedure required for composition scheme. Now, we proceed to decide each of the demands on merits.*
>
> *(i) The demand of Service Tax on residential complex services : At this stage, it would be profitable to examine the various legal provisions and to issue decisions with regard to levy of Service Tax on construction of residential complex services.*
>
> *(a) The Constitution of India divided the legislative powers between the Union and States listing them in three lists of the Seventh Schedule. Service Tax is levied by the centre as per its legislative competence under Article 265 read with Entry 97 of List I of this Schedule. Tax, on sale or purchase of goods, falls in the competence of States as per List II. Initially, Constitution of India (as well as its predecessor Government of India Act, 1935) did not provide for taxing the goods used in executing composite, indivisible works contracts treating such use of goods as sale. The State's attempt to tax in such a manner was struck down by the Constitutional Bench of Hon'ble Supreme Court in the case of State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. - 1959 SCR 379 = 2015 (330) E.L.T. 11 (S.C.). After examining this judgment, the Law Commission of India, in its 61st Report suggested three alternative amendments to the Constitution to bring the goods used in execution of works contracts within the legislative competence of the States to tax. Accepting one of these alternatives, the Parliament passed the 46th Amendment to the Constitution in 1983 by inserting clause (29A) to Article 366, the definition clause as follows :*
>
> *366(29A) "tax on the sale or purchase of goods" includes -*

> *(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;*

(b) This 46th Constitutional amendment was challenged in Builders' Assn. of India v. Union of India, (1989) 2 SCC 645 and it was upheld by the Apex Court. Thus, the goods component of the indivisible works contracts fell within the legislative competence of the States to tax.

(c) The legislative competence of the Union to tax services itself is not in doubt because the Service Tax itself is under the residuary power under Entry 97 of List I (Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists).

(d) The question as to whether such taxation is covered by the charging section of the Service Tax provisions (Finance Act, 1994) or otherwise was examined by the Hon'ble Supreme Court in the case of Commissioner of Central Excise and Customs v. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]. The charging sections in this Act are Sections 66 and 66A. While Section 66 provides for charging services within India, 66A provides for charging the recipient of a service for services received from outside India.

(e) Section 66 reads as follows :

"There shall be levied a tax (hereinafter referred to as the Service Tax) at the rate of ten per cent of the value of taxable services referred to in sub-clauses …… of clause (105) of Section 65 and collected in such manner as may be prescribed."

(f) The sub-clauses of clause (105) of Section 65 listed various services. With effect from 1st June, 2007, 'Works Contract Service' has been introduced in this clause by sub-clause (zzzza) of clause (105) of Section 65. Even before the introduction of this sub-clause, Revenue sought to charge Service Tax under various other heads on composite works contracts allowing abatement towards the cost of materials as per applicable notifications. Hon'ble Apex Court held that 'works contract is a separate species of contract distinct from the contract for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. It was further held that prior to the introduction of sub-clause (zzzza) of clause (105) of Section 65, there was neither any charging section nor machinery to levy and assess Service Tax on indivisible works contracts. The relevant paras of this landmark judgment are as below :

17. We find that the assessees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. In Gannon Dunkerley, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows :-

> *"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the Learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427).*

27. In fact, the speech made by the Hon'ble Finance Minister in moving the Bill to tax Composite Indivisible Works Contracts specifically stated :-

> *"State Governments levy a tax on the transfer of property in goods involved in the execution of a works contract. The value of services in a works contract should attract Service Tax. Hence, I propose to levy Service Tax on services involved in the execution of a works contract. However, I also propose an optional composition scheme under which service tax will be levied at only 2 per cent of the total value of the works contract."*

42. It remains to consider the argument of Shri Radhakrishnan that post, 1994 all indivisible works contracts would be contrary to public policy, being hit by Section 23 of the Indian Contract Act, and hit by Mcdowell's case.

43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess Service Tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

44. We have been informed by Counsel for the revenue that several exemption notifications have been granted qua Service Tax "levied" by the 1994 Finance Act. We may only state that whichever judgments

which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of Service Tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of.

45. We, therefore, allow all the appeals of the assessees before us and dismiss all the appeals of the Revenue.

> *(g) Thus, the established legal position is that 'Works Contract Service' can be charged as 'works contracts' only under Section 65(105)(zzzza) and only with effect from 1-6-2007.*
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> *(h) In the case of Real Value Promoters Pvt. Ltd. and Others as reported in 2018 (9) TMI 1149-CESTAT, Chennai, the question which arose was whether a demand can be made on 'commercial and industrial construction service' under Section 65(105)(zzzh) of the Finance Act, 1994 after 1-6-2007 where the nature of contract is a composite contract involving both supply of materials and rendition of services. It has been held that "For the period post 1-6-2007, Service Tax liability under the category of 'commercial or industrial construction service' under Section 65(105)(zzzh), 'Construction of complex service' under Section 65(105(zzzq) will continue to be attracted only if the activities are in the nature of services simpliciter.*
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> *(i) Thus, if the services rendered are in the nature of composite works contracts, they cannot be charged to Service Tax prior to 1-6-2007 and can be charged post this date only under this head 65(105)(zzzza) and not under any other head.*
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> *(j) In the case of M/s. Krishna Homes v. CCE, Bhopal and CCE, Bhopal v. M/s. Raj Homes as reported in 2014 (3) TMI 694-CESTAT, Ahmedabad, the scope of taxing 'Composite Works Contracts' rendered in connection with construction of complex services prior to 1-7-2010 was examined. 'Construction of complex services' was covered in Section 65(105)(zzzh) and in this clause an explanation was added w.e.f. 1-7-2010. This reads as follows :*

(zzzh) to any person, by any other person, in relation to construction of complex;

"Explanation. - For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer."

(k) The definition of 'Works Contract Service' is as follows :

(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation. - For the purposes of this sub-clause, "works contract" means a contract wherein,

(i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) Such contract is for the purposes of carrying out, -

(a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) Construction of a new residential complex or a part thereof; or

(d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

(l) Before the introduction of the explanation in [sub-clause] (zzzh) w.e.f. 1-7-2010, in all cases where the builder entered into an agreement to sell flats and collected advances, but the actual transfer of the property took place only after the completion certificate is issued, the service was considered as self-service by the builder only and not a service provided to the customer and hence was not taxable. Similarly, where the semi-built flats are sold and then the customer enters into an agreement with the builder for its completion, such agreement, being in the nature of service for a flat for personal use, was also excluded from the definition of 'residential complex' under Section 65(91a) which reads as follows :

"(ii) "Residential Complex" means any complex comprising of -

(i) a building or buildings, having more than twelve residential units;

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this clause, -

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;

[Section 65(91a) of the Finance Act, 1994]"

(m) Thus, as far as Service Tax, under 'construction of complex service' in respect of residential complexes is concerned, prior to 1-7-2010 (when the explanation was inserted), no tax could be levied. This was also clarified by the C.B.E. & C. in Circular No. 108/2/2009-S.T., dated 29-1-2009. The question as to whether this limitation on taxation prior to insertion of the explanation in 'construction of complex services' also extends to cases where such services are rendered as 'works contract service' was examined and answered in affirmative in the case of Krishna Homes (supra) by the Tribunal. This ratio has been followed in subsequent orders including by this bench. The relevant portion of the order in the case of Krishna Homes v. CCE, Bhopal [2014 (34) S.T.R. 881 (Tri. - Del.)] is as follows :

"Coming first to the question as to whether the activity of M/s. Krishna Homes and M/s. Raj Homes was taxable during the period of dispute or not, by Finance Act, 2005, Clause (zzzh) was introduced into Section 65(105) of Finance Act, 1994, so as to bring within the purview of the term 'taxable service', a service provided or to be provided to any person by any other person "in relation to construction of complex". The expression "construction of complex" was defined in sub-section (30a) of Section 65 and accordingly this expression covered - "(a) construction of a new residential complex or a part thereof or (b) completion of finishing services in relation to residential complex 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; or (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex". The expression residential complex was defined in Section 65(91a) of the Finance Act, 1994 as any complex

comprising of - "(i) a building or buildings, having more than twelve residential units; (ii) a common area; and (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by any authority under law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person". There is no dispute that the complex constructed by both the assessees in these appeals are covered by the definition of "residential complex" as given in Section 65(91a). There is also no dispute that both the assessees had engaged contractors for construction of the complexes. The dispute in these appeals is as to whether the assessees would be liable to pay Service Tax on the amounts charged by them from their customers with whom they had entered into agreements for construction of the residential units and whose possession was to be handed over on completion of the construction and full payment having been made by the customers. It is seen that on this point, the Tax Research Unit of the Central Board of Excise & Customs, which is a wing of the C.B.E. & C. dealing with legislation work, had vide Circular No. 332/35/2006-TRU, dated 1-8-2006 clarified that in case where a builder, promoter, developer builds a residential complex having more than 12 residential units by engaging a contractor for construction of such residential complex, the contractor shall be liable to pay Service Tax on the gross amount charged for the construction service provided to the builder/promoter/developer under construction of complex service falling under Section 65(105)(zzzh) of the Finance Act, 1994 and that if no person is engaged by the builder, promoter, developer for construction work who undertakes construction work on his own without engaging the services of any other person than in such cases, in absence of the service provider and service recipient relationship, the question of providing taxable service to any person by any other person does not arise. W.e.f. 1-7-2010 an explanation was added to Section 65(105)(zzzh) which was as under :-

> *"Explanation. - For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer."*

Thus, in terms of this explanation, when a builder/promoter/ developer got a residential complex constructed for his customers with whom he had individually entered into agreements, in terms of which the prospective customers were required to make payments for the residential units to be constructed in instalments and the possession of

the residential units was to be given to the customers on completion of the complex and full payment having been made, the builder/promoter/developer was to be treated as a deemed provider of construction of residential complex service to his customers. Thus, by this explanation, the scope of the Clause (zzzh) of Section 65(105) has been expanded and this amendment by adding an explanation has been held by this Tribunal in the case of CCE, Chandigarh v. U.B. Construction (P) Ltd. (supra) as prospective amendment. In this regard, para 5 of this judgment is reproduced below :-

> *"5. In Maharashtra Chamber of Housing Industry v. Union of India - (Bom.), the validity of the 'Explanation' added to Sections 65(105)(zzq) and (zzzh) was challenged on several grounds. The Bombay High Court, also considered the issue whether the explanation was prospective or retrospective in operation and ruled that the explanation inserted by the Finance Act, 2010 brings within the fold of taxable service a construction service provided by the builder to a buyer where there is an intended sale between the parties whether before, during or after construction; that the 'Explanation' was specifically legislated upon to expand the concept of taxable service; that prior to the explanation, the view taken was that since a mere agreement to sell does not create any interest in the property and the title to the property continues to remain with the builder, no service was provided to the buyer; that the service, if any, would be in the nature of a service rendered by the builder to himself; that the explanation expands the scope of the taxable service, provided by builders to buyers pursuant to an intended sale of immovable property before, during or after the construction and therefore the provision is expansive of the existing intent and not clarificatory of the same; and is consequently prospective".*

9. In view of the above, though in view of the Apex Court judgment in the case of M/s. Larsen & Toubro Limited and Others v. State of Karnataka & Others (supra), the agreements entered into by a builder/promoter/developer with prospective buyers for construction of residential units in a residential complex against payments being made by the prospective buyers in instalments during construction and in terms of which the possession of the residential unit, is to be handed over to the customers on completion of the residential complex and full payment having been made, are to be treated as works contracts, it has to be held that during the period of dispute, there was no intention of the Government to tax the activity in terms of such contracts a builder/developer with prospective customers for construction of residential units in a residential complex. Such works contracts involving transfer of immovable property were brought within the purview of taxable service by adding explanation to Section 65(105)(zzzh) w.e.f. 1-7-2010, and therefore, it has to be held that such contracts were not covered by Section 65(105)(zzzh) during the period prior to 1-7-2010."

(n) To sum up, as far as construction of 'residential complexes' by the builders are concerned :

*(i) Prior to 1-6-2007, if it is a composite works contract, no Service Tax is leviable in view o**f** the judgment of the Hon'ble Apex Court in the case of Larsen & Toubro (supra).*

(ii) After 1-6-2007, it is chargeable as 'works contract' only if it is a composite contract and under 'construction of complex services' if it is a service simpliciter.

(iii) However, after 1-6-2007 but prior to 1-7-2010, whether it is a service simpliciter or a works contract, if the service is rendered prior to issue of completion certificate and transfer to the customer, it is not taxable being in the nature of self service.

(iv) Further, whenever the service is rendered for completion or construction of a flat for personal use of the service recipient, no Service Tax is payable in view of the exclusion in the definition of residential complex service.

(v) After 1-7-2010, Service Tax is chargeable under the head of 'construction of complex services' if it is service simpliciter and under 'works contract service' if it is a composite works contract.

(o) In view of the above, it is well settled legal position that whether the service is rendered as service simpliciter or as a works contract, no Service Tax can be levied on construction of residential complex prior to 1-7-2010. Learned Counsel would submit that for the period post 1-7-2010, they have been discharging Service Tax appropriately. This is a fact which can be verified to ascertain the full tax liability for the period post 1-7-2010 or otherwise.

(ii) The demand of Service Tax on construction of Mahatma Gandhi Cancer Hospital and Research Institute : Learned Counsel sought to impress upon us that it is not meant for industry or commerce and therefore, a hospital building cannot be subjected to Service Tax. We do not find any reason to hold that the activity of a corporate hospital does not amount to commerce or industry. In fact, health care and hospitals is one of the most profitable and fast growing service industries in the country. In view of the above, we do not find any reason to hold that the construction of hospital building of a corporate hospital is excluded from the definition of works contract service. It is clearly covered by Section 65(105)(zzzza)(ii)(b) as a new building meant for the purpose of commerce or industry. The demand on this count, therefore, needs to be upheld and we do so.

(iii) The demand of Service Tax on construction of administrative building for Indian Registrar of Shipping : We find that the Indian Registrar of Shipping is regulatory body who registers ships and vessels in the country and also classifies them and does related

activities. These cannot be termed as an act of commerce or industry. Learned departmental representative submits that the IRS charges fees for its activities. Even if it does so it is similar to that of other regulatory agencies such as RT officer, Transport Authority charging fees for issuing a driving license or for registering a vehicle. It is neither an organisation involved in commerce or industry nor does the organisation make any profit. In view of the above, we find that the demand on construction of administrative building for IRS is liable to be dropped and we do so.

12. *In view of the above, we find that the demand under works contract on construction of residential complexes post 1-7-2010 and on construction of cancer hospital building need to be upheld and the rest of the demands need to be set aside. As far as the composition scheme is concerned, the assessee has the option of paying Service Tax under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, if he chooses to do so. The mere fact that they have not opted for this earlier does not reduce their entitlement to opt for this scheme now. The demand of Service Tax needs to be recomputed as above, after following principles of natural justice and giving the assessee an opportunity to present their case including, indicating if they desire to avail the benefit of composition scheme. Interest as applicable will have to be paid on the differential Service Tax, if any."*

11. We find that the Tribunal in the above judgment has dealt in great details the option of paying Service Tax under the composition scheme and it cannot be forced on the assessee.

By following the said principles, we find that the impugned order cannot be interfered with and accordingly, we uphold the same. The appeal is thus dismissed on the above terms.

(Order pronounced in the open court on 11 January 2022.)

Sd/

(P.K.CHOUDHARY)

MEMBER (JUDICIAL)

Sd/

(P.V.SUBBA RAO)

MEMBER (TECHNICAL)

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