

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 61030 of 2019

[Arising out of Order-in-Appeal No. 70/ST/CGST-APPEAL-GURUGRAM/SG/2019 dated 28.06.2019 passed by the Commissioner (Appeals), CGST, Gurugram]

M/s Rites Limited

Rites Bhawan, Plot No.1, Sector-29,
Gurugram, Haryana-122001

.....Appellant

VERSUS

**Commissioner of Central Excise,
Goods & Service Tax, Gurugram-I**

Plot No.36-37, Sector-32, Gurugram,
Haryana-122001

.....Respondent

APPEARANCE:

Ms. Mansi Khurana, Advocate for the Appellant

Shri Anurag Kumar and Ms. Amita Gupta, Authorized Representative for
the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

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

FINAL ORDER NO.61698/2025

DATE OF HEARING: 17.11.2025

DATE OF DECISION: 21.11.2025

P. ANJANI KUMAR:

M/s Rites Ltd., the appellants, were awarded the work of Consultancy Services for the project management of construction of broad-gauge railway siding from Surgaon, Banjari Station to Bir Station by Madhya Pradesh Power Generating Co. Ltd; the appellant

was required to appoint or engage a contractor for execution of project work for and on behalf of MPPGCL; a tender was floated and was awarded to M/s GVR-ENC; approval of Indian Railways was taken. A show cause notice dated 14.04.2018 was issued to the appellants alleging that the appellants received works contract service from M/s GVR-ENC and it is not related to construction of railway for public use and accordingly, they are liable to pay service tax in terms of Section 65B(22) read with Section 66E(h) of the Finance Act; the show cause notice was adjudicated on 15.01.2019 confirming the demand raised and holding that the service received by the appellants is not for public carriage of goods.

2. Ms. Mansi Khurana, learned Counsel for the appellants, submits that the show cause notice accepts the fact that the appellant is acting on behalf of MPPGCL and the work in question is installation of railways. She submits that the issue is no longer res integra having been decided by this Bench in the case of Nabha Power Ltd. – 2018 (8) TMI 1228- CESTAT Chandigarh wherein it was held that railway siding constructed for transport of coal to thermal power plant operated by a private company is covered within the definition of railway and therefore is exempt from payment of service tax in terms of Entry No.14A of Notification No.25/2012; Hon'ble Supreme Court has dismissed the appeal against this order preferred by Revenue vide Civil Appeal Diary No.29059/2020 dated 10.02.2021. She submits that the Tribunal has also held similarly in the case of Konkan Railway Corporation Ltd. – 2023 (2) TMI 1175 –

CESTAT Mumbai which was also upheld by the Hon'ble Apex Court – 2023 (8) CENTAX 166 (SC).

3. Learned Counsel further submits that the show cause notice in the case was issued without pre-consultation in violation of the CBIC Instructions dated 21.12.2015 and the CBIC Master Circular dated 10.03.2017. She relies on the following cases on this issue:

- Amadeus India Pvt. Ltd. MANU/DE/1591/2019
- Back Office IT Solutions Pvt. Ltd. MANU/DE/0696/2021
- Omaxe New Chandigarh Developers Pvt. Ltd. MANU/DE/0672/2021
- SLP bearing SLP (Civil) 18819/2022
- Omaxe Ltd. and Anr., MANU/DE/0672/2021: SLP bearing SLP (Civil) 13215/2022 is pending before the Hon'ble Supreme Court.
- Johnson & Johnson Private Limited, ST Appeal No. 85435 of 2020
- Numal Saikia, ST Appeal No. 75969 of 2021

4. Shri Anurag Kumar assisted by Ms. Amita Gupta, learned Authorized Representatives for the Revenue reiterates the findings of the impugned order. They take us through the definition of "Railway" in the Railway Act and submits that as per Section 2(31) of Indian Railway Act, 1989, Railway means: a Railway, or any portion of Railway, for the public carriage of passengers or goods; therefore, the project under question not being meant for public carriage, benefit of Notification cannot be extended.

5. Heard both sides and perused the records of the case. We find that MPPGCL has appointed the appellants as consultants for the construction of a railway siding; the appellants have engaged the service of M/s GVK-ENC to execute the contract. Revenue wants to

collect service tax on the services received by the appellants from M/s GVK-ENC under reverse charge mechanism in terms of Section 65B(22) read with Section 66E(h), holding that the same is not public usage. We find that the appellant's case is covered by the cases relied upon by the appellants. We find that Mumbai Bench of the Tribunal in the Konkan Railway Corporation (supra) held as follows:

9. It is, thus, clear that the proposition of strict construction of intent of exemption notification must also go hand in hand with strict construction of every word/phrase therein. The exemption from tax is available to 'railways', excluding mono rail or metro, by notification no. 25/2012-ST dated 20th June 2012 after 1st July 2012 and, as conceded by the adjudicating authority, there being no definition of 'railway', either therein or in Finance Act, 1994, the distinction between railway for private purpose and railway for public service cannot be artificially contrived to suit tax administration; neither can the definition in another statute be drawn upon for the purported purpose of illumination. The Railways Act, 1989 was enacted to authorize Government of India to operate the railway network of the country; it also affords a framework for administration of the railway services and jurisdictional monopoly. The 'taxable service' in Finance Act, 1994 excluding 'railways' from the ambit of the service did not place any restriction on benefit going to private railways. The statute, too, did not consider it necessary to fall back on the definition of 'railways' in another statute for determination of taxability and it is not open to the adjudicating authority to arrogate that privilege in an executive capacity. The intent of exclusion prior to 1st July 2012, and exemption for the period, thereafter, is abundantly clear.

6. We find that in the case of CONCOR – 2024 (6) TMI 192-CESTAT Kolkatta, the Tribunal was held that no distinction is made between public and private railways in the Notification No.25/12, though, the word "Railways" is not defined under the Finance Act, 1994. We find that in the impugned case that distinction is not

material as the railway siding is constructed for use by a Public Sector Undertaking/ Corporation i.e MPPGCL. We find that by use of public does not necessarily mean by individual public but also includes use by Public Sector Undertaking/ Corporations. Therefore, we find that there is no merit in the contention of the Department.

7. In view of the above, the appeal is allowed.

(Order pronounced in the open court on 21/11/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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