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*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   *Judgment reserved on: 11.08.2026*
Judgment delivered on: 01.09.2026
Judgment uploaded on: 01.09.2026

\#   **CNR No: DLHC010366612023**

\+   **SERTA 15/2023 & CM APPL. 47934/2023**

HOSPITECH MANAGEMENT CONSULTANTS PVT LTD ....Appellant

versus

PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX .....Respondent

<u>Advocates who appeared in this case</u>

For the Appellant : Dr. Prabhat Kumar, Mr. Pralabh Mathur, Mr. Karan Kanwal, Advs

For the Respondent : Mr. Atul Tripathi, SSC with Mr. Shubham Mishra, Mr. Gaurav Mani Tripathi, Mr. Akshay Sagar and Mr. Madhav Anand, Advs. for CBIC

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

<u>JUDGMENT</u>

<u>MANMEET PRITAM SINGH ARORA, J.</u>

1. The present service tax appeal has been filed under Section 83 of the Finance Act, 1994 [‘Act of 1994’] read with Section 35G of the Central Excise Act, 1944, challenging CESTAT[1]’s Final Order dated 15.05.2023 [‘Impugned Order 1’] whereby levy for payment of service tax for the normal period of limitation[2] along with interest was upheld.

2. The Appellant has also assailed CESTAT’s Miscellaneous Order dated 30.06.2023 [‘Impugned Order 2’] whereby a reduced penalty of Rs. 4,50,000/- under Section 78 of the Finance Act was imposed on the Appellant.

3. Initially, Commissioner of Service Tax (Adjudication) *vide* order dated 31.03.2014 raised a demand of service tax for Rs. 65,75,890/- along with interest for longer period of five years by invoking proviso to Section 73(1) of the Act of 1994[3], demand of CENVAT[4] credit of Rs. 12,360/- along with interest, and imposed a total penalty of Rs. 65,93,250/-.

3.1. The breakdown of penalty amount was Rs 65,75,890/- under Section 78 of Act of 1994 + Rs. 5000/- under Section 77 of Act of 1994 + Rs.12,360/- under Rule 15 of the Credit Rules read with Section 78 of the Act of 1994.

4. This order dated 31.03.2014 was challenged before CESTAT, which led to the passing of the Impugned Orders 1 and 2.

[1] Customs Excise & Service Tax Appellate Tribunal
[2] July 01, 2009 to March 30, 2010
[3] April 01, 2005 to March 30, 2010
[4] Central Value Added Tax

5. Pertinently, challenge to the demand of recovery of CENVAT credit of Rs. 12,360/- along with interest as well as penalty of Rs. 12,360/- was not pressed before CESTAT and therefore this demand has attained finality. Similarly, the challenge to levy of penalty of Rs. 5,000/- under Section 77 of the Act of 1994 was also not pressed before CESTAT and has attained finality.

6. The Appellant in its written submissions dated 29.10.2025 has stated that it seeks to confine the challenge in this appeal only to the imposition of penalty of Rs. 4,50,000/-, which is relief (ii) in this appeal. This submission was also reiterated by the learned counsel for the Appellant at the hearing dated 11.08.2026.

7. Thus, relief (i) of the appeal challenging the imposition of service tax under the normal period of limitation as per Impugned Order 1 stands dismissed as not pressed. This judgment deals only with relief (ii) of the appeal, which arises from Impugned Order 2 vis-à-vis imposition of penalty of Rs. 4,50,000/- under Section 78 of the Act of 1994 for the period 01.07.2009 to 30.03.2010.

FACTUAL MATRIX

8. The brief facts of the present case are as follows:

8.1. The Appellant was engaged in providing services relating to the planning, designing, construction, management and supervision of projects for various government hospitals, medical colleges and educational institutions. The Appellant was duly registered with the Service Tax

Department under various taxable service categories, including architectural services, erection, commissioning and installation services, scientific and technical consultancy, management consultancy and construction services.

8.2. It is the case of the Appellant that its services were provided to institutions established for educational, charitable and health purposes and not for profit and, therefore, the services rendered in relation to their construction were non-commercial in nature and not liable to service tax. It was the case of the Appellant that these services do not fall within the ambit of taxation for levy of service tax under the Act of 1994.

8.3. The genesis of the dispute is a CERA[5] Audit Memo No. 95 dated 18.01.2006 ['Audit Memo'], whereby the audit authorities took the view that the services being rendered by the Appellant were taxable.

8.4. It is stated that the Service Tax Department, however, initially disagreed with the audit objection. In reply to the said Audit Memo, the Assistant Commissioner of Service Tax, Div.-I, Delhi *vide* letter dated 11.09.2006[6], addressed to Senior Audit Officer, CAP-IV, stated that the Appellant was engaged in providing construction service to medical and educational institutions as per Medical Council of India norms. The Assistant Commissioner relied upon CBEC Circular No. 80/10/2004-ST dated 17.09.2004[7] ['CBEC Circular'] to contend that constructions for institutions established solely for educational, religious, charitable, health,

[5] Central Excise Revenue Audit
[6] Annexed as Annexure -9 along with the present appeal
[7] Annexed as Annexure -10 along with the present appeal

sanitation or philanthropic purposes and not for profit, was non-taxable being non-commercial.

8.5. It is stated that the Assistant Commissioner of Service Tax, Div.-I, Delhi, thereafter sought information from Guru Ghasidas University, Bilaspur, one of the recipients of the Appellant's services, as regards the nature of services rendered by the Appellant.

8.6. It is stated that similarly the Deputy Commissioner of Service Tax, Div-I, Delhi, also, by communication dated 20.11.2007 addressed to Senior Audit Officer, CAP-IV, reiterated that payment of amount of Rs. 1,07,38,000/- paid by Guru Ghasidas University to the Appellant during 2004-05 was towards the construction and supervision of the medical college, dental college, nursing college, hostels, and staff quarters. It stated that no service tax was leviable in view of the aforesaid CBEC Circular and accordingly requested the Senior Audit Officer that the audit objection be dropped.

8.7. It is stated, however, that Deputy Director (CERA) *vide* letter dated 26.12.2007 informed the Commissioner of Service Tax that the objection had already been incorporated in C&AG Audit Report No. 7/2007. It requested that an Action Taken Report [‘ATR’] of the Department may be sent directly to the C&AG through the Ministry for further necessary action at the end of C&AG.

8.8. It is stated that in this background, in July-August, 2010 the Appellant's records were internally audited by the service tax Commissionerate for the period 2005-06 to 2009-10, under Rule 5A of the

Service Tax Rules, 1994 and an objection regarding taxability was raised, which were in dispute earlier when CERA audit was carried out.

8.9. It is stated that a Show Cause Notice dated 22.10.2010 ['SCN'] was issued by the Commissioner of Service Tax, proposing the invocation of the extended period of limitation, levying the demand of service tax along with interest, the denial of CENVAT credit, and the imposition of penalties.

8.10. It is stated that the Appellant filed WP(C)199/2011, whereby *vide* order dated 24.01.2011, the Court directed that the matter be examined by the Commissioner of Service Tax.

8.11. It is stated that the case was further transferred to the Commissioner of Service Tax (Adjudication), which *vide* Order-in-Original dated 31.03.2014 confirmed the demand for service tax, CENVAT credit, along with interest, and penalty as set out in paragraph 3 and 3.1 hereinabove.

8.12. It is stated that the Appellant thereafter preferred an appeal before CESTAT which *vide* Final Order No. FO/ST/50658/2023-CU[DB] dated 15.05.2023, ['Impugned Order 1'] sustained the demand of service tax only for the normal period of limitation[8], along with interest. The Tribunal set aside the demand for the extended period[9] on the finding that there was no suppression of facts by the Appellant with the intent to evade payment of service tax, which is a *sine qua non* for invoking Section 73(1) of the Act of 1994.

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[8] July 01, 2009 to March 30, 2010
[9] April 01, 2005 to June 30, 2009

The Appellant has not pressed its challenge to Impugned Order 1 in this appeal. The Appellant has thus accepted the levy of service tax for the normal period of limitation.

8.13. It is stated that since the Impugned Order 1 did not deal with the question of penalty amount of Rs. 65,75,890/- imposed under Section 78 of Act of 1994, the Appellant filed an application for Rectification of Mistake [‘ROM’]. *Vide* a Miscellaneous Order dated 30.06.2023 [‘Impugned Order 2’], CESTAT reduced the penalty amount to Rs. 4,50,000/-. The Appellant has in the written submission confined the challenge to the levy of this penalty amount. It is thus, Impugned Order 2 which is the subject matter of the present appeal.

<u>SUBMISSIONS ON BEHALF OF THE APPELLANT</u>

9. Dr. Prabhat Kumar, learned counsel for the Appellant, stated that the penalty of Rs. 4,50,000/- is challenged on the ground that there was a bona fide understanding of the Appellant regarding classification and taxability of the income earned by the Appellant for the services provided to Government Hospitals and Educational Institutions. This view was also supported by the Service Tax Department itself, which had earlier consistently taken the view that the said services were non-taxable.

9.1. He contended that there was no fraud, collusion, willful misstatement, suppression of facts or intention to evade tax; and all the relevant information and documents had been furnished, by the Appellant, to the Department. He stated that admittedly all agreements, invoices and records were duly disclosed during audit and investigation. Therefore, there was no ground for imposing penalty under Section 77 of the Act of 1994.

9.2. He stated that similarly for invoking Section 78 of the Finance Act, Respondent would have to show that there was any fraud, collusion or suppression by the Appellant with the intent to evade service tax. In the facts of this case, however, Appellant acted under the bona fide belief that the services provided to Government Hospital and Educational institutions were non-commercial in view of the 'CBEC Circular'.

9.3. He relied upon letters dated 11.09.2006 and 20.11.2007 addressed by the Assistant Commissioner and Deputy Commissioner of Service Tax respectively to CERA stating that the services provided by the Appellant to its clients were non-commercial and not liable to service tax.

9.4. He stated that the bona fide of the Appellant was also accepted by CESTAT in Impugned Order 1 at paragraph no. 30 while setting aside the demand of service tax for the extended period of limitation.

9.5. Alternatively, he stated that the Appellant, in any event, is entitled to the benefit of Section 80 of the Act of 1994 on account of reasonable cause demonstrated for its failure as well as the Department's own initial view on the non-taxability of the services rendered by it.

<u>SUBMISSIONS ON BEHALF OF THE RESPONDENT</u>

10. Mr. Atul Tripathi, learned counsel for the Respondent stated that the services rendered by the Appellant were essentially architectural, engineering, design and consultancy services and not construction services.

He stated that the agreements, invoices and accounts showed that the Appellant's role was confined to preparation of designs, drawings, estimates, obtaining approvals, site visits and supervision, without any expenditure on construction material or receipt towards actual construction activity.

10.1. He stated that the Consultancy Agreement dated 11.04.2002, entered with the Guru Ghasidas University, established that the Appellant was engaged only for consultancy work.

10.2. He stated that accordingly, the services were appropriately classifiable as 'Architect's Services' under Sections 65(6) and 65(105) (p) of the Act of 1994 and, where applicable, as 'Management or Business Consultancy Service' under Sections 65(65) and 65(105) (r) of the Act of 1994.

10.3. He further stated that the Appellant's reliance on internal departmental correspondence between the Department and the Accountant General Central Revenue ['AGCR'] to contend that the Department itself had treated the services as construction services is misconceived, as classification must be determined from the actual nature of the services rendered.

10.4. He stated that a penalty has been levied on the Appellant for suppressing the value of taxable services. He stated that the Appellant had failed to correctly assess and discharge the total tax liability. He stated that the Appellant failed to pay or short paid service tax on the services rendered because of willful misstatement and suppression of facts. He stated that therefore penalty was leviable under Section 77 and 78 of the Act of 1994.

He stated that consequently, no interference is warranted with the Impugned Order 2, and the present appeal deserves to be dismissed.

CASE ANALYSIS

11. The Court has heard the counsels for the parties and perused the record.

12. The Commissioner of Service Tax (Adjudication) *vide* order dated 31.03.2014 confirmed a demand of Rs. 65,75,890/- towards services provided by the Appellant as a 'management of business consultant' including a demand of Rs.4,63,343/- towards services provided as an 'architect' for the period from 01.04.2005 to 30.03.2010, with recovery of interest, demand of CENVAT credit amounting to Rs. 12,360/- along with interest thereon, and levied total penalty of Rs. 65,93,250/- [breakdown of penalty is provided in paragraph no. 3.1 hereinabove] under Section 77 and 78 of the Act of 1994 as well as Rule 15 of the CENVAT Credit Rules, 2004.

13. The Appellant accepted the demand of CENVAT credit of Rs. 12,360/- with interest before CESTAT and the penalty of Rs. 12,360/-. Thus, the said demand has attained finality.

14. The Appellant challenged the aforesaid demand of service tax of 65,75,890/- with interest and penalty before CESTAT. The Tribunal set aside the service tax demand for the extended period of limitation on the finding that there was no suppression of facts, by the Appellant, with the intent to evade payment of service tax. The Tribunal concluded thus, there

was no justification for the invocation of proviso to Section 73(1) of the Act of 1994 for invoking the extended period of limitation. The demand for the extended period 01.04.2005 to 30.06.2009 was therefore, set aside.

15. The Tribunal *vide* Impugned Order 1 upheld the demand of service tax for the normal period, i.e., 01.07.2009 to 30.03.2010. The issue of taxability of the services rendered by the Appellant to the institutions was thus upheld.

16. Though the Appellant had challenged Impugned Order 1 in this appeal, however, it has not pressed the said challenge. The Appellant has, thus, accepted the levy of the demand of service tax for the normal period, i.e., 01.07.2009 to 30.03.2010 along with interest in these proceedings. Thus, the said demand for service tax has attained finality.

17. The Appellant filed before CESTAT an application for Rectification of Mistake of the Impugned Order 1 on the plea that the imposition of penalty of Rs. 65,75,890/- by the Commissioner of Service Tax (Adjudication) under Section 78 of the Act of 1994 had not been adjudicated. The Tribunal, taking into consideration its conclusion that the demand for extended period of limitation had been set aside, agreed with the contentions of the Appellant and reduced the penalty amount from Rs. 65,75,890/- to Rs. 4,50,000/- *vide* Impugned Order 2.

18. In the present appeal, the Appellant is challenging the levy of penalty amount of Rs. 4,50,000/-, imposed under Section 78 of the Act of 1994 *vide* Impugned Order 2.

19. The Appellant has relied upon the contents of the communications dated 11.09.2006 and 20.11.2007 addressed by the Assistant Commissioner and Deputy Commissioner of Service Tax respectively to the Senior Audit Officer, CAP-IV, contending that the services rendered by the Appellant to the Government Institutions was non-commercial and thus, not exigible to service tax. It has contended that the non-payment of service tax by the Appellant was thus a bona fide interpretation of the nature of its services and that there was no suppression by the Appellant warranting imposition of penalty.

20. The Appellant has relied upon Section 80 of the Act of 1994, which reads as under: -

> "Section 80. Penalty not to be imposed in certain cases.
>
> (1) Notwithstanding anything contained in the provisions of section 76, section 77 or first proviso to sub-section (1) of section 78 **no penalty** shall be imposable on the assessee for any failure referred to in the said provisions **if the assessee proves that there was reasonable cause for the said failure**".
>
> [Emphasis supplied]

21. The Commissioner by the SCN at paragraph 9(vi) proposed imposition of penalty under Section 78 of the Act of 1994 on the premise that the Appellant has deliberately suppressed facts with an intention to evade payment of service tax.

22. However, a perusal of the aforesaid communications dated 11.09.2006 and 20.11.2007 bears out the submission of the Appellant, that the Department was itself of the opinion that the services rendered by the Appellant to the Government Institutions was not exigible to service tax. It

lends credence to the submission of the Appellant that it had a reasonable and bonafide cause for its failure to deposit service tax.

23. We also take note of the fact that the Tribunal has while setting aside the levy of demand of service tax by the Commissioner for the extended period of limitation under proviso to Section 73(1) of the Act of 1994, returned a finding in favour of the Appellant that there was no willful suppression of facts by the Appellant with an intent to evade payment of service tax, which is a *sine qua non* for invoking Section 73(1) of the Act of 1994. The said finding of the Tribunal has not been challenged by the Respondent and has attained finality.

24. In our considered opinion, the said finding of the Tribunal has a material bearing on the allegations in the SCN for imposing penalty and prayer made by the Appellant by relying upon Section 80 of the Act of 1994 for seeking waiver of the penalty of Rs. 4,50,000/-.

25. A Co-ordinate Bench of this Court in **Bharat Hotels Ltd. v. Commissioner of C. Ex. (Adjudication)**[10], while examining the scope and applicability of Section 80 of the Act of 1994, held that where the material on record demonstrates that the assessee had acted under a bona fide belief regarding the non-taxability of the services in question and there was no deliberate intention to evade payment of service tax, such circumstances would constitute a reasonable cause within the meaning of Section 80 of the Act of 1994. Accordingly, in the absence of any contumacious or mala fide conduct on the part of the assessee, the benefit of Section 80 of the Act of

[10] 2017 SCC OnLine Del 12813 at paragraph nos. 27, 28 and 29

1994 was held to be available and the imposition of penalty was found to be unwarranted.

26. A similar view was taken by another Co-ordinate Bench of this Court in a batch of matters titled **M/s Bajaj Travels Ltd. v. Commissioner of Service Tax**[11]. The Court held that, notwithstanding a default in payment or deposit of service tax, the authorities are required to examine whether the assessee has been able to establish a bona fide and reasonable cause for such default. It was observed that where the conduct of the assessee establishes that the failure to deposit service tax was not deliberate, the statutory protection under Section 80 of Act of 1994 could be invoked. In such circumstances, penalties otherwise imposable under Sections 76 and 78 of the Act of 1994 were held liable to be waived.

27. In the present case, as well, the non-payment of service tax by the Appellant for the relevant period cannot be viewed as a deliberate or contumacious default, as the assessee had acted under a bona fide and reasonable belief that the services rendered by it were not exigible to service tax. Significantly, the material on record also indicates that the Department itself, at the contemporaneous time, had a similar view regarding the non-taxability of the services rendered by the Appellant. Such interpretational uncertainty, coupled with the absence of any material suggesting suppression, fraud, wilful misstatement, or an intention to evade tax, constitutes a reasonable cause within the meaning of Section 80 of Act of 1994. The default in payment of service tax, therefore, arose from a bona fide understanding of the applicable legal position rather than from any

[11] 2011:DHC:3908-DB at paragraph nos. 20, 21 and 22

deliberate attempt to avoid the statutory liability. We, therefore, find merit in the plea raised by the Appellant for seeking setting aside of the levy of demand for penalty.

28. In view of the aforesaid observations, the present appeal is allowed. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

ANIL KSHETARPAL, J

SEPTEMBER 01, 2026/mt/aj