

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.40813 of 2014

(Arising out of Order-in-Original No. 2/2014-ST dated 10.1.2014 passed by the Commissioner of Central Excise and Service Tax, Trichy)

Diocese of Tanjore Society

Bishop's House, PB No. 204
Trichy Road, V.O.C. Nagar
Thanjavur – 613 007.

Appellant

Vs.

Commissioner of GST & Central Excise

No. 1, Williams Road
Cantonment, Trichy – 620 001.

Respondent

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant
Shri Harendra Singh Pal, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40795/2023

Date of Hearing : 28.08.2023

Date of Decision: 15.09.2023

Per M. Ajit Kumar,

This appeal is filed against Order-in-Original No. 2/2014-ST dated 10.1.2014 passed by the Commissioner of Central Excise and Service Tax, Trichy (impugned order).

2. Brief facts of the case are that intelligence gathered by the Preventive Unit, Thanjavur revealed that the appellant was engaged in the activity of renting out their commercial building complexes located in and around Thanjavur to various tenants for commercial purposes. It appeared that the appellant being a service provider had not obtained registration from the department and had not paid the

appropriate service tax on the taxable services provided by them. The total income received by them was reflected in their profit and loss statements based on which they had filed their income tax returns. The services of renting of immovable property for use in the course or furtherance of business or commerce is liable to service tax under the category of 'Renting of Immovable Property service' with effect from 1.6.2007 in terms of sec. 65(90a) of the Finance Act, 1994. A Show Cause Notice dated 16.9.2013 was issued proposing to demand service tax of Rs.87,96,460/- along with interest for the period from 1.4.2008 to 31.3.2013 and for imposing penalties. After due process of law, the adjudicating authority confirmed the demand as proposed in the Show Cause Notice along with interest and imposed equal penalty under sec. 78 besides penalty under section 77 of the Finance Act, 1994. Aggrieved by the impugned order, the appellant is before the Tribunal.

3. No cross-objection has been filed by the respondent-department.

4. We have learned counsel Shri M.N. Bharathi for the appellant and Shri Harendra Singh Pal, learned Assistant Commissioner (AR) for the Department.

4.1 Shri M.N. Bharathi, learned counsel for the appellant submitted that the appellant is registered under the Societies Registration Act, 1860 and is under the direct control of the Bishop of Tanjore. As per the Memorandum of the Society its object is to promote the spiritual, educational, industrial, technical or agricultural and other interests primarily of the members of the Catholic Community but members of the other communities of the said Diocese of Thanjavur society are not excluded. The Diocese is a religious body being a part of Roman

Catholic mission headed by the Pope. Further the term "religious body" has not been defined in the Finance Act 1994 and the laws applicable to service tax. The definition of 'religious body' is given at section 81 of the Equal Opportunity Act, 2010 as a body established for religious purpose etc. As per section 65(90a) of the Finance Act 1994, 'renting of immovable property' does not include renting, letting, leasing etc. by a religious body or to a religious body. Hence as letting on rent of their various commercial building complexes being a religious body was not subject to service tax up to 30.06.2012, they did not seek registration with the department till 08.04.2013. He stated that a society established for religious purposes can be registered under the Societies Registration Act for charitable purposes. The term 'charitable purpose' in Section 1 and 20 of the Societies Registration Act includes societies formed for religious purpose. He relied on the decision of the apex court of **Hindu public vs Rajdhani Puja Samithee** (AIR 1999 SC 964) to state that the term 'charitable purpose' also includes the advancement of religion. In the case of **Radhaswamy Satsang Sabha vs Secretary of State India in Council 1939** [All. 757 = AIR 1939 All. 557] the Division Bench held with regard to the very Sabha that it was a religious and charitable institution and validly registered under Act No.21 of 1860. He also relied on Section 12AA of the Income tax act, 1961, and stated that the income of the appellant was exempt from inclusion under Section 11 *ibid.* This being so the department SCN dated 16.09.2013 demanding ST of Rs. 87,96,460/- was untenable. With respect to the extended period of limitation he stated that renting of immovable property by a religious body or to a religious

body was brought into service tax levy from 01.07.2012 consequent to the negative list-based levy of service tax. Further, mega exemption Notification 25/2012 has also stated that service tax would not be liable to an entity that is registered under Section 12AA of the Income Tax Act. He further stated that the question whether "service tax" under Section 65(105)(zzzz) of the Finance Act, 1994 on renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce is within the legislative competence of the Union Parliament is still before the Hon'ble Supreme Court in the case of **Union Of India vs UTV News Ltd.**, [2018 (13) GSTL 3 (SC)]. Therefore, the appellants were under the bonafide belief that the said activity would not attract tax liability. He submitted the following chart to trace the history of the legal developments regarding the impugned tax.

Date	Particulars
01.06.2007	"Renting of Immovable Property Services' have been brought under the purview of Service tax with effect from 1.6.2007 with a view to tax the activity of renting of immovable property for use in the course or furtherance of business or commerce.
18.04.2009	Hon'ble High Court of Delhi, in the case of M/s Home Solution Retail India Ltd & Others v UOI and Ors, 2010 (19) STR 3 (Del) held that renting per se cannot be regarded as service. Hence, no service tax could be levied on the activity of renting per se.
08.05.2010	Finance Act, 2010 was enacted on 8.5.2010. As a result, changes proposed by the Union Budget, 2010 in respect of the enlargement of the scope of 'Renting of Immovable Property Services' became the part of Finance Act, 2010 and applicable from the date to be notified in the notification issued in this respect after the enactment of Finance Act 2010.
18.05.2010	Assessee filed the Writ Petition before the Hon'ble Delhi High Court, challenging the constitutional validity of the retrospective amendment. In this regard, Hon'ble High Court of Delhi once again granted stay to Home Solution Retail (I) Ltd, from payment of service tax on renting of immovable property (2010 (19) STR 3 (Del))

01.07.2010	Notification No 24/2010 dated 22.6.2010 was issued to notify the date of amendment in the definition of 'Renting of immovable property services' with effect from 1.7.2010. The amendment has been given retrospective effect from 1.6.2007.
14.12.2010	The Hon'ble High Court held that interim order (stay) passed on earlier occasions ie Stay order dated 18.5.2010 shall remain in force. (2011 (21) STR 109 (Del)
10.01.2011	Hon'ble Apex Court passed an interim order to the effect that stay order dated 18.5.2010 granted to M/s Home Solutions by the Hon'ble Delhi High Court shall be nullified. Case was still pending before the Supreme Court for final hearing and yet to be disposed off
04.02.2011	Hon'ble Apex Court has passed an order to the effect that the High Court of Delhi will hear and dispose of the entire writ petitions as expeditiously as possible. Further, the Supreme Court has ordered that the interim order which was passed by the Supreme Court on 10.1.2011 would continue to operate till the disposal of the writ petitions in Delhi High Court.
30.03.2011	Hon'ble Supreme Court in the case of Mineral Area Development Authority v. Steel Authority of India, (2011) 4 SCC 450, addressed the issue of <i>"6. Whether "taxes on lands and buildings" in List II Entry 49 of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land?"</i> wherein the Hon'ble Supreme Court referred the issue to a nine judge bench stating: <i>"2..... However, in the present case, since prima facie there appears to be some conflict between the decision of this Court in State of W.B. u. Kesoram Industries Ltd. [(2004) 10 SCC 201] which decision has been delivered by a Bench of five Judges of this Court and the decision delivered by a seven-Judge Bench of this Court in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12], reference to the Bench of nine Judges is requested. The office is directed to place the matter on the administrative side before the Chief Justice for appropriate orders."</i>
23.09.2011	Hon'ble High Court of Delhi in the case of M/s Home Solution Retail India Ltd & Others v. UOI and Ors 2011 (24) STR 129 (Del) has upheld the constitutional validity of retrospective amendment by Finance Act, 2010 in definition of taxable service of commercial renting.
05.04.2018	In the case of Union of India vs. UTV News Ltd reported in 2018 (13) GSTL 3 (SC), the court held that this

	question of law has been referred to the Larger bench of the Supreme Court vide Mineral Area Development Authority v. Steel Authority of India - (2011) 4 SCC 450 and still remains pending before the Hon'ble Supreme Court, hence any case pertaining to this issue must be kept pending until the question of law is decided by the 9 judge bench of the Hon'ble Supreme Court.
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He submits that when there is a retrospective amendment as in the case of Notification 24/2010 dated 22.6.2010 from 1.6.2003 demanding of interest and penalty is untenable in view of the Hon'ble Supreme Court 's decision in the case of *Star India P Ltd vs CCE, Mumbai and Goa* reported in [2005 (3) TMI 10-Supreme court] and the same was followed by this Hon'ble Tribunal in the case of *Commissioner, Namakkal Municipality vs Commr. Of GST &CE, Salem* reported in 2023(7) TMI 206 - CESTAT Chennai. Moreover, when taxability is still under dispute and before the Hon'ble Supreme Court, invocation of extended period is not justified. Dispute is interpretational in nature, where the constitutional validity of the levy is yet to be decided. He placed reliance placed on the following case laws:

- Commissioner of C.Ex., Goa vs Mormagao Municipal Council - 2017 (7) GSTL 228 (Tri.Mumbai)
- Vodafone Essar South Ltd vs Commissioner of S.T.,Bangalore- 2020 (43) GSTL 249 (Tri.Bang)
- Nagar Palika Mandal vs Commissioner of CE, Jaipur- II-2019 (21) GSTL 516 (Tril-Del)
- Rajdhani Krishi Upaj Mandi Samiti vs Commr. Of C.Ex& ST, Jaipur-1-2019(24) GSTL 623 (Tri.Del)

He therefore prayed that this Hon'ble Tribunal may be pleased to allow the appeals and thus render Justice.

4.2 Shri Harendra Singh Pal, learned Assistant Commissioner (AR) has stated that from a reading of the bye laws of the Diocese it is seen that they are a Public Charitable and Educational Society and their activities are not confined to any particular religion. Therefore, while they may be entitled for exemption under the Income Tax Act as a charitable society, they are not entitled to exemption as a religious body under the Finance Act, 1994 and are liable to pay tax from 01/06/2007 when the category of 'Renting of Immovable Property service' was brought under levy in terms of sec. 65(90a) of the Finance Act, 1994. He further reiterated the points given in the OIO.

5. We have carefully gone through the appeal and heard the rival parties. It is seen that the period covered by the impugned order relates to the period 1.4.2008 to 31.3.2013 and hence involves the period prior to and after 01/07/2012 when the negative list-based levy of service tax came into force. The appellant has not disputed their service tax liability from 01/07/2012. The impugned order also at para 13 agrees that renting of immovable property does not cover renting by a religious body. The whole issue boils down to whether the appellant is a 'religious body' as contended by them and hence eligible to be exempt from tax till 01/07/2012 when the negative list-based levy came into force or whether they are a 'Public Charitable and Educational Society' and not a religious body as claimed by Revenue and come under the levy in terms of sec. 65(90a) of the Finance Act, 1994 from 01/06/2007. Another question which is related and seeks

an answer in the resolution of the dispute is whether a 'Public Charitable and Educational Society' can also be a 'religious body'.

5.1 To examine the issue it would be useful to extract section 65(90a) and section 65(105)(zzzz) of the Finance Act 1994 below:

Section 65(90a)

"Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include -

(i) renting of immovable property by a religious body or to a religious body; or

(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;

Explanation 1. - For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

Explanation 2.- For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property"

Section 65(105)(zzzz):-

"To any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or for furtherance of, business or commerce

....."

As per a plain reading of the sections renting of immovable property by or to a 'religious body' is not leviable to service tax before 01.07.2012 on which date the negative list-based levy was introduced for the first time. A difficulty arises in examining the issue because the phrase 'religious body' has not been defined in the Finance Act 1994. The benefit of a legal definition in tax laws is that it primarily serves as

mechanisms for examining the inclusion and exclusion of a subject from levy. Those subjects included in the definition are recognised by law to be subject to levy, though they may be eligible for exemption from tax separately those subjects excluded cannot be taxed. Hence determining the definition of 'religious body' is crucial to examining the question of levy. The Constitution too does not define 'religion' or 'religious body' and hence does not help in dealing with questions that arise from the interaction between law and religion. There may be pitfalls in attempting to define the phrase too narrowly due to the myriad variety of religions and religious practices, and the common understanding of the concept of 'religious bodies' with changing religious and cultural norms in society over a period of time. The different contexts of law in which the usage may arise may also require it to be treated differently as in taxation law, charity law, trust law etc.

5.2 Paragraph 5 of the impugned order carries an abstract of the statement from Rev. Fr. L. Sahayaraj. Both the sides have not questioned any of the averments made in the statement and it can hence be helpful in understanding the status of the Diocese. The said para is reproduced below:

“5. Therefore, a statement was recorded from Rev.Fr.L.Sahayaraj, Secretary of the Diocese of Tanjore Society who was authorized by Most Rev. Dr.M.Devadoss Ambrose, the President of the Society. In his statement dated 19.04.2013 deposed under Section 14 of Central Excise Act, 1944 read with Section 83 of Chapter V of the Finance Act, 1994, Shri. L. Sahayaraj has inter alia stated that,-

- i. The Diocese of Tanjore Society was registered under the Societies Registration Act, XXI of 1860 on 09.10.1958;
- ii. The objects of Society are religious and educational, charity, social service, development etc. as stated in the Memorandum of Association of Bylaws of the Society;

- iii. They are running Primary, Middle Schools, High Schools, Higher Secondary Schools, Arts and Science College, Nursing College, B.Ed., College and Industrial Technical Institutes;
- iv. As per the objects in Bylaws of the Society, the Education and Educational Institutions are primarily for Catholic and in addition for members of other communities without distinctions of caste or creed; that their institutions are open to all other communities according to the norms of the Government;
- v. The Society owns Ave Maria Complex, Cauvery Complex, Jubilee Towers all in VOC Nagar, Trichy Road, Thanjavur. Building at Santhome High Road. Building at Vallam which are rented to various commercial concerns, that they have already furnished the details of rent collected by them from the said commercial complexes;
- vi. The Diocese of Tanjore Society is a religious body and it is registered under Section 12AA of Income Tax Act, 1961; that the income of their society is exempted under Section 11 of the Income Tax Act, 1961; that as per Section 65(90a) of the Service Tax Act, the activity of renting of immovable Property by a religious body or to a religious body is excluded from the "Renting of Immovable Property Services" and hence, they have not registered and not paid the Service Tax for the period up to 30.06.2012;
- vii. They agreed that they are liable to pay service tax on the rental income from 01.07.2012 onwards. They got Service tax registration on 08.04.2013 for payment of Service tax under Renting of Immovable Property Services and their Service Tax Registration No. is AAATD0436HSD002.
- viii. So far they have not paid any Service tax and they will pay the appropriate service tax for the period from 01.07.2012 onwards,
- ix. Their Society is accepting Voluntary Contributions through Hundi or Dum box of the Churches and the Donors are not availing any exemption under income Tax Act for the donations made to the Society,
- x. Some of the schools run by them are aided by the Government and other schools are self-financing. Colleges are self-financing only. Three orphanages receive Government grants."

Further the objects and purpose of the Diocese is seen from the 'Memorandum of Association' as amended on 29/04/1985. Relevant portion is reproduced below:

MEMORANDUM OF THE DIOCESE OF TANJORE SOCIETY
(As Amended on 29-4-85)

1. Name of the Society:

THE DIOCESE OF TANJORE SOCIETY

2. Address of the Society

The address of the Society shall be BISHOP'S HOUSE, Trichy Road, Post Box No. 204, Thanjavur 613 007.

3. Area: The activities of the Society shall be confined to the Diocese of Thanjavur.

4. Objects: Inspired by the good News preached by Christ the objects or purposes for which the Society is established are the following:-

(a) Religious and Educational: To promote the spiritual, educational, industrial, technical or agricultural and other interests of primarily the members of the Catholic Community but members of the other communities of the said Diocese of Thanjavur society are not excluded in the places noted above including all the religious, charitable, benevolent and eleemosynary works of the said Diocese in the said places.

As regards Education and Educational Institutions they are primarily for Catholics and in addition for members of other communities without distinction of caste or creed.

(b) Charity: To perform works of charity primarily for members of the Catholic community in need but members of other communities irrespective of race, caste, community or creed are not excluded.

(c) Social Service: To engage in social service activities aimed at improving the living conditions and general welfare of the poor particularly farmers and other working people as well as poor and indigent persons primarily member of the Catholic community but members of other communities irrespective of race, caste or creed are not excluded.

(d) Development: To work for the total development primarily of the members of the Catholic Community but members of other communities are not excluded.

(e) To establish: Conduct, manage, promote, maintain, equip, administer, close down or dispose of Churches and Chapels, Primary, Middle, High and Higher Secondary Schools, social welfare centres, social training centres, technical schools, social institutions, dispensaries, hospitals, clubs, work guilds, recreational centres, orphanages, reading room, study circles agricultural schools, demonstration centres, nurseries and other related institutions to promote the objects of the society.

(f) To acquire: To the same extent as natural persons might or could do, to acquire by purchase, lease, mortgage, loan, gift, legacy,

bequest, exchange, right, privilege or otherwise from any persons, company society, government or institutions or anybody whatsoever movable and immovable properties of all descriptions deemed necessary or useful for any purpose of the society.

(g) To build: To erect buildings, hostel, bungalows, godowns, orphanages, community centres, welfare facilities, office buildings, schools, chapels, churches and any other type of building or structure whatsoever to further any purpose or purposes of the society and to maintain, deal with, manage, control, administer, develop, improve, alter, repair, demolish or reconstruct the same or any portions thereof.

(h) To take Gifts, Trusts: To take or receive any gift whether money or property, movable and immovable, donations in the form of debentures, stocks, shares of securities in any company or society whether incorporated or not or whether buy gifts by a person living or by legacy, bequest, will or foundation and whether subject to any special trust or not for any one or more of the objects of the society or for works connected therewith and to take such steps for the securing of such contributions for the funds of the society from either Indian or foreign sources as may from time to time be deemed expedient.

(i) To Alienate: By way of sale, mortgage, lease, release, loan, charge, hypothecation, pledge, exchange, hiring out, gift or otherwise, with or without security, properties or funds of the Society or any portion or portions thereof including the making of contributions or assistance, pecuniary or otherwise to charitable, educational, benevolent, social welfare or other institutions, bodies, persons as from time to time may deem, necessary or appropriate.

(j) To invest: To lay aside, deposit in banks or otherwise deal with the moneys or funds of the society not immediately required for the objects of the society and to subscribe for purchase, acquire, hold, sell, endorse and negotiate in every way debentures, stocks, shares and securities of every description on the money market.

(k) Funds: To borrow and to raise funds with or without security, manner the Society may think fit and to repay the same.

(l) Grants: To negotiate with and to enter into arrangements with any Government or authority whether Central, State, District, Municipal, Local, University, Donor agency or other people, public or private body as may seem conducive to the promotion or accomplishments of the objects of the Society or any of them and to obtain, collect, receive or recover from any such Government or authority or body, such grants, allowances, rights, concessions and privileges as may seem from time to time desirable and to carry out, exercise, comply with and utilize the same.

(m) Income; To use all income from the property movable and immovable or from the works of the Society as such, whensoever derived, for the objects of the Society as set forth in this memorandum of Association, provided that no portion thereof be

distributed among its members by way of profits, dividends or bonuses.

(n) Resume: To do or to cause to be done any such acts or things as shall be conducive to the social, economic, cultural, moral, ethical, patriotic, religious or physical welfare and development of the people of India, provided such things or acts be not contrary to nor inconsistent with the spirit and principles of the laws under which this society has been organized and registered.”

From the statement and the objects and purpose of the Diocese as seen from the 'Memorandum of Association' it is clear that it includes religious activity apart from other activities like charity, social service, etc. These activities are primarily for members of the Catholic community while members of other communities are not excluded. The income of the society is exempted under section 11 of the Income Tax Act 1961. In their reply to the SCN dated 20/11/2013 and noted at para 10 of the impugned order they have stated that the Diocese is a part of the Roman Catholic Mission.

5.3 We may at this stage examine some of the judgments of superior courts in addressing the issue involved. The Hon'ble Supreme Court examined the definition of 'religious denomination' in the landmark judgment of **The Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** [1954 AIR 282]. It was held that a denomination is "a collection of individuals, classed together under the same name; now almost always specifically, specially a religious sect or body having a common faith and organisation and designated by a distinctive name." In **S.P. Mittal v. Union of India and Others**, [1983 SCR (1) 729] the law was further elaborated. It was held that if a body has a:

1. Common Faith

2. Common Organisation

3. Distinctive Name;

it categorises as a religious denomination. The appellant has referred to the definition of 'religious body' as given in section 81 of the '**Equal Opportunity Act, 2010**' which is extracted below:

81 Definition of religious body For the purposes of sections 82 and 83, religious body means—

- (a) a body established for a religious purpose; or
- (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

The Act being a foreign legislation is not applicable in India.

5.3 The definition of a 'religious body' has to be broader than that of a 'religious denomination'. A religious denomination is a subgroup within a religion. Religious body can be a part of a religion or a religious denomination and established with the objective of propagating religion and primarily serving the members of its community. Religions are generally propagated and administered with the help of organizations within its domain that are closely integrated with society. These organisations are understood in common parlance to be 'religious bodies' as distinct from religion per se or a religious denomination. Hence, they are recognised by the public and societal institutions as a religious body. In the absence of any definition of a 'religious body' in law, the common understanding would have to be taken into consideration. By definition a Diocese is a district under the

pastoral care of a Bishop of the Christian Church. As per the Cambridge Dictionary a Diocese is 'an area controlled by a bishop'. As per the Merriam-Webster Dictionary it is 'the territorial jurisdiction of a bishop'. From the facts stated at para 5.1 and the discussions herein it is clear that in the context of service tax levy, the Diocese is found to be infused with the character of a religious body. It has been held by the Hon'ble Supreme Court in **Plasmac machine Mfg. Co. (P) Ltd. vs Collector of Central Excise**, [1991 supp. (1) SCC 57], that 'where definition of a word has not been given, it must be construed in its popular sense'. So also, in **M/s Indo International Industries vs Commissioner of Sales Tax, Uttar Pradesh**, [1981 (2) SCC 528], it has been held that "if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted".

5.4 Having found that the Diocese is found to be infused with the character of a religious body the question which arises is whether a 'religious body' can also be a 'public charitable and educational society'. A similar matter came up before the Hon'ble Supreme Court in **Hindu Public v. Rajdhani Puja Samithee**, (supra). The Hon'ble Court stated the law as follows:

"14. In our opinion, this contention is not well founded. More than ninety years ago, such a contention raised under Act 21 of 1860 was negatived by the Allahabad High Court in *Anjuman Islamia of Muttra v. Nasiruddin*. It was contended in that case that the registration of a society called "Anjuman Islamia" under Act 21 of 1860 was not permissible as the society was formed for "religious purposes only" and not for charitable purposes. The Allahabad High Court rejected the said contention and held that a society for religious purposes would ordinarily be a society for charitable purposes. A similar

question arose before the Madras High Court in Khaji Muhammad Hussain Sahib v. Majiday Mahmood Jamait Managing Committee. A Division Bench consisting of Wadworth. and Venkataramana Rao, JJ. held that Act 21 of 1860 was passed in 1860 when according to English Law, a gift for the advancement of religion or promotion of religious worship was treated as a charitable purpose and, therefore, a society formed for such a purpose would be a charitable society under Act 21 of 1860. The only condition was that it should be for the benefit of the public. No doubt, in some statutes enacted subsequent to Act 21 of 1860, the Legislature used the words “charitable” and “religious” but the definition of these words was expressly stated to be for the purposes of those, Acts. The subsequent legislation, the Madras High Court held, would not be helpful in interpreting the word “charitable” in Act 21 of 1860. The real question was: “What did the term mean in 1860?” We are in agreement with the view of the Allahabad and Madras High Courts. In fact, Lord McNaughten in his celebrated judgment in CIT v. Pemsel said that charitable purposes which came within the language and spirit of the statute of Elizabeth (43 Eliz Ch. 4) could be grouped into four heads (i) relief of poverty, (ii) education, (iii) advancement of religion, and (iv) other purposes beneficial to the community not coming under any of the preceding heads. The words in Act 21 of 1860 are, therefore, to be understood as including religious purposes also. Point 1 is held against the society.”

(emphasis added)

The judgment of the Hon’ble Supreme court has clarified the position that charitable purposes is to be understood as including religious purposes also.

5.5 The onus of proof of fulfilment of condition subject to which an exemption may be admissible lies on the assessee or upon a party claiming benefit under a notification, but in the case of subjecting an activity to levy under a taxing statute, the onus is on Revenue. Merely because the Diocese is registered under the Societies Registration Act, 1860, it cannot be said that it automatically means that the Diocese is not a religious body. In the light of the discussions above Revenue has failed to establish that the Diocese is not a religious body and will be covered by the definition under section 65(90a) of the Finance Act 1994. Hence, we find that the appellant will be subject to levy under service tax for renting of immovable property only from 01/07/2012

and not before that date. The appellant also agrees that they are liable to pay service tax from 01/07/2012.

6. The appellant has stated that changes proposed by the Union Budget, 2010 in respect of enlargement of scope of Renting of Immovable Property Services' became a part of Finance Act, 2010 and is applicable from the date to be notified. The same was challenged by the assessee's PAN India and during the impugned period, the courts had taken a view that the amendment was unconstitutional and had even granted a stay in this regard. Further, the Apex Court vide its order in **Union Of India vs UTV News Ltd.**, [2018 (13) GSTL 3 (SC)], while examining a question directly relatable to the scope and ambit of Entry 49 of List II of the Seventh Schedule to the Constitution of India dealing with "Taxes on lands and buildings" has categorically ordered all the cases on this issue to be deferred until the matter before the nine judges Bench in **Mineral Area Development Authority and others vs. Steel Authority of India and others** ((2011) 4 SCC 450) is decided. Therefore, the owners were under the bonafide belief that the said activity would not attract service tax liability. In a case where the constitutional validity of the levy is yet to be decided the dispute is interpretational in nature. We, agree with the appellant hence invocation of extended period is not justified.

6.1 Although the appellant has pleaded against the demand for interest on the duty due, it is seen that interest is necessarily linked to the duty payable, such liability arises automatically by operation of law. As per the Hon'ble Supreme Court's judgment in **Commissioner of Central Excise, Pune Vs M/s SKF India [2009-TIOL-82-SC-CX]**

interest is to be paid on delayed or deferred payment of duty for whatever reasons.

6.2 The demand and interest are hence to be restricted to the normal period and the penalties are to be set aside.

7. Based on the discussions above, we hold that the impugned order dated 10.01.2014 passed by the Commissioner of Central Excise and Service Tax, Trichy is partially modified as stated at para 5 above. The demand for duty and interest is also limited to within the normal period. All penalties are also set aside. The appeal is allowed on the said terms with consequential relief as per law, if any.

(Pronounced in open court on 15.9.2023)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

Rex