IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75182 of 2025

(Arising out of Order-in-Appeal 218/RAN/2024 dated 31.12.2024 passed by Commissioner of Central Excise & Service Tax, Hazaribagh, Jharkhand)

M/s. Poonam Construction & Co. **: Appellant**
C/o. Sandeep Agarwal, Advocate, 102, Industry House,
Bank More, Dhanbad-826001.

VERSUS

The Commissioner of Central Excise & Service Tax **: Respondent**
Hazaribagh Jharkhand.

APPEARANCE:

Mr. Akshat Agarwal, Advocate for the Appellant

Mr. S.K.Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76521/ 2025

DATE OF HEARING :09.06.2025

DATE OF DECISION:12.06.2025

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order demanding Service Tax for the period 2015-16 to 2016-17 on the basis of information received from Income Tax Department that appellant has shown a income of Rs. 2,24,01,689/- against the provision of service during the impugned period. Therefore, the Show Cause Notice dated 08.10.2020 was issued to the appellant to demand Service Tax from the appellant.

2. The appellant contested the Show Cause Notice but the demand against the appellant was confirmed for Service Tax of Rs. 33,18,402 alongwith interest and penalties under Section 77 & 78 of the

Act was also imposed. The said order was challenged before the Ld. Commissioner (Appeal) on the ground that the service provided by the appellant is covered under exemption Notification No. 25/2012 ST dated 20th June, 2012 and the service provided to the Government Local Authority or Government Authorities are exempt.

3. It is the submission of the appellant that they provided services of sub contractor by way of works contract to another contractor providing works contract which are exempted. The appellant also submitted that on the basis of Form 26 AS demand cannot be raised against the appellant. But the Ld. Commissioner (Appeal) held that the work has been executed by the appellant on the basis of work order awarded by private contractors and confirmed the demand against the appellant.

4. Aggrieved from the said order, the appellant is before us.

5. The Ld. Counsel appearing on behalf of the appellant submits that certain work orders have been awarded to the appellant for Earth cutting filling, blanketing compaction, construction of minor bridges, drain and other ancillary works in Reach in connection with construction of new BG Rail line, therefore, the activity undertaken by the appellant which relates to construction of railways. In that circumstances, the service provided by the appellant is covered under Notification No 25/2012 ST dated 20th June, 2012 Serial No. 14 which provides that services by way of construction, erection, commissioning or installation of original works pertaining to railways is exempt from payment of Service Tax . In that circumstances the services

provided by the appellant are exempt from the payment of Service Tax as main contractor who is supplying the service through the appellant is also exempt as per the CBC circular no. 147/16/2011 ST dated 21.10.2011. In that circumstances, it is clear that impugned order deserved no merit and the same is to be set aside.

6. On the other hand Ld. Authorized Representative submitted that the appellant has failed to provide the original work order awarded to the main contractor to whom the appellant had provided the service therefore, it cannot be ascertain that the services provided by the main contractor are exempt from payment of Service Tax or not.

7. Heard the parties. Considered the submissions.

8. We find that the sole issue is that whether the appellant is liable to pay Service Tax against the demand raised on the basis of Form 26AS obtained from the Income Tax Department or not?

9. We find that in this case appellant has produced some of the work orders assigned to him which are extracted here below for appreciation of the facts.

(16)

Annex-10

ANPR PROJECTS PVT. LTD.

To

DATE 04/06/2015

M/s Poonm Construction & Co.,
Canary Hill Road, Hari Om Path,
Hazaribag Pin 825301
PAN Card AAMFP3517F
Axis Bank HZB Br. 911020063839521, UTIB40000613

Sub:- Work Order for Earth work in cutting filling, blanketing compaction, construction of minor bridges, drain and other ancillary works in Reach – III from 08.000KM. to 11.000KM. in connection with construction of new BG Rail line between TORI- SHIVPUR in Latehar Dist . in Jharkhand State.

Dear Sir,

We had been awarded by Tender No. 24 of 13-14 (open) South for two packet system for Earth Work in cutting filling, blanketing, compaction construction of minor bridges, drain and other ancillary works in Reach- III From 08.000 km. to 11.000 km. in connection with construction of new BG Rail line between TORI -SHIVPUR in Latehar Dist. In Jharkhand State.

We are giving the work for constructions of side drain, Catch water drain painting work to you for Earth cutting and rate will be Rs. 90 per cu.m and Qty 125000 (Qty in cu. m.) with following terms & conditions below.

1. TDS @ 2 % will be deducted on Gross Bill.
2. Diesel will be provided by the company and recovered at the rate mentioned above from the bills.
3. The above said men & machinery must and should have highly skilled staff.
4. Payments will be submitted in your Axis Bank Account.
5. Payment will be made in between 05th and 10th every month for the previous month.

Kind Attn Person - Mr. Diwakar Kumar (9931269993 & 9431192253)

Thanking You

Yours faithfully

For ANPR Construction Pvt. Ltd.

Authorised Signatory

ADDRESS OFFICE:- ANPR PROJECTS PVT LTD A-7/5PHASEIII CHANDRAMA COMPLEX KHARVELNAGAR BHUBANESWAR ODISHA 751010

Annex-6 17

MCPL- SSC (JV)

To
M/s Poonm Construction & Co.,
Canary Hill Road, Hari Om Path,
Hazaribag Pin 825301

17/01/2017

WORK ORDER

Sub:- This Work Order is providing for Earth cutting filling, blanketing compaction, construction of minor bridges, drain and other ancillary works in Reach –IX from 05.000 KM. to 10.000 KM. in connection with construction of new BG Rail line between Shanki - Daridag in Ramgarh Dist . in Jharkhand State between Ranchi Koderma line .

Dear Sir,

We had been awarded by Tender No.29 of 13-14 (open) South East for two packet system for Earth Work in cutting filling, blanketing, compaction construction of minor bridges, drain and other ancillary works in Reach- IX From 05.000 km. to10.000 km. in connection with construction of new BG Rail line between Shanki - Daridag in Ramgarh Dist . in Jharkhand State

We are providing the work order for work of side drain, Catch water drain painting work to you for Earth cutting and rate will be Rs. 90 per cu.m and Qty 125000 (Qty in cu. m.) with following terms & conditions below.

1. Diesel will be provided by the company and recovered at the rate mentioned above from the bills.
2. TDS will be deducted on gross Bill I.e. 2% .Diesel will be provided by the company and recovered at the rate mentioned above from the bills.
3. Payments will be submitted in your Bank Account that is given by you.
4. Payment will be made in between 05^{th} and 10^{th} every month for the previous month.

Kind Aftn Person - Mr. Diwakar Kumar (9931269993 & 9431192253)

Thanking You

Yours Truly
For MCPL-SSC (JV)
Authorised Signatory

Near Railway Office, Dipugarha, Hazaribagh, Jharkhand 825301

Upakar

(18)

To

M/S. Poonam Construction & Co.,
Canary Hill Road, Hari Om Path,
Hazaribagh – 825301.
PAN Card – AAMFP3517F
Axis Bank, HZB Br. 911020063839521., UTIB40000613

Dt. 29.10.2016

Kind Attn – Mr.Diwakar Kumar (9334157433, 9931269993 & 9431192253)

Sub: -Work Order for Earth work in cutting, filling, blanketing, compaction, construction of minor bridges, drain and other ancillary works in Reach- VI from11.500 Km. to 16.000 Km. in connection with construction of new BG Rail line between TORI-SHIVPUR inLatehar Dist. in Jharkhand State

Dear Sir,

We had been awarded by Tender No. 25 of 13-14(open) south for two packet system for Earth work in cutting, filling, blanketing, compaction, construction of minor bridges, drain and other ancillary works in Reach- VI from11.500 Km. to 16.000 Km. in connection with construction of new BG Rail line between TORI-SHIVPUR inLatehar Dist. in Jharkhand State.

We are giving the work for constructions of Side drain, Catch water drain, painting work to you with following terms & conditions below.

Item No	Description	Qty in Cu.m	Rate per Cu.m
1	Earth work cutting	125000.0	₹.90/- per cu.m

1. TDS @ 2 % will be deducted on Gross Bill.
2. Diesel will be provided by the Company and recovered at the rate mentioned above from the bills.
3. The above said men & machinery must and should have highly skilled staff.
4. Payment will be made in between 10th and 15th of every month, for the previous month.
5. Payments will be transferred to your account directly.

Thanking you

Yours faithfully
For Upakar Infra Projects Pvt. Ltd.

Authorised Signatory

To
M/S. Poonam Construction & Co.,
Canary Hill Road, Hari Om Path,
Hazaribagh – 825301.
PAN Card – AAMFP3517F
Axis Bank, HZB Br. 911020063839521., UTIB40000613

Dt. 30.10.2016

Kind Attn – Mr.Diwakar Kumar (9334157433, 9931269993 & 9431192253)

Sub: -Work Order for Earth work in cutting, filling, blanketing, compaction, construction of minor bridges, drain and other ancillary works in Reach- VII from 16.000 Km. to 19.000 Km: in connection with construction of new BG Rail line between TORI-SHIVPUR in Latehar Dist. in Jharkhand State.

Dear Sir,

We had been awarded by Tender No. 26 of 13-14(open) south for two packet system for Earth work in cutting, filling, blanketing, compaction, construction of minor bridges, drain and other ancillary works in Reach- VII from 16.000 Km. to 19.000 Km. in connection with construction of new BG Rail line between TORI-SHIVPUR in Latehar Dist. in Jharkhand State. We are giving the work for constructions of Side drain, Catch water drain, painting work to you with following terms & conditions below.

Item No	Description	Qty in Cu.m	Rate per Cu.m
1	Earth work cutting	115000.0	₹.90/- per cu.m

1. TDS @ 2 % will be deducted on Gross Bill.
2. Diesel will be provided by the Company and recovered at the rate mentioned above from the bills.
3. The above said men & machinery must and should have highly skilled staff.
4. Payment will be made in between 10th and 15th of every month, for the previous month.
5. Payments will be transferred to your account directly.

Thanking you

Yours faithfully
For Pallavi Construction

Authorised Signatory

10. On going through the said work orders appellant is engaged in providing the services of work for construction of side drain, catch water drain and painting work. These facts are not in dispute.

11. As claimed by the appellant that the work executed by the appellant pertains to construction of railways which is exempt from payment of Service tax in terms of Serial No. 14 of the Notification No. 25/2012 dated 20th June, 2012 which is evident from the said entry which is extracted here below:

"*14 Services by way of construction, erection, commissioning, or installation of original works pertaining to.*

(a) an airport, port or railways, including monorail or metro;

(b) a single residential unit otherwise than as a part of a residential comples,

(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India,

(d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;"

12. As the activity undertaken by the appellant with regard to construction do not clearly showing that it is in regard to railways which can be evident from the work order assigned to the main contractor, therefore, the work order assigned to the main contractor is essential to ascertain the fact that the activity undertaken by the appellant is in regard to railways. Therefore, we direct the appellant to produce the work orders issued to the main contractor to ascertain the true facts.

12. In that circumstances, we remand matter back to the Ld.Commissioner (Appeal) to ascertain the said fact on production of work orders issued to the main contractor by the appellant.

13. In view of this, the appeal is disposed off by way of remand.

(Pronounced in the open court on 12.06.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K.ANPAZHAKAN)
MEMBER (TECHNICAL)

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