CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. III

SERVICE TAX APPEAL NO. 52467 OF 2018

[Arising out Order-in-Appeal No.75(RK)ST/JPR/2017-18 dated 12.03.2018 passed by the Commissioner (Appeals) and ADG, DGGSTI, JZU, Jaipur]

Agarwal Jagdish Construction Co. Pvt Ltd **Appellant**
184, Main Street, Nasirabad,
Ajmer-305 601

Vs.

Commissioner(Appeals) and ADG, DGGSTI, Jaipur **Respondent**
C-62, Sarojini Marg, C-Scheme,
Jaipur-302 005

Appearance:
Present for the Appellant : Ms. Suchi Sethi, Advocate
Present for the Respondent: Shri Mehboob Ur Rehman, Authorised Representative

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.50396/2026

Date of Hearing: 26.02.2026
Date of Decision: 23.03.2026

BINU TAMTA:

1. Challenge in the present appeal is to the order-in-appeal [1] dated 12.03.2018 rejecting the refund application as the appellant has not placed the documents to prove that the services were provided to the Government and on the ground of unjust enrichment.

2. During the period from June 2015 to June 2016, the appellant has claimed to have provided services to M/s. Military Engineering Service (MES), Bhopal and Jaipur for construction of infrastructure of Pinaka

[1] No. 75(RK)ST/JPR/2017-18

Regiment etc., which included construction of civil structure and non-commercial building.

3. The construction services provided to Government, local authority or governmental authority were earlier exempted vide Entry Sl. No. 12(a) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. With effect from 01.04.2015, the said entry was omitted vide Notification No. 06/2015-ST dated 01.03.2015. Therefore w.e.f. 01.04.2015, service tax was leviable on construction services provided to the Government, Local authority or governmental authority.

4. A new Entry Sl. No. 12(A) was inserted w.e.f. 01.03.2016, wherein the construction services provided to Government, local authority or governmental authority were exempted vide Notification No. 09/2016-ST dated 01.03.2016 subject to condition that the contract should have been entered prior to 01.03.2015 and on which appropriate stamp duty, where applicable, has been paid prior to such date.

5. For the intervening period from 01.04.2015 to 29.02.2016, vide Finance Act, 2016, Section 102 was inserted in the Finance Act, 1994. A special provision for exemption in certain cases relating to construction of Governmental buildings during the period 01.04.2015 to 29.02.2016 was made under Section 102(1) in respect of contract entered into before 01.03.2015 and on which appropriate stamp duty, where applicable, has been paid before that date. Further, under Section 102(2), provision of refund of service tax collected during the period was also made.

6. The appellant had filed refund claim of Rs.70,46,602/- on 11.11.2016 in respect of service tax paid during June 2015 to June 2016, on the services provided to M/s. Military Engineering Service (MES) Bhopal and Jaipur for construction of infrastructure of Pinaka Regiment etc. claiming that that no service tax was leviable on the above services during the period from June 2015 to June 2016 as the same were exempted under Serial No.12(A) of Exemption Notification No.25/2012-ST dated 20.06.2012, as amended vide Notification No.09/2016-ST dated 01.03.2016 and vide Section 102(1) of Finance Act, 1994. The refund claim was filed under Section 102(2) read with Section 11B of Central Excise Act, 1944 made applicable to the Service Tax.

7. Show cause notice dated 15.12.2006 was issued to the appellant for rejection of the refund claim of Rs.70,46,602/- filed by them under Section 11B of the CEA, 1944 on the grounds that they have not fulfilled the conditions laid down under Section 102 of the Finance Act, 1994 as well as the claim appeared to be of unjust enrichment as laid down in Section 11B(1) of Central Excise Act, 1944 made applicable to Service Tax matters also as per Section 83 of the Finance Act, 1994. The Assistant Commissioner of Service Tax, Ajmer vide Order-in-Original dated 02.02.2017 dismissed the refund application as the appellant has not submitted the copies of contract agreements and invoices and applicability of bar of unjust enrichment.

8. Aggrieved by the said Order-in-Original, the appellant filed appeal before Commissioner (Appeals) on the ground that (i) they have provided construction of building services to Military Engineers Services, which is a Govt. department under Ministry of Defence; (ii) these civil structures

constructed were non-commercial Govt. buildings; they could not submit the copy of whole contract but they submitted running bills clearly evidencing that the services were provided to MES. The Commissioner (Appeals) vide Order-in-Appeal dated 09.03.2018 rejected the appeal and upheld the said order-in-original. Hence the present appeal.

9. Heard Ms. Suchi Sethi, learned Counsel for the appellant and Shri Mahboob Ur Rehman, learned Authorised Representative for the respondent/Department and perused the case records.

10. The issue of entitlement to refund by virtue of the provisions of Clause 12A under Notification No.9/2016 dated March 1, 2016 read with Section 102 in the Finance Act 1996 with retrospective effect from April 1, 2015 is no more *res-integra* and has been decided in series of decisions. Reference is invited to the decision of the Gujarat High Court in **Ranjeet Singh Chaudhary versus Union of India**[2], where the Court noticed that the petitioner is squeezed between two Government Departments. The Service Tax Authority does not return the service tax to the petitioner apprehending that the petitioner will not return it to CPWD and will therefore be enriched unjustly. The CPWD recovered such amount from the petitioner but could not retrieve it from the Service Tax Department. In the process, the petitioner ended-up bearing the burden of service tax, which was not its liability. It was, therefore, directed as under:-

> **"20.** In the result, petition is disposed of with the following directions :

[2] 2018 (15) GSTL 192 (Guj.)

> (1) The order passed by the respondent No.4 - Assistant Commissioner of Central Excise & Service Tax, Central Excise & Service Tax Division, Ajmer to the extent it holds that it is a case of unjust enrichment, and therefore, directs depositing of the said sum of Rs. 59,81,343/- to be credited in the Consumer Welfare Fund is declared to be illegal. The order is quashed, however, without disturbing the findings and observations on the allowability of the refund claim. The proceedings are placed back before the Assistant Commissioner of Central Excise & Service Tax, Central Excise & Service Tax Division, Ajmer (Rajasthan). It would be open for the CPWD to join in the said application as a co-applicant. If so done by 30th June, 2018, the Competent Authority shall decide such application on merits. We also hold that not the petitioner, but the CPWD can pursue the refund claim."

11. We may refer to the final order passed by us in **M/s. G.R. Infraprojects Ltd. Vs. Commissioner of Central Excise, Udaipur[3],** where the appellant had provided services to Air Force Station, Naliya, Military Engineer Service, Gandhinagar. The Bench considered the provisions of the two notifications no.25/2012 and no.9/2016 and the provisions of Section 102, which have been introduced to grant retrospective exemption by way of refund in respect of services of construction, addition, commissioning, or installation during the period from April 1, 2015 to February 29, 2016 and observed as under:-

> **"11.** As noticed above, the nature of services and the provisions of the two notifications read with Section 102 are the same and the fact that the appellant was availing the exemption under Sl.No.12(a) which the Department has not disputed, the appellant would be entitled to avail the same exemption on reintroduction and claim refund thereof under the provisions of Section 102. The Revenue has not pointed

[3] Final Order No.50059/2026 dated 14.01.2026 in S.T. Appeal No.52841 of 2018

out any justification for taking a different view. In this regard, the appellant has relied on the following decisions, wherein it has been held that Department cannot take contrary stand during different periods when subject matter is identical and has been assessed earlier:-

***Rosmerta Technologies Ltd. Vs. Commissioner of Central Excise & ST, LTU Delhi** [4]

***Popular Carbonic Pvt. Ltd Vs. Commissioner of Central Excise, Chennai-I, Commissionerate**[5]

***Hi-Tech Corporation Vs. Commissioner of Customs, Chennai**[6]

***Fabworth (1) Limited Vs. Commissioner of Central Excise & Customs, Nagpur**[7]

***Commissioner, Commercial Tax, U.P., Lucknow Vs. I.T.T.Ltd.**[8]

***Commissioner of Central Excise, Pune-II Vs. S.S. Engineers**[9]

13. …………..The services being rendered to MES, a Department of Ministry of Defence which is responsible for the security and safety of the nation, the requirement under Section 102(a) that services are meant predominantly for use other than for commerce, industry, or any other business or profession is satisfied. The Division Bench of the Tribunal in **National Refrigeration and Air Conditioning Engineering versus CCE, Ludhiana** [10] has observed that as MES (a Department of Ministry of Defence) is not involved in any commercial activity, therefore, any service rendered to them is not taxable. The decision has been followed by the learned Single Member in **Khanna Constructions versus Commissioner of CUS, CGST & C.Ex, Jodhpur** [11] and

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[4] 2019 (11) TMI 1573- CESTAT Chandigarh

[5] 2021 (8) TMI 240-CESTAT Chennai

[6] 2021(8) TMI 1214-CESTAT Chennai

[7] 2007 (213) ELT 136 (Tri.- Kolkata)

[8] 2017 (5) TMI 928-Allahabad High Court

[9] 2023 (386) ELT 192 (SC)

[10] 2011(23)STR 247 (Tri.Del)

[11] 2020(33) GSTL 111 (Tri.-Delhi)

> considering that MES is the construction and maintenance agency for Indian Army the construction/ maintenance services of MES since being linked to the structures or buildings which are not to be used for commercial purposes but for Ministry of Defence, any service rendered to MES is not taxable."

12. Referring to the provisions of section 3 of the Indian Stamp Act, 1899, it was held:-

> "**15.** In view of the statutory provisions above, the agreement executed by the Ministry of Defence was exempted from payment of stamp duty. It is not open to the Revenue to take an argument which is contrary to the statute as well as to their own notification which has been consciously worded. The expression "wherever applicable" used in Section 102 has been considered by the Tribunal in **Shanti Construction Company versus Commissioner of CEX & ST, Rajkot**[12] and it was categorically observed that the Adjudicating Authority has missed the term "wherever applicable" while denying the refund of this amount on the ground that there is no evidence of payment of stamp duty on the contract. Further, Chief Engineer, (Air Force) MES in their letter dated 20.02.2017 on the basis of the office letter No. 88176/636/E8 dated December 20, 2016 clarified that government was not required to pay any stamp duty on the instrument executed by or on behalf of or in favour of the Government in terms of Section 3 of the Indian Stamp Act, 1899. The issue is crystal clear that under Section 102 stamp duty is chargeable only wherever applicable and since in the present case the agreement has been executed by the Government of India, no stamp duty is leviable in view of express bar in Section 3 of the Stamp Act."

13. The other relevant paragraphs from the decision, which would be applicable in the facts of the case here are quoted below:-

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[12] 2021(54) GSTL 164 (Tri.-Ahmd.)

"20. The principle of unjust enrichment as provided in Section 11B(2) of CEA will also not be applicable for the reason that in the refund claim, the appellant had categorically prayed that the amount of Rs.3,40,58,797/- be refunded directly to the account of the service recipient who have reimbursed the said amount to the appellant. In this regard, the learned Counsel has placed on record the communication dated October 17, 2016 issued by MES to All Command, CES suggesting the modalities to be followed for refund of service tax from the contractors, to the effect that the contractor will process refund cases to the Service Tax Department. While processing refund, they would intimate clearly that this amount has already been reimbursed to them from MES, (the concerned name of GE/GE/(I) AGE(I) formation to be mentioned) and that the refund be directly credited to the account of GE/GE/(I) AGE(I). In view of the peculiar situation, the appellant cannot be said to have passed on the burden of tax to any other person. We, therefore, do not find reason to justify that the principle of unjust enrichment can be applied in this case.

21. On the issue whether amount was merely a deposit and not duty, we concur with the view taken by the Tribunal in M/s. Amit Rishabh that the amount of service tax cannot be considered to be merely a deposit as Section 102 (2) makes it clear that refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section(1) been in force all material times. Further, sub-section(3) also makes it clear that an application for the claim of refund of service tax shall be made within a period of six months. We also rely on the principle noted by the Bombay High Court in **D.P. Jain and Company infrastructure Private Limited** [13] from the decision in **Commissioner of Income Tax vs. Shaw Wallace & Co.**[14] that "what could be brought to tax alone can be exempted from it or the levy. If that was not taxable at all or from inception, then there is no question of grant of any exemption therefrom". Therefore, logically the amount in question cannot be construed as deposit.

22. We may now consider the recent decision of the Principal Bench of the Tribunal in **M/s. Amit Rishabh Builders Pvt. Ltd.**, where in similar situation, the amount of service tax deposited by the appellant was reimbursed by MES and it was observed that since the liability of service tax was borne by MES, they are the proper person, who could have filed the refund application under Section 102 of the Finance Act. The Bench, therefore remanded the matter to be re-examined by the Assistant Commissioner, on MES being impleaded as a co-applicant in the refund application as only MES can pursue the refund application. Following the same, we need to remand the refund application to be considered by the Assistant Commissioner after giving an opportunity to MES to be impleaded as a co-applicant therein.

23. The learned counsel has relied on the provisions of Section 11 B2(e) of CEA, which provides that amount of duty is refundable to the service recipient if such duty is borne by

[13] 2014 (33) STR 668 (Tri.-Bom.)
[14] AIR 1932 SC 138

service recipient and the tax incidence is not passed to any other person. In view of the decision in **Amit Rishab Builders**[15], the same shall be considered by the Assistant Commissioner."

14. It is an undisputed fact that the appellant has provided construction of building services to Military Engineering Services, which is a Government Department under the Ministry of Defence and the civil structure is not used for the purpose of commerce or industry or any business or profession. The appellant had paid the service tax on the said services, which were exempted by the Mega Exemption Notification No.25/2012–ST dated June 20, 2012 and as amended by Notification No. 9/2016 –ST dated March 1, 2016 read with Section 102 of the Finance Act. There is no reason to differ with the view taken by the earlier decisions. Consequently, the impugned order is hereby set aside and the appellant is entitled to the refund as claimed, however, the same shall be decided by the Assistant Commissioner on MES being impleaded as a co-applicant in the refund application. The appeal is, accordingly allowed by way of remand.

[order pronounced on 23rd March, 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp/RR

[15] Final Order Nos.51689-51692/2025 dated 23.10.2025