CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

SERVICE TAX APPEAL NO. 52960 OF 2019

[Arising out of Order-in-Appeal No.339 & 340 (CRM)ST/JPR/2019 dated 26.09.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. L N AGARWAL **Appellant**
Pitra Sneh, 1/513, Vidhyadhar Nagar,
Jaipur

Vs.

The Commissioner (Appeals),
Central Excise & CGST, Jaipur **Respondent**
NCRB, Statue Circle, Jaipur-302005

AND

SERVICE TAX APPEAL NO. 52961 OF 2019

[Arising out of Order-in-Appeal No.339 & 340 (CRM)ST/JPR/2019 dated 26.09.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. L N AGARWAL **Appellant**
Pitra Sneh, 1/513, Vidhyadhar Nagar,
Jaipur

Vs.

The Commissioner (Appeals),
Central Excise & CGST, Jaipur **Respondent**
NCRB, Statue Circle, Jaipur-302005

Appearance:
Present for the Appellant : Shri Yash Dhadda, Chartered Accountant
Present for the Respondent: Ms. Jaya Kumari, Authorised Representative

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:**02/04/2026**
Date of Decision:**31/07/2026**

Final Order Nos.51270-51271/2026

DR. RACHNA GUPTA:

The present order disposes of two appeals filed by the same appellant assailing the same Order-in-Appeal bearing no.339 & 340/2019 dated 26.09.2019. Issue is pursuant to the same Show Cause Notice bearing no.61/2017 dated 20.11.2017 and the same order-in-original bearing no.07/2018-19 dated 21.05.2018 vide which the demand was partially confirmed to the extent of Rs.1,20,37,313/- out of Rs.1,91,78,241/-. However, the demand of Rs.59,63,878/- was dropped. Against the said order, the assessee as well as the department filed an appeal before the Commissioner (Appeals), who vide order No.339 & 340/2019 dated 26.09.2019 had allowed the appeal filed by the department but has rejected the appeal filed by the appellant/ assessee. Being aggrieved the present two appeals have been filed. It is also observed that appeal bearing no.52960/2019 is the better elaboration of the statement of facts and grounds of appeal than the appeal bearing no.52961/2019 both filed by the appellant. The prayer under both the appeals is also same. Resultantly, one of the appeal of the appellant bearing no.52961/2019 is disposed of as being not maintainable, being filed for same cause of action as another one.

2. Briefly stating facts are that the appellant was engaged in providing taxable "Works Contract Services" (WCS). The services were being provided for constructing residential complex at Ramgarh Gas Thermal

Power Plant, Jaisalmer. Department observed that the appellant had not deposited service tax on the consideration received during the period 01.07.2012 to 31.03.2014 against the said construction work. The appellant acknowledged the liability and deposited the service tax along with the interest and penalties.

3. However, the taxability with respect to other projects undertaken by the appellant was investigated by anti-evasion branch, and the appellant was inquired. The Chartered Accountant of the appellant submitted the documents including work order, ST-3 Returns, Balancesheet and three CD reports for the year 2012-13 to 2015-16. On scrutiny thereof, the department observed that the appellant is mainly engaged in the work of road construction along with other civil construction work for Government agencies and others. The service tax liability viz-a-viz work orders of others were being discharged, however, remaining work orders were claimed to be exempted, but the department was not satisfied and with respect to following work orders.

i). Two-level parking at Ram Niwas Garden, Jaipur of Jaipur Development Authority.

ii). Rajasthan International Centre, Jaipur of Jaipur Development Authority.

iii). Two auction platforms at main Mandi, Phalodi of RSAMB, Jodhpur.

iv). RSWC -Roofing at Hindan City.

v). RSAMB, Steel roofing at Muhana Mandi, Jaipur.

Accordingly, the service tax demand for an amount of Rs.19178241/- was proposed vide the aforementioned Show Cause Notice dated 20.11.2017. The said demand was finally been fully confirmed vide the order-in-appeal dated 03.10.2019 (though partial demand for an amount of Rs.5963878/- was dropped by original adjudicating authority and demand only for Rs.1,20,37,313/- was confirmed). Being aggrieved of the Order-in-Appeal dated 26.09.2019 the appellant is before this Tribunal.

4. We have heard Shri Yash Dhadda, learned Chartered Accountant for the appellant and Ms. Jaya Kumari, learned Authorised Representative of the Department.

5. Learned Chartered Accountant for the appellant has submitted that the construction of two-leval parking contract was awarded to the appellant by JDA with a view to have parking space for the general public. Vide work order dated 14.10.2010, JDA being a local governmental authority, the appellant claimed exemption under entry-12 (a) of the Notification No.25/2012 dated 20.06.2012. The exemption is wrongly denied alleging the activity meant for commerce or business. It is submitted that JDA has given contract for maintenance and running of said parking space to another contractor. The amount collected was too nominal to be used for any other purpose than the maintenance. Hence, the benefit of exemption notification is wrongly denied to the appellant. Learned Chartered Accountant has impressed upon a certificate dated 01.09.2017 issued by Executive Engineer, Jaipur. The demand on this issue is prayed to be set aside.

6. While submitting with respect to Rajasthan International Centre, the work order dated 06.03.2013 is relied upon with the mention that it was a cultural centre for public purposes got constructed for the Jaipur Developmental Authority, the Governmental Authority, who is responsible for developing public utilities. The similar exemption is applicable to the said project also. The Certificate issued by JDA dated 05.12.2016 confirming that the building was not being used for any commercial activity, the demand of service tax for the construction of Rajasthan International Centre, is also prayed to be set aside.

7. While submitting with respect to steel roofing at Muhana Mandi, Jaipur, for RSAMB, learned Chartered Accountant for the appellant submitted that the appellant had constructed self-supportive steel roofing over internal roads, at terminal market Muhana Mand, along with the road for Rajasthan State Agricultural Marketing Board, Entry No.13(A) of the same Mega Exemption Notification No.25/2012 dated 20.06.2012 exempt the services provided by way of construction of roads. Hence the demand confirmed for this activity also is liable to be set aside.

8. Finally it is submitted that the extended period of limitation has wrongly been invoked. The appellant had duly disclosed its turnover from various services sources in the ST-3 Returns duly reconciled with the Books of Accounts. The copies thereof, were also provided to the Investigating Anti-Evasion Office. Hence, there was no concealment of information at any stage. The extended period has wrongly been invoked. The penalties are also not imposable for the said reason.

Learned Chartered Accountant submitted that if the appellant’s liability is at all held then appellant may be given cum-tax benefit as they did not charge any service tax separately. With these submissions the order under challenged confirming the entire demand proposed under the Show Cause Notice is prayed to be set aside and the appeal is prayed to be allowed.

9. While rebutting these submissions, it is submitted that the parking constructed by the appellant was a paid parking. GDA had awarded the maintenance and the collection of payment to the another contractor. Collection of Payment of Rs.25 for first two hours and Rs.7 for every hour in addition to said two hours cannot be said to be the minimal fee. This is sufficient to hold that the project got constructed by the Governmental Authority but for the commerce or business.

10. While submitting with respect to construction of Rajasthan International Centre, learned Departmental Representative mentioned that the Centre is being constructed over a large area of 4 lakh sq.ft. with an auditorium of capacity of 725 persons and too many auditoriums of capacity of 320 and 200 persons with a banquet hall of 10000 sq. ft. area, the centre was meant to be utilized by any private or public sector organization. Against charges, the object of getting such centre constructed was to generate revenue for GDA. Hence, the construction activity does not get covered under entry no.12(a) of Mega Exemption Notification.

11. While submitting with respect to steel roofing over internal roads of terminal market, it is mentioned that the work awarded to the

appellant was not of construction of roads meant for general public but was for providing roofing over a road that too an internal road of a terminal market. Hence, the activity cannot be covered under entry at Sr. No.13(a) of the Mega Exemption Notification. The demand of service tax on three of the counts has rightly been confirmed. The appeal is, accordingly, prayed to be dismissed.

12. Having heard the rival contentions, perusing the entire records, it is observed that initially the service tax demand was raised with respect to five construction activities provided by the appellant (as already mentioned above). However, the demand with respect to RSWC roofing at Hindan City and RSAMB auction platform at Mandi, Phalodi, was dropped by the Adjudicating Authority. The order to that extent was not challenged by the Department before Commissioner (Appeals) in the Cross-Appeal, before him, as there was no review against the drop-off the said two demands. The demand with respect to following three activities has still been confirmed:

i). Two-level parking at Ram Niwas Garden, Jaipur of Jaipur Development Authority.

ii). Rajasthan International Centre, Jaipur of Jaipur Development Authority.

iii). RSAMB, Steel roofing at Muhana Mandi, Jaipur

13. Activity wise findings are as follows:

i) & ii). **Two-level parking & Rajasthan International Centre**: the appellant has claimed exemption of Entry No.12(a) of Notification No.25/2012 dated 20.06.2012. The said entry reads as follows:

> "12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
>
> (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession."

iii). The perusal makes it clear that a civil structure/ any other original work when provided to the Government or the Governmental Authorities is not taxable in case it is not for commerce/business. The appellant has claimed that neither the two-level parking nor the International Centre were meant for commerce. The respective certificates has been relied upon. Perusal reveals that the Executive Engineer of Jaipur Development Authority had certified vide Certificate No. D-173/2017 dated 01.09.2017 that the project was undertaken purely in public interest to decongest the walled city markets by relocating permanently parked vehicles of shop owners and residents thereby enabling parking for the general parking. The certificate, to our opinion, is the sufficient evidence that the construction of parking was not intended for any commercial purpose. For any purpose to be commercial, the foremost criteria is the element of profit. Though the Department has mentioned that the amount received per vehicle was Rs.25 for initial two hours and Rs.7 per hour subsequent thereto, but there is no evidence to show that the said amount was too high as is to be used for the maintenance of the said two-level parking and that the Jaipur Developmental Authority was earning profit by getting the said amount per vehicle parked in the said parking area. The onus was very much upon the Department. Department has not discharged the same.

(iv) Similarly, with respect to Rajasthan International Centre, the certificate bearing no.D-07/2017-18 date 02.01.2018 issued by the Executive Engineer specifically recites that the Rajasthan International Centre would not be used for any commercial activity whatsoever. The Memorandum of Association of Rajasthan International Centre Society dated 23.12.2023 is also on record. The apparent objective of society is to carry out the administration and management of Rajasthan International Centre, Jaipur. It has been expressly mentioned in the said MOA that no profit motive is involved in any of the objects mentioned therein. It clearly establishes that the international centre was not constructed for the pre-dominant purpose of business or commerce. Again, it was for the Department to prove that profit has been earned by the Governmental Authority/ Jaipur Developmental Authority, but there is no evidence to the said effect. We hold that the confirmation of demand of service tax for constructing both the projects for JDA i.e., the two-leval parking and international centre has wrongly been confirmed. The order under challenged is held liable to be set aside.

(v) **Issue with respect to Steel Roofing at Muhana Mandi, Jaipur:** For this work order also the appellant has claimed exemption of Entry

No.13(a) of Notification No.25/2012 dated 20.06.2012, which reads as follows:

> "13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of.
>
> (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;"

14. It becomes absolutely clear that the construction of roads meant for general is exempted under the said entry. Apparently and admittedly, the construction done by the appellant is the Steel Roofing of a road which is an internal road of terminal market, Muhana. Irrespective, the road is for the general public but the construction of its roofing is not covered under above quoted 13(a). Law is settled that the exemption notifications have to be strictly interpreted. There should not be any additional interpretation to the language used in the exemption notification. In case of any ambiguity of unclarity, the benefit of same shall go to the Revenue and not to the assessee. We draw our support from the decision of 5-Judge Constitution Bench of Supreme Court in case of **Commissioner of Customs** vs. **Dilip Kumar & Company** reported as **(2018)9 SCC 1 (SC)**, where Hon'ble Court has overruled prior precedents (like the Sun Export case) and set three major rules for interpreting tax exemptions which equally applies to beneficial schemes:

(i) Strict Interpretation i.e., tax payer has strictly to fall within the exact letter of the notification.

(ii) Burden of Proof- rests entirely on assessee claiming it.

(iii) Benefit of Ambiguity- Benefit thereof and of two possible interpretations must be interpreted in favour of the government/ department.

In the present entry, there is no mention of the steel roofing of the road. The activity of the appellant cannot be held exempted under the said entry of 13(a) of Mega Exemption Notification. Appellant is held reliable to pay service tax for this construction activity. The order confirming demand of service tax on discount is, therefore, upheld.

15. The appellant has duly disclosed its turnover from various service sources in the ST-3 returns, which have been reconciled with the books of accounts and also submitted to the Anti-Evasion Office. The copy of the reconciliation of ST-3 returns with the financial statements for the Financial Year 2012-13, 2013-14 and 2014-15 were also submitted before the Anti-Evasion office and are enclosed on record herewith and marked as Annexure F.

16. The appellant was under the belief of being eligible for exemption under Mega Exemption Notification, their recipient being the governmental authorities. Benefit of said exemption has been extended. Therefore, it is held that there has been no concealment of information at any stage, and all relevant details have been transparently declared in the ST-3. Accordingly, the allegation of suppression of facts with intent to evade tax is wholly unfounded and unjustified. It is accordingly held that extended period is wrongly invoked. Penalties under section 70 are wrongly imposed. As a result of entire above discussion, the demand of service tax with respect to steel roofing of internal road in Muhana Mandi, that too

for normal period is upheld. Rest of the demand is set aside. Consequently, appeal is partially allowed.

(Order pronounced on **31/07/2026**)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana