IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75677 of 2024

(Arising out of Order-in-Original No. 48/COMM/ST/SLG/23-24 dated 29.02.2024 passed by the Commissioner of Central Excise and C.G.S.T., Siliguri, Central Revenue Building, Hakimpara, Haren Mukherjee Road, Siliguri – 734 001)

M/s. Ashok Kumar Madhyani **: Appellant**
NJP Station Road, RM Colony,
Siliguri – 734 007

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Siliguri Commissionerate,
Central Revenue Building, Hakimpara, Haren Mukherjee Road,
Siliguri – 734 001

APPEARANCE:

Shri Navin Kumar Agrawal, Chartered Accountant, for the Appellant

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

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77450 / 2025

DATE OF HEARING: 17.09.2025

DATE OF DECISION: 19.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 48/COMM/ST/SLG/23-24 dated 29.02.2024 passed by the Commissioner of Central Excise and C.G.S.T., Siliguri, wherein the demand of service tax of Rs. 1,45,54,321/- has been confirmed, along with interest and equal amount of tax as penalty.

2. M/s. Ashok Kumar Madhyani (hereinafter referred to as the “appellant”) is a firm engaged in providing 'Works contract Service'. The main nature of the service rendered by the appellant includes 'Guage Conversion', i.e., laying of track for North Eastern Frontier Railways. The appellant did not have any service tax registration.

2.1. Scrutiny of the information received from the Income Tax Department revealed that as per Form-26AS, the appellant has received the amount of Rs. 11,73,69,466/- and Rs.14,52,34,196/-(total of Rs. 26,26,03662/-), during the Financial Years 2015-16 and 2016-17 respectively, from various service recipients on which TDS was deducted under Section 194C of the Income Tax Act, 1961. Thus, the officers of Service Tax department were of the view that the appellant had rendered 'Works Contract Service' liable to Service Tax in terms of Section 65B(44) and 65B(54) of the Finance Act, 1994. Thus, the Department alleged that the appellant was liable to pay Service Tax amounting to Rs.3,88,03,702/- (including Cess) on the payments received by them during the above said periods.

2.2. On the basis of the above said objection, a Show Cause Notice dated 28.04.2021 was issued to the appellant, demanding Service Tax amounting to Rs.3,88,03,702/- (including Cess) for the Financial Years 2015-16 and 2016-17, by invoking the extended period of limitation.

2.3. The said Notice was adjudicated whereafter the demand of Service Tax amounting to Rs. 1,45,54,321/- (including Cess) has been confirmed in the impugned Order-in-Original dated 29.02.2024. Penalty, inter alia, equivalent to the Service Tax demand confirmed has also been imposed under Section 78 of the Finance Act, 1994. The summary of the impugned demands are as follows:-

F.Y.	**Amount involved**	**Service Tax Liability including Cess (14.5%/15%)**
2015-16	Rs. 11,73,69,466/-	Rs. 59,47,237/-
2016-17	Rs. 14,19,94,617/-	Rs. 86,07,084/ -
Total	**Rs. 25,93,64,083/-**	**Rs. 1,45,54,321/-**

2.4. Aggrieved against the confirmation of the demand of Service Tax, along with interest and penalty, the appellant has filed this appeal.

3. During the course of hearing, the appellant submitted that they are involved in rendering Works Contract Services for North Eastern Frontier Railways. They refer to Section 65B(54) of the Finance Act which defines "Works Contract" service, which includes repair, maintenance, renovation, alteration of any movable or immovable property. The appellant submits that the services rendered by them are 'Original Works' to Railways, which are specifically exempted vide Service Tax Mega Exemption Notification No. 25/2012 dated 20/06/2012; that the Department denied exemption on the ground that the appellant relied only on a Railway certificate stating the work order is "original work" as per Railway

Board's letter no. 2017/EnHM/26/04dated 17-05-2018. It is submitted that the exemption claimed by them was not on the basis of Railway Board's clarification; whether the works rendered by them are 'original works' or not is to be examined as per the definition of "original work" as laid down under the Service Tax law. It is pointed out by the appellant that while denying the benefit of the said notification, the ld. adjudicating authority has not given any specific finding as to why the services rendered by them as per the work orders would not be covered under the definition of "original work" under the Service Tax law; the ld. adjudicating authority merely rejected the exemption benefit on the basis of reliance on the Railway's clarification, without examining the statutory definition under the Service Tax provisions.

3.1. It is also the appellant's contention that it is a settled legal principle that if a contract/work order is covered under the definition of "original work" as provided under the Service Tax law, then such work is eligible for the exemption irrespective of how it is described in any departmental circular or internal communication; therefore, once the nature of work is examined and found to be covered within the ambit of "original work" as per the Service Tax law, the benefit of exemption cannot be denied.

3.2. In view of these submissions, the appellant has prayed for setting aside the demand of Service Tax, along with interest and penalty, confirmed in the impugned order and allowing the appeal filed by them.

4. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. We find that the appellant is mainly rendering the service laying of track for North Eastern Frontier Railways. There is no dispute that the service rendered by the appellant falls within the ambit of Section 65B(54) of the Finance Act, 1994, which defines "Works Contract" service. As per the said definition, 'works contract service' includes repair, maintenance, renovation, alteration of any movable or immovable property. The appellant claims that the services rendered by them are 'Original Works' to Railways, which are specifically exempted vide Service Tax Mega Exemption Notification No. 25/2012 dated 20.06.2012 but the adjudicating authority has denied the exemption benefit solely on the ground that the services rendered by them cannot considered as 'Original Works'. From a perusal of the impugned order, we observe that the ld. adjudicating authority has not considered the 'work contract service' rendered by the appellant as 'Original Works', as stated by the appellant.

6.1. In this regard, we are of the view that the eligibility of the exemption provided under the Notification No. 25/2012 dated 20.06.2012 has to be determined on the basis of the 'work order' and not on the basis of Railway Board's clarification. Whether the works rendered by the appellant are 'original works' or not is to be examined as per the definition of "original work" as laid down under the Service Tax law. We find that while denying the benefit of the said notification, the ld. adjudicating authority has not given any specific finding as to why the services rendered by them as per the work orders would not be covered under the definition of "original work" under the Service Tax law. The ld. adjudicating authority merely rejected the exemption benefit on the basis of reliance on the Railway's clarification, without examining the statutory definition of 'Original work' as provided under the Service Tax provisions.

6.2. It is a settled legal principle that if a contract/work order is covered under the definition of "original work" as provided under the Service Tax law, then such work is eligible for the exemption irrespective of how it is described in any departmental circular or internal communication. Therefore, once the nature of work is examined and found to be covered within the ambit of "original work" as per the Service Tax law, the benefit of exemption cannot be denied.

6.3. We observe that the appellant has claimed the benefit of exemption as provided under Sl. No. 14 of the mega exemption Notification No. 25/2012-ST dated 20.06.2012, which states as under: -

> *"14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-*
>
> - ***railways, including monorail or metro;***
> - *a single residential unit otherwise than as a part of a residential complex;*
> - *low- cost houses up to a carpet area of 60 square meters 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;*
> - *post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or …"*

(Emphasis supplied)

6.4. The definition of original works as per Notification No. 25/2012-ST dated 20.06.2012, as amended, reads as under: -

> *"For the purpose of this notification, unless the context otherwise requires:*
>
> *(y) "original works" means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;"*

6.4.1. **Explanation (1)(a) to the Rule 2A of Service tax (Determination of Value) Rules, 2006, dated 20.6.2012,** defines "Original Works" as:

> *"(i) all new constructions;*
>
> *(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*
>
> *(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise'"*

6.5. From the above definition of 'Original Works', we find that all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable, falls within the ambit of 'original work'.

6.6. On the basis of the above definition of 'original work', we have examined the work orders executed by the appellant, which are the subject matter of dispute in this appeal. Our observations in respect of each of the work orders are as under: -

Work Orders related to FY 2015-16:

1. **Work Order No. W/362/15/BG TFR. Point/KNE /L-Cell (ST Amount involved : 4,43,787/-**

This Contract is related to:

(A) Installation of broad gauge (Railway with track gauge) through fitting renewal of the existing Pre Stressed Concrete sleeper laid under 52Kg rail by new fitting under the jurisdiction of Divisional Engineer of Katihar Junction.

(B) Deep screening (which is done to ensure that a clean ballast cushion of the required depth is available below the lower half of the sleepers which will not affect the performance of the track) of ballast of loop line at Kishanganj station and at aluabari Road junction under the jurisdiction of Divisional Engineer of Katihar Junction.

(C) Deep screening of point and crossing under Assistant Divisional Engineer of Kishanganj. The Deep Screening will result in addition of the structure of the land to make it workable.

The above work :

(A) involves laying new Broad Gauge through fitting renewal to ensure bigger stabilitity of the existing Pre Stressed Concrete Sleeper.

(B) **& (C)** involves Deep screening of the ballast which is done to ensure that a clean ballast cushion of the required depth is available below the lower half of the sleepers (i.e. alteration to existing damaged sleepers on land), which is necessary for providing the proper drainage and elasticity to the track.

We find that the above contract is covered under the definition of "Original Work".

2. **Work Order No. W/362/15/KNE/Glued Switch Joint/L-Cell (ST Amount involved : 2,20,098/-**

This Contract is related to:

(A) Replacement of glued rail joints under the jurisdiction of Assistant Divisional Manager of Kishanganj (Total=125 sets)

(B) Replacement of glued rail joints under the jurisdiction of Assistant Divisional Manager of Kishanganj (Total=134 sets)

(C) Renewal of Switch expansion joint (52 Kg) {expansion joint installed at each end of Long welded rails (LWR) and Continuous welded rails (CWR) to permit expansion contraction of the adjoining breathing lengths due to temperature variations} with all fittings and sleeper under the jurisdiction of Assistant Divisional Manager of Kishanganj (Total=29 sets).

We observe that the above contract of glued rail joints and switch expansion joints involves replacement and renewal of rail joints installed on land and are in nature of new constructions. Thus the above contract is clearly covered under the definition of "Original Work".

3. **Work Order No. W/362/15/BG TSR (P)/NJP-JPE/L-Cell (ST Amount involved : 23,80,151/-**

This Contract is related to:

> **(A)** Installation of broad gauge (Railway with track gauge) through fitting renewal of the existing Pre Stressed Concrete sleeper laid under 60Kg rail between New Jalpaiguri to jalpaiguri road.

It is observed that the above work is in nature of renewal (i.e. new construction) of entire lot of sleeper over a particular stretch which should be done when the percentage of unserviceable sleepers is equal to 30% on trunk routes/main lines and 35% on branch lines to make the same more workable. Considering the above, we find that the above contract stands covered under the definition of "Original Work".

4. **Work Order No. W/362/14/TRP(P) & TTR (P)/L-Cell (ST Amount involved : 3,91,209/-**

This Contract is related to:

> Through rail renewal of the existing 52 Kg/72 UTS rail on Pre stressed concrete by 60Kg/90UTS rail in DN Line.

The above work includes work through rail renewal which is carried out after the track gets consolidated by three rounds of through packing and also on account of passage of trains and is an alteration to existing structure on land. Thus, it clearly flows from the above that the above contract is covered under the definition of "Original Work".

5. **Work Order No. W/362/12/BG CTR (P)/NJP-KDPR-MLDT/L-Cell (ST Amount involved : 7,71,997/-**

This Contract is related to:

(A) Board Gauge Complete Track Renewal of existing 52 Kg/72UTS rail on pre stressed concrete(PSC/5) by 60 Kg/90UTS rail and Pre stressed concrete (PSC/6) on Dn line .

(B) Through Rail Renewal of the existing 52 Kg/72 UTS rail on pre stressed concrete (PSC/6) on pre stressed concrete (PSC/6) on Dn line.

The above contract includes new constructions work involving complete renewal of existing track on Dn line from km 6.3 to 8.6 and Through Rail Renewal work on Dn line km 3.25 to 6.3 and is in nature of new works. Thus, we find that the above contract is also covered under the definition of "Original Work".

6. **Work Order No. W/362/14/TRP(P) & TTR (P)/L-Cell(ST Amount involved : 4,85,960/-**

This Contract is related to:

> Board Gauge Through Turn-out Renewal of the existing 52 Kgs FS 1in 12 on Pre Stressed Concrete sleeper by 60Kg FS 1 in 12 on Pre Stressed Concrete sleeper.

The above contract includes new construction work on the existing land. Thus, the same is covered under the definition of "Original Work".

7. **Work Order No. W/362/14/BG CTR (P)/L-Cell (ST Amount involved : 12,54,035/-**

This Contract is related to:

> Board Gauge Complete Track renewal of existing 52 Kg/72 UTS rail on Pre Stressed Concrete (PSC/5) sleeper by 60 Kg/ 90 UTS rail and Pre stressed Concrete (PSC/6) sleeper in Dn line of New Jalpaiguri to Malda Town Railway station.

We find that the above contract includes new construction works, involving complete renewal from km 87 to 94. Thus, the above contract is covered under the definition of "Original Work".

Work Orders related to FY 2016-17:

1. **Work Order No. W/362/Con/P.Way ancillary works/MYGD-CBD/42 to 62.5 (ST Amount involved : 3,44,597/-)**

   The Contract is related to:

   Permanent way and ancillary work required for completing the balance work in connection with the opening of the section from New Mal Junction to Changrabandha.

The above work involves New Gauge Conversion Work for changing of one railway track gauge to another. Thus, the above contract is covered under the definition of "Original Work".

2. **A) Work Order No. W/362/15/TTR CMS Crossing=90 Sets/L-cell (ST Amount involved : 20,63,161/-**

   B) Work Order No. W/362/14/TRR(P) & TTR (P)/L-Cell (ST Amount involved : 3,79,972/-

   C) Work Order No. W/362/15/BG TSR/NJP/L- cell (ST Amount involved : 21,03,353/-

   These Contracts are related to:

   Through rail renewal of the existing 52 Kg/72 UTS rail on Pre stressed concrete PSC/6 sleeper by 60Kg/90UTS rail in DN Line.

The above work includes work through Rail Renewal which is carried out after the track gets consolidated by three rounds of through packing and also on account of passage of trains and is an alteration to existing structure on land. Thus, the above contract is covered under the definition of "Original Work".

3. **Work Order No. W/362/15/NJP/Cess/L-Cell (ST Amount involved : 12,76,346/-)**

   The Contract is related to:

   (A) Provision of RCC drain from Belakoba railway station yard 17/8 Km to 17/2 km. engineer of new jalpaiguri.

   (B) Provision of Drain at Ambari Falakata railway station & Belakoba yard.

We observe that the above works are in nature of addition and alterations to abandoned structures on land. Thus, the above contract is covered under the definition of "Original Work"

4. **Work Order No. W/362/15/BG TSR (P)/NJP - JPE /L- Cell (ST Amount involved : 19,80,968/-)**

   The Contract is related to:

   (A) Installation of broad gauge through fitting renewel of the existing Pre-stressed Concrete sleeper laid under 60Kg rail.

The above work is in nature of renewal of entire lot of sleepers over a particular stretch from M+7 to M+8 which should be done when the percentage of unserviceable sleepers is equal to 30% on trunk routes/main lines and 35% on branch lines to make the same more workable Thus, we find the same to be covered under the definition of "Original Work".

5. **Work Order No. W/362/15/BG TSR (P)/NJP - JPE/L- Cell (ST Amount involved : 19,80,968/-)**

The Contract is related to:

(A) Installation of broad gauge through fitting renewel of the existing Pre Stressed Concrete sleeper laid under 52Kg rail.

(B) Deep screening of ballast of loop line.

(C) Deep screening of point and crossing,

The above work :

(A) involves laying new Broad Gauge through fitting renewal to ensure bigger stabilitity of the existing Pre-Stressed Concrete Sleeper.

(B) & (C) involves Deep screening of the ballast which is done to ensure that a clean ballast cushion of the required depth is available below the lower half of the sleepers.

Considering the above, we find that the above contract is covered under the definition of "Original Work".

6. **Work Order No. W/362/15/BG TSR (P)/NJP - JPE/L- Cell (ST Amount involved : 19,80,968/-)**

The Contract is related to:

Unloading and spreading of 50 mm Machine ballast under the jurisdiction of Senior Divisional engineer of katihar.

The above work includes spreading of un-loading ballast in track with all lead, lifts descents crossing of running track etc uniformly in track with a lead of 250mt on either side and making standard ballast. Thus, it is clear that the above contract would be covered under the definition of "Original Work".

6.7. In view of the above findings, we are of the considered view that the work orders mentioned hereinabove, on the basis of which the 'work contract service' has been rendered by the appellant, all fall within the definition of "Original Work". Accordingly, we hold that the services rendered by the appellant being 'Original Works' to Railways, are specifically exempted vide Service Tax Mega Exemption Notification No. 25/2012-S.T. dated 20.06.2012. Consequently, we hold that the demand of Service Tax confirmed in the impugned order is not sustainable and hence, we set aside the same.

6.8. As the demand of Service Tax itself does not survive, the question of demanding interest and imposing penalties does not arise. Accordingly, we set aside the demand of interest as well as the penalties imposed in the impugned order.

7. In view of the above discussions, the impugned order is set aside and the appeal filed by the appellant is allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **19.09.2025**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd