

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

REGIONAL BENCH - COURT No. III

**ST/MISC/APPLICATION No. 40092 of 2024  
In  
SERVICE TAX APPEAL No. 42823 of 2014  
And  
SERVICE TAX APPEAL No. 40147 of 2015**

(Arising out of Order-in-Original No. 07/2014 – ST dated 16.10.2014 passed by  
Commissioner of Central Excise, Trichy)

**Church of South India Trust Association**

Thanjavur Diocese, Diocesan Office,  
Puthur, Tiruchirapalli – 620017.

.... Assessee

Versus

**Commissioner of CGST & Central Excise, Trichy**

No.1 Williams Road, Contonment,  
Tiruchirapalli – 620 001.

.... Revenue

And

**Commissioner of CGST & Central Excise, Trichy**

No.1 Williams Road, Contonment,  
Tiruchirapalli – 620 001.

.... Revenue

Versus

**Church of South India Trust Association**

Thanjavur Diocese, Diocesan Office,  
Puthur, Tiruchirapalli – 620017.

.... Assessee

**APPEARANCE :**

Shri. M.N. Bharathi, Advocate, for the Assessee  
Shri M. Ambe, Authorised Representative for the Respondent

**CORAM :**

**HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)  
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.40434-40435/2024**

DATE OF HEARING : 15.04.2024  
DATE OF DECISION : 15.04.2024

**Per Ms. Sulekha Beevi. C.S**

The above appeals arise out of the same impugned order and were  
heard together and disposed of by this common order. Brief facts are that

the assessee M/s. Church of South India Trust Association Trichy – Thanjavur Diocese (herein after referred to as CSITA) had their Diocesan office at Trichirapalli and is registered under Companies Act 1956. The intelligence gathered by the officers of headquarters Anti Evasion unit of CGST and Central Excise Commissionerate, Trichy indicated that CSITA have been renting out their shops and premises for commercial activities and receiving rental charges which is taxable under the category of 'renting of immovable property service'. The assessee neither registered with the department under the said service category nor paid service tax on the taxable amount received by them. A show cause notice dated 07.04.2014 was issued to the assessee for the period 1.10.2008 to 30.9.2013 proposing to demand the service tax along with the interest and also for imposing penalty. Before adjudication the assessee paid the amount of service tax applicable to period after 30.06.2012 along with interest opting for Voluntary Compliance Encouragement Scheme (VCES). After due process of law the original authority confirmed the demand of service tax along with interest and imposed penalties for the period up to 30.06.2012. The amount paid as interest for the period after 30.06.2012, under VCES was ordered to be appropriated towards interest for the period prior to 30.06.2012. The penalties proposed for the period after 30.06.2012 was set aside. Aggrieved by the said order of confirmation of demand of service tax, interest penalties imposed, for the period up to 30.06.2012, the assessee has filed appeal no.42823/2014. Aggrieved by the order passed by the adjudicating authority wherein the adjudicating authority did not impose penalty for the period after 30.06.2012, the department has filed appeal No. ST/40147/2015.

2. The Ld. Counsel Shri. M.N. Bharathi appeared and argued for the assessee. The assessee is one of the constituents of CSI and is formed as trustee or agent for CSI with objective of acquiring immovable property and to apply both capital and income arising out of such properties towards promotion of religious purposes. The object of the church is to aid the work of the Church of South India commonly known as CSI. The assessee is registered under Section 25 of Companies Act and has been issued certificate of incorporation. The assessee owns various shops and rent its immovable properties to tenants for commercial purposes. They have received the rental income which is used for maintenance of churches, prayer houses, hospitals and schools and maintenance of bishops, deacons, pastors, teachers and other workers of CSI. Such income is also used for the relief, Provident Fund and for charitable purposes. The assessee had contended before the adjudicating authority that the assessee is a religious body and is not liable to pay service tax as per exclusion under Section 65 (90a)(i) of the Finance Act 1994. However, the show cause notice has been issued alleging that the assessee has not furnished the necessary documents to show that it is a religious body. The assessee filed writ petition before the Madurai Bench of Hon'ble High Court of Madras as W.P (M.D) No.7205 of 2013 and M.P (MD)No. 1 of 2013. As per order dated 26.04.2013 the Hon'ble Madurai bench directed the Department to consider the representation of assessee dtd 15.4.2013 in which they had stated that they are exempted from the levy of Service Tax as they fall under religious institution/body.

3. The Ld. Counsel adverted to the memorandum of association of the assessee to argue that the assessee uses its funds and income generated by renting of immovable property for conduct of hospitals, educational

institutions, refugee homes etc. One of the objects of the trust is to cater the need and also provide maintenance of bishops, presbyters, deacons, pastors, teachers, evangelists, doctors, nurses and other workers of the church. The object of the trust/association is to acquire sites for building and to build, alter or enlarge such buildings and also maintain churches, chapels, churchyards, burial grounds, schools, colleges, organizations. Thus, the object of the trust / association is essentially religious and therefore the adjudicating authority ought to have considered that the assessee being a religious body is excluded from the levy of service tax under renting of immovable property.

4. The assessee produced certificate issued by the Income Tax department under Section 10 (23C) (v) of Income Tax Act 1961 wherein it is stated that the assessee is a religious and charitable institution/association. However, the said certificate was brushed aside by adjudicating authority stating that the assessee is only a religious and charitable association and cannot be considered as a religious body.

5. The decision rendered by the Tribunal in the case of Diocese of Tanjore Society Vs Commissioner of GST & Central Excise, Trichy (2023) (9) TMI 871 CESTAT Chennai was relied by the Ld. Counsel to submit that in the said case the Tribunal has discussed similar facts wherein it was held that Diocese of Tanjore Society is a religious body and is excluded from the purview of the levy of service tax under the category of renting of immovable property for the period up to 30.06.2012. The Ld. Counsel submitted that in the present case the assessee is contesting the liability only for the period up to 30.06.2012. They have discharged the service tax along with interest for the period after 30.06.2012 under VCES. The Ld. Counsel submitted that an assessee is not liable to pay interest for

service tax paid under VCES when within the prescribed date. However, the assessee inadvertently paid interest of Rs.3,40,382 along with the Service Tax. The assessee pointed out this fact to the adjudicating authority, who ordered for appropriation of the amount towards the interest payable by the assessee for the period prior to 30.06.2012 which is erroneous. The Ld. Counsel prayed that the appeal may be allowed.

6. The Ld. AR Shri. M. Ambe, appeared and argued for the department. The findings of the impugned order was reiterated. The Ld.AR adverted to para 18 of the impugned order to submit that the objects stated in the Memorandum of Association has been reproduced by the AA in this para and it can be seen that the object does not specify any religious activity. Though assessee may be undertaking some religious activity, they are managing the immovable property by renting out these properties for commercial purposes. The assessee has not produced any document to show that they fall under the category of 'religious body'. The certificate issued by the income tax is only for being a charitable association and not religious body. The same cannot be accepted for giving the benefit of crucial under renting of immovable property. The AA has set aside the penalties for the period after 30.06.2012. Though the assessee has paid the service tax for the period after 30.06.2012 under VCES, the penalties ought to have been imposed for the reason that the assessee has paid the service tax only after the issuance of show cause notice. The Ld. AR prayed that the appeal may be dismissed.

7. Heard both sides.

8. The issue to be considered is whether the demand of service tax, interest and penalties imposed by the adjudicating authority is legal and proper.

8.1 The SCN has been issued proposing to demand service tax under 'renting of immovable property service' for the period from 01.10.2008 to 30-09-2013. For the period after 30.06.2012, the assessee has paid the service tax along with interest under VCES. The assessee is not contesting the liability for the period post 30.06.2012. The definition of Renting of immovable property service for the period up to 30.06.2012 reads as under:-

*A per Section 65(90a) of Finance Act, 1994*

*"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.*

9. On perusal of the above definition, it can be seen that renting of immovable property service rendered by a religious body or provided to a

religious body is excluded from the levy of service tax. The assessee has argued that they fall under the category of religious body. The department has taken the view that the assessee only a charitable institution though they also undertake certain religious activity and therefore cannot be considered as a religious body. The assessee has been issued a certificate under Section 10(23C)(v) of Income Tax Act 1961 as a charitable organization. Further, on perusal of Memorandum of Association, the objects for which this association is established includes maintenance of bishops, presbyters, deacons, pastors etc. So also assessee engages in maintaining churches, chapels, churchyards, burial grounds, schools, colleges etc. The income generated from immovable property is used for these purpose. From the objects of the trust/association it is sufficiently clear that assessee is a religious body and cannot be said that they are merely a charitable organization. In the case of Diocese of Tanjore Society (supra) the Tribunal relied upon the decision of the Hon'ble Supreme Court in the case of Hindu Public and Ors Vs Rajdhani Puja Samithee and Ors – 1999 (2) TMI 723 – Supreme Court the relevant paras of the decision of Tribunal in the case of Diocese of Tanjore Society is reproduced as under:-

*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 negated 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 assessee will be subject to levy under service tax for renting of immovable property only from 01/07/2012 and not before that date. The assessee also agrees that they are liable to pay service tax from 01/07/2012.*

10. The Tribunal held that the assessee therein being a religious body cannot be subject to levy of service tax under renting of immovable property service for the period up to 01.07.2012. After considering the facts of the case before us and also appreciating the documents produced, in nature of Memorandum of Association, we are of the considered opinion that the assessee fits in to the category of 'religious body'. As per the definition of Renting of immovable property service, such service rendered by a religious body or to a religious body is excluded from the levy of service tax. We hold that the assessee herein is not liable to pay service tax under the category of renting of immovable property services up to 30.06.2012. Therefore, the demand for the period prior 30.06.2012 cannot be sustained and require to be set aside. Order accordingly.

11. For the period after 30.06.2012 the assessee discharged the service tax up to 31.12.2012 under VCES. As per the said scheme assessee is not required to pay interest or penalty. In the present case the assessee inadvertently paid the interest also. On being pointed out the adjudicating authority has appropriated the said amount towards the interest payable for the period prior to 01.07.2012.

12. The department has filed appeal contending that the adjudicating authority ought to have imposed penalty for the period after 30.06.2012. as the assessee has paid service tax opting for VCES, the penalty would

automatically stand waived. The demand in the SCN is for the period upto 30.09.2013. as per para 14 of the impugned order the assessee has paid the service tax for the period 01.07.2012 to 30.09.2013 before passing of the adjudication order. The assessee being a religious body was not liable to pay service tax prior to 01.07.2012. after the amendment w.e.f. 01.07.2012 the assessee is liable to pay service tax and has discharged the same before passing the order. The issue being interpretational and the period being transitional when the new service tax regime become applicable, we do not find any grounds to impose penalty for the period 31.12.2012 to 30.09.2013. the view of the adjudicating authority in not imposing penalty is upheld. The department appeal is dismissed.

13. The Ld. Counsel submitted that miscellaneous application is filed to receive additional ground which are nothing but decisions relied. It is submitted that the application is not pressed. The Miscellaneous Application No.40092/2024 is dismissed. Assessee appeal allowed with consequential relief, if any. Departmental appeal dismissed.

(Dictated and pronounced in open court)

**(VASA SESHAGIRI RAO)**  
Member (Technical)

**(SULEKHA BEEVI C.S.)**  
Member (Judicial)