CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

SERVICE TAX APPEAL NO. 51540 OF 2022

[Arising out of Order-in-Appeal No. RPR-EXCUS-000-APP-113/21-22 dated 17.02.2022 passed by the Commissioner (Appeals) Central Goods and Services Tax and Central Excise and Customs, Raipur]

M/S. IRCON INTERNATIONAL LTD. **...APPELLANT**
59- Ashoka Life Style
Dharampura-03,
Jagdalpur,
District Bastar
Chattisgarh

VERSUS

PR. COMMISSIONER OF CGST &
CENTRAL EXCISE, RAIPUR **.. RESPONDENT**
Central Excise Building,
Dhamtari RaoD, Tikrapra, Raipur
Chhatisgarh-492001

APPEARANCE:
Shri P K Sahu, Advocate for the Appellant
Shri Mehboob Ur Rehman, Authorised Representative for the Revenue

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51039 /2026

DATE OF HEARING/ DECISION: 22.05.2026

P. V. SUBBA RAO

M/s. IRCON International Ltd.[1] filed this appeal to assail the Order dated 17.02.2022[2] passed by the Commissioner (Appeals) in which upheld the order of Joint Commissioner dated 18.1.2021. The Joint Commissioner had, in his order, confirmed the proposals in the Show Cause Notice dated 28.11.2019[3].

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1 Appellant
2 Impugned order
3 SCN

2. We have heard learned counsel for the appellant and the learned authorised representative for the Revenue and perused the records.

3. The appellant was registered with the service tax department for providing services during the relevant period (2016-17 and 2017-18 up to June 2017). The dispute in this case is whether service tax was payable during the period on the advances received by the appellant from a Joint Venture company of M/s NMDC and M/s. SAIL for making Jagdalpur-Rwaghat Railway Line Project by the appellant. The railway was meant for exclusive use of NMDC and SAIL.

4. The appellant's case is that the service was exempted by Notification NO. 25/2012-ST [S. No. 14(a)] and hence no service tax was payable and hence it was not paid. The case of the Revenue is that the service was not exempted.

5. The relevant entry in the exemption notification read as follows:

> "14. Services by way of construction, erection, commissioning or installation of original works pertaining to
>
> (a) railways, excluding monorail and metro;"

6. Both the Joint Commissioner and the Commissioner (Appeals) held that the appellant was not entitled to the benefit of this notification for the reason that the railway in question was for exclusive use of two entities viz., NMDC and SAIL and it was not a government railway.

7. Learned authorised representative for the Revenue also submitted that there are two types of Railways- government and non-government and the exemption would apply only to government

railways and it cannot be extended to the private railway in question. He relied on the judgment of the five member constitutional bench of the Supreme Court in **Commissioner of Customs (Import), Mumbai vs Dilip Kumar and Co.**[4] in which it was held that any exemption notification must be strictly construed and the benefit of any ambiguity must be given to the Revenue.

8. We have considered the submissions. It is true that in **Dilip Kumar & Co.,** it was held that if there is any doubt about the interpretation of any exemption notification, it must be ruled against the assessee and in favour of the Revenue.

9. However, there must be a doubt in the first place. The exemption notification does not leave any scope for doubt as it does not say that only services provided to government railways were exempted. The only exclusions in the exemption notification are monorail and metro and the railway in question was neither a monorail nor a metro. It is not open to the adjudicating authority to read the word 'railways' in the notification as 'government railways' as there cannot be any intendment in tax laws. Even if the Joint Commissioner or the Commissioner (Appeals) were of the opinion that exemption should be restricted to government railways, it is not for them or this tribunal to modify the entry in the notification or read additional words into it. The power to issue exemption notifications has been conferred by the Parliament on the Central Government under section 93 of the Finance Act, 1994 and not to any officer,

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4 2018(7) TMI 1826- Supreme Court (LB)

tribunal or court. The notifications must therefore, be read as they are issued by the Central Government and interpreted.

10. We, therefore, find that the Commissioner (Appeals) erred in passing the impugned order upholding the Order of the Joint Commissioner denying the benefit of the exemption notification by treating it as being confined to 'government railways'.

11. An identical issue was before a bench of this Tribunal in **Konkan Railway Corporation Ltd. vs Commissioner of CGST and Central Excise**[5] and it was held that the railway siding constructed for use by NTPC was covered by the exemption. Revenue's Civil Appeal against the order was dismissed by the Supreme Court in **Commissioner of CGST and Central Excise vs Konkan Railway Corporation Ltd.**[6] holding that the judgment of the Tribunal does not call for any interference.

12. In view of the above, we find that the impugned order cannot be sustained and is set aside. This appeal is accordingly, allowed with consequential relief to the appellant.

(Operative part of the order was pronounced in open court)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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5 (2023) 8 Centax 161 (Tri-Bom.)
6 (2023)8 Centax 166 (SC)