

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 2644 of 2011

(Arising out of Order-in-Original No. 113/2011 dated 26/05/2011 passed
by the Commissioner of Service Tax, Bangalore)

PJB Engineers Pvt. Ltd.

143, Rathna Building, 4th Floor, Richmond
Road, Bangalore - 560 025

Appellant(s)

VERSUS

**Commissioner of Service Tax
Bangalore Service Tax- I**

1st To 5th Floor,
TTMC Building, Above BMTC Bus Stand,
Domlur
Bangalore - 560 071
Karnataka

Respondent(s)

Appearance:

Mr. M.S. Nagaraja, Advocate

NO.1010, 2nd Floor,
Above Corp. Bank, 26th Main, 4th T Block,
Jayanagar
Bangalore - 560 041
Karnataka

For the Appellant

Mr. Rama Holla, Supdt. (AR)

For the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20200 / 2020

Date of Hearing: 18/02/2020

Date of Decision: 18/02/2020

Per: ANIL CHOUDHARY

The issue involved in this appeal is whether appellant-assessee is liable to pay service tax for construction of private railway sidings for the factory of JSW Steel and for Karnataka Power Corporation Ltd. for their Bellary Thermal Power Station.

2. Heard the parties.

3. Having considered the rival contentions, we find that similar issue came up before this Tribunal in ***Afcons Infrastructure Ltd. Vs. Commissioner of C. Ex., Mumbai-II*** reported at ***2015 (38) S.T.R. 194 (Tri.-Mumbai)*** wherein the issue of service tax on private railway sidings have been decided by this Tribunal in favour of the

assesse. Further, the Tribunal in the case of **Afcons Infrastructure Ltd.** in para 5.1 & 5.2 has held as under:

“5.1 The definition of ‘Commercial and Industrial Construction Service’ as provided in Section 65(25b) excludes such activities relating to roads, ports, railways, dams, bridges, tunnels etc. There is no distinction between a monorail or metro rail or any other kind of rail and, therefore, the term ‘railways’ used therein has to be given its widest meaning to include all types of railways and all types of railway lines. Therefore, the distinction sought to be made by the adjudicating authority is not sustainable in law.

5.2 Secondly, we do not find any basis for the conclusion drawn by the learned adjudicating authority by referring to some decision of the Government while examining the scope of the terms ‘railways’ in the context of certain tax exemptions. There is no evidence before us to show that the Government examined the matter and came to such a conclusion nor is there any circular or notification issued by the Government in this regard. In the absence of any such decision which is in the public domain, we are unable to accept the contention raised by the Revenue in this regard and reject the same totally. In other words, the law has to be interpreted as it stood, as held by the Hon’ble Apex Court in the case of Doypack Systems Pvt. Ltd. [[1988 \(36\) E.L.T. 201](#) (S.C.)] wherein it has been held that the notings in the Government files are not relevant for interpretation of the statutes and the statute has to be interpreted by the wordings explicitly used therein and if there is no ambiguity in the language used therein, there is no need to refer to the notings in the Government file. On that ground also, the

observation of the adjudicating authority has no bearing to the facts on hand and has to be rejected.”

4. Accordingly, we find that the issue herein is squarely covered by the precedent ruling of this Tribunal. Accordingly, we hold that appellant-assessee is not liable to pay service tax for construction of the private railway siding. We also notice that the Tribunal’s ruling has been followed in ***KVR Rail Infra Projects Pvt. Ltd. Vs. Commr. of C.T., Secunderabad – 2019 (27) G.S.T.L. 549 (Tri.-Hyd.) & SMS Infrastructure Ltd. Vs. Commissioner of C.Ex. & Cus., Nagpur – 2017 (47) S.T.R. 17 (Tri.-Mumbai)***. In view of this, we allow the appeal and set aside the impugned order. Appellant is entitled for consequential benefit.

(Order was pronounced and dictated
in Open Court on **18/02/2020**)

(ANIL CHOUDHARY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

