

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51891 of 2018

[Arising out of Order-in-Appeal No. 96(AK)ST/JPR/2017-18 dated 30.05.2018 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

**M/s. Road Infrastructure Development
Company of Rajasthan Limited (RIDCOR) ...Appellant**
LIC Jeevan Nidhi Building, Ambedkar Circle,
Bhawani Singh Marg,
Jaipur (Rajasthan)-302005

VERSUS

**Commissioner of Central Excise and Customs,
Central Goods and Service Tax, Jaipur I ...Respondent**
NCR Building, Statue Circle,
C-Scheme, Jaipur - 302005

APPEARANCE:

Shri M.B. Maheshwari, Chartered Accountant for the Appellant
Ms. Jaya Kumari, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 16.10.2025
DATE OF DECISION: **13.02.2026**

FINAL ORDER NO. 50267/2026

DR. RACHNA GUPTA

M/s. Road Infrastructure Development Company of Rajasthan Limited, the appellant herein, is the holder of service tax registration being engaged in providing various taxable services as that of Renting of Immovable Property Services, Consulting Engineering Services, Works Contrat Services etc. There was an introduction of amendment vide Finance Act, 2016 incorporating Section 102 in the Act conveying that no service tax shall be levied or collected during the period commencing from 01.04.2015 and ending with 29.01.2016 both days inclusive), in respect of taxable

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 civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

2. Pursuant to the said provision, the appellant filed a refund claim of service tax amounting to Rs.1,58,03,017/- on 11.11.2016 for service tax paid on construction of multilevel parking at Nayi Sadak, Jodhpur, underground parking at Gandhi Maidan, Jodhpur and Hathiwala Park at Udaipur and Eklavya Model Residential School, Rajgarh, Alwar claiming the exemption under serial no. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 09/2016-ST dated 01.03.2016 read with Section 102 of the Finance Act, 2016. However, department observed that the requisite documentary evidences were not provided by the appellant nor any evidence was provided vis-à-vis eligibility towards exemption Notification No. 25/2012. Accordingly, vide Show Cause Notice No. 18/151/2016 dated 05.01.2017, the refund claim of Rs.1,58,03,017/- was proposed to be rejected. The said proposal was confirmed vide Order-in-Original No. 228/2016-17 dated 08.02.2017. Appeal against the said order has been rejected vide Order-in-Appeal No. 96/2017-18 dated 30.05.2018. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri M.B. Maheshwari, learned Chartered Accountant for the appellant and Ms. Jaya Kumari, learned Authorized Representative for the department.

4. Learned counsel for the appellant has submitted that the impugned refund claim has been filed in terms of Section 102 of the Finance Act, 1994 as was incorporated in view of the amendment act of 2016. The adjudicating authority below has failed to appreciate the legislative intention behind insertion of the said Section 102 which is a special provision granting retrospective exemption provided that the contracts for the purpose got entered into prior 01.03.2015. It is submitted that the appellant fulfilled all the conditions of the exemption vis-à-vis date of contract, nature of contract, type of service recipient and intention of services. Hence the rejection of refund claim is unreasonable and unjustified.

4.1 Learned counsel further submitted that the object of construction of parking facility was to provide parking space to the public at large to ease the traffic on the roads. Thus, it was a public utility service as also mentioned in Article 243W of the Constitution of India. The said construction activity is wrongly held to be commercial activity by the adjudicating authority below. The contracts for construction of parking were awarded by Nagar Nigam. Though nominal charges were being collected by Nagar Nigam but not with an intent to earn revenue or profit but to ensure the proper and judicious use of such public facilities and to maintain these facilities. The letter from Commissioner, Jodhpur Nagar Nigam has specifically clarified that the construction of parking is not for any commercial activity. The charges collected were towards such business of government where there was no profit element. This aspect has been ignored by the adjudicating authorities below. The appellant has wrongly been denied the

benefit of exemption Notification No.25/2012 and the refund claim of appellant have wrongly been rejected. While referring to all relevant provisions, learned counsel has prayed for the impugned order to be set aside and the appeal to be allowed. Learned counsel has relied upon the decision of this Tribunal in the case of **Commissioner of C. Ex. & S.T., Lucknow Vs. Shalimar Corp. Ltd. reported as (2019) 24 GSTL 254 (CESTAT, Allahabad).**

5. While rebutting these submissions, learned Departmental Representative has reiterated the finding arrived at in the impugned order. Specific emphasis to the following has been laid:

(i) The construction services for parking projects are meant for the local bodies to charge hefty amount from the contractors, who in turn charge high parking fees from the general public. Hence it is rightly considered as an activity in the nature of commerce and industry. Thus the refund claim of Rs.1,27,74,972/- is rightly rejected on this ground.

(ii) The work of Eklavya Model Residential School which is an educational institute was awarded by Tribal Area Development Department of Government of Rajasthan and is covered under Notification No. 25/2012 as amended and hence refund claim of Rs.30,28,045/- is not liable to be rejected on this ground.

5.1 It is further submitted that refund claims are not maintainable unless and until the self assessment has got reviewed/revised. The decision of **Hon'ble High Court of Delhi in the case of BT (India) Pvt. Ltd. Vs. Union of India reported as (2023) 13 Centax 89 (Del.)** and the decision of Hon'ble Supreme Court in the

case of **ITC Ltd. Vs. Commissioner of Central Excise, Kolkata IV reported as 2019 (368) ELT 216 (SC)** has been relied upon while praying for dismissal of the appeal.

6. Learned counsel for the appellant while rebutting these submissions has denied the applicability of both the decisions relied upon by the department. It is submitted that the refund claim in the present case is filed under a specific provision vis-à-vis exemption notification (Section 102 of the Finance Act, 2016) permitting refund of service tax deposited for a short period during which the benefit of exemption was withdrawn but the benefit was specifically restored granting retrospective exemption. Learned counsel for the appellant also submitted even the decision of Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Vs. Commissioner of Central Excise and Service Tax, Alwar reported as 2022 (58) GSTL 129 (SC)** is not applicable to the facts and circumstances of the present case. In that case the Agricultural Produce market Committees were renting/leasing/allotting the shop/land/platform with the pure element of earning profit whereas in the present case the appellant had constructed parking as well as the school building purely for the government to discharge its mandatory statutory duties prescribed under Article 243W of the Constitution of India. With these submissions, the appeal is prayed to be allowed.

7. Having heard both the parties and perusing the entire records, following issues are observed to need adjudication:

(i) Whether the appellant is eligible for the exemption benefit of Entry No. 12A of Notification No. 25/2012-ST dated 20.06.2012.

(ii) Whether the appellant's claim of refund on construction of parking facility for local authority has rightly been rejected or not?

8. Issue No. 1 is pre-requisite for the findings to issue no. 2.

Hence foremost we have perused the relevant entry of notification.

12A. 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;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;"

8.1 We have also perused Section 102 of the Finance Act, 1994 as got inserted by Finance Act, 2016. It was the special provision for retrospective exemption in certain cases relating to construction of government buildings. The provision reads as follows:

(2) Special provision for retrospective exemption in certain cases relating to construction of Government buildings (Section 102 of Finance Act, 1994 as inserted by Finance Act, 2016) -

(1) Notwithstanding anything contained in section 66A of the Act, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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;

b) a structure meant predominantly for use as-

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

c) a residential complex meant predominantly for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) 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 at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

8.2 The perusal of both the provisions makes it clear that whenever service is provided to a government, a local authority or a governmental authority by way of construction as mentioned under clause 12A(a) of the exemption Notification No. 25/2012 or for the purpose of being used as educational establishment under Section 12A(c) of said Notification No. 25/2012 during the relevant period (01.04.2015 to 29.02.2016) as prescribed under Section 102 of the Finance Act, since such activity was held exempted from payment of service tax, if any tax paid during the said relevant period shall be held eligible for being refunded. The order under challenge has rejected the refund claim for the service tax paid by the appellant during the period 01.04.2015 to 29.02.2016 on the ground of holding the construction of parking by the appellant to be a construction done for commerce and it has been rejected vis-à-vis

construction of school for want of invoices and other requisite documents.

8.3 To appreciate the correctness of the said adjudication, we have foremost perused the facts. The admitted facts on record are:

(i) Both the activities are initiative of Government of Rajasthan.

(ii) The appellant was awarded civil construction contracts by the Government of Rajasthan (Directorate of Local Bodies) for the following works:

S. No.	Name of Contract	Date of Agreement	Awarded by	Date of Commencement/completion
1.	Multilevel parking at Nayi Sadak, Jodhpur	Original Sanction : 5 th Sep' 2013 Revised Sanction : 1 st Feb' 2016	Director Local Bodies (DLB), Government of Rajasthan	1 st Nov' 2013 (suspended)
2.	Underground parking at Gandhi maidan, Jodhpur	Sanction : 5 th Sep' 2013	Director Local Bodies (DLB), Government of Rajasthan	20 th Jan' 2014
3.	Hathiwala Park, Udaipur	Sanction : 27 th Sep'	Director Local Bodies (DLB), Government of	1 st Nov' 2013/1 st April, 2017

		2013	Rajasthan	
4.	Eklavya Model Residential School, Rajgarh, Alwar*	Original Sanction 3 rd Oct' 2013 Revised Sanction : 11 th Jun' 2014	Tribal Area Development Department (TADD), Government of Rajasthan	15 th Apr' 2014/15 th Nov' 2016

(iii) The appellant was claiming exemption under Notification No. 25/2012 and was allowed prior the said exemption was withdrawn by the Central Government vide Notification No. 6/2015 dated 01.03.2015 w.e.f. 01.04.2015.

(iv) After the said withdrawal, the appellant started depositing service tax on such services w.e.f. 01.04.2015.

(v) The said exemption was restored vide Notification No. 9/2016 dated 01.03.2016 at serial no. 12A w.e.f. 01.03.2016.

(vi) The restoration of exemption was with respect to contracts as were entered into prior 01.03.2015 and on which appropriate stamp duty whenever applicable had been paid prior to such date.

(vii) Section 102 of the Finance Act, 1994 incorporated pursuant to Finance Act, 2016 had allowed refund of service tax which was paid but would not have been paid in terms of retrospective exemption granted by the said section (already reproduced above).

(viii) Urban planning including term planning and providing public amenities including parking lots etc. is the responsibility of state municipalities in terms of 12th Schedule to Article 243W of Constitution of India.

8.4 These admitted facts makes it clear there is difference between activity/service rendered for business or commerce and the government activities rendered for public welfare. For the purpose we have perused the meaning of word commercial/commerce as given under various dictionaries:

As per Oxford dictionary:

The word commercial means 'making or intended to make a profit, more concerned with profit and being popular than with quality. In common parlance, commercial denotes profit motive. Similarly, industry means branch of economic, commercial activity, manufacture and trade.'

In Black's Law dictionary:

"Commercial" has been defined as "relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce".

In Stroud's judicial dictionary (5th Edition):

The term 'commercial' is defined as traffic, trade or merchandize in buying and selling of goods.

In Ramanatha Iyers's Advanced Law Lexicon (3rd edition):

The word, 'Commercial Purpose' is defined as: Word has a wide connotation, in determining commercial purpose, scale of

business, the investment involved, motive and intention behind the business, whether in the nature of earning a livelihood or earning substantial profits, currently as well as in future should be taken in to consideration.

Further in **R.M. Investment and Trading Co. Pvt. Ltd. v. Boeing Co. and Another, (1994) 4 SCC 541**, while dealing with the expression "commercial" it has been opined that the expression "commercial" should be construed broadly having regard to the manifold activities which are integral part of international trade today.

8.5 Thus, the above interpretation clearly amplifies that an activity is said to be commercial in nature, if it is carried on as a business to earn profit. Profit motive is essential in determining the transaction for commerce or industry. Whether the activity actually results in profit or loss is immaterial but what is necessary is that the intention must be to earn profit. Similarly, an organization or establishment can be said to be 'commercial concern' if it is run with an intention to make money or earn profit. In the instant case, the parkings constructed by the government are claimed to be run for the public used/welfare in public interest under the Constitution of India, Article 243W and hence, cannot be treated as a commercial concern."

8.6 The stand of the appellant, since beginning, is that a nominal parking fee has been charged from the public for sale of maintaining the parking and no profit was intended nor even earned to corroborate the same, the appellant has placed on record a letter of the Commissioner, Jodhpur Nagar Nigam bearing No. 7/67 dated

03.07.2018 wherein it is mentioned that the parking facility at Gandhi Maidan, Jodhpur is being constructed to provide facility to the public that too pursuant to the directions of Hon'ble High Court of Jodhpur given in public interest litigation (PIL) seeking parking facility. It has been clarified in the said letter that the activity was not for any commercial purpose. As already observed above, the regulation of parking of private vehicles is otherwise covered under constitutional duty of municipalities and as per clause 45 and 253 of the Rajasthan Municipalities Act, 2009, such activities are not meant for commerce. The decision of **Krishi Upaj Mandi Samiti (supra)** is held not applicable to the facts and circumstances of the present case. Construction of educational institutes/schools is specifically exempted under clause 12A(b)(i) of Notification No. 25/2012 dated 20.06.2012. As a result of above discussion, it is held that the appellant was rendering service to the government, local bodies of civil construction for parking lots as well as for the educational establishment which were not meant for commerce. Merely for a small fee being collected from the users of the parking, the said activity cannot be termed as commercial as was held in **Shalimar Corp. Ltd. (supra)**, wherein the construction of public parking was held to be an activity rendered for the government towards its discharge of public function. Issue No. 1 stands thus decided in favour of the appellant.

9. **Issue No. 2**

12.1 The Commissioner (Appeals) has confirmed the rejection of refund claim vis-à-vis the service tax paid for constructing parking lots for the reason that the requisite documents/invoices has not

been submitted and that incidence of tax has been passed on by the appellant. However, held that the refund claim vis-à-vis construction for Eklavya Model Residential School, is not liable to be rejected being covered under Notification No.25/2012. It is observed that the refund claim has been filed under Section 102 of the Finance Act incorporated in terms of Section 159 of the Finance Act, 2016. The said section has considered Section 102 as the special provision for exemption in certain cases relating to construction of governmental buildings. The objective of this section is to extend service tax exemption retrospectively for the services specified therein. The CBEC vide Circular No. 334/8/2016 dated 29.02.2016 has clarified that the relevant services provided to the government during the period under the contracts entered into prior 01.03.2015 shall remain exempted from service tax. Section 102(2) (as reproduced above) has used word 'shall' making it mandatory for the department to refund such service tax which has been collected but which would not have been so collected as the exemption would never been withdrawn. The intention of legislature is ample cleared that the refund under the said Section 102 is absolutely different from the refund under Section 27 of the Customs Act or Section 11B of Central Excise Act. This observation is sufficient to hold that the decision in **BT (India) Pvt. Ltd. (supra)** and **ITC Ltd. (supra)** is not applicable to the present facts and circumstances of the present case. All relevant documents, were admittedly produced by the appellant. The contract for construction of multilevel parking at Nayi Sadak Jodhpur is denied to be executed prior 01.03.2015. However, it is observed from the show cause notice itself that the said contract

was initially entered into on 05.09.2013. However, it got merely revised in the Year 2016.

9.1 The adjudicating authority is held to have been wrong while considering the date of revision as the date of original contract. As apparent from the table above, the contracts for construction of parking got executed prior the date as mentioned in Section 102 of the amendment act of 2016. Further department has not produced any evidence to prove that the stamping of those contracts was required. Hence the adjudicating authority below is held to have failed in complying with said Section 102 which mandates the refund of the amount of service tax paid during the period 01.04.2015 to 29.02.2016. Amount in question apparently pertaining to the said period.

9.2 With respect to the issue of passing over the incidence of tax, admittedly, the Chartered Accountant of the appellant has given certificate, the incidence has not been passed on. It was also brought on record that the tax charged and collected from Director Local Bodies, Jaipur was refunded by way of issue of credit notes for the equivalent amount. No evidence has been produced by the department to falsify the said certification/declaration. It is the settled principle that Chartered Accountant Certificate is a sufficiently admissible document for the proof of the content therein. I draw my support from the decision in the case of **Akasaka Electronics Ltd. v. Commissioner of Central Excise/Customs, Mumbai (2016 (343) E.L.T. 362 (Tri. - Mumbai).**

9.3 In light of the said discussion, it is held that the grounds for rejecting the impugned refund claim are wrongly been invoked in the present case. Those are not relevant to the facts and circumstances of the present case (as discussed above). It is therefore held that the order rejecting refund claim of the service tax paid for construction of parking lots for Rajasthan Municipal Corporation is liable to be set aside. Thus Issue No. 2 also stands decided in favour of the appellant.

10. In light of the entire above discussion, the order under challenge is hereby set aside and the appeal is allowed.

[Order pronounced in the open court on **13.02.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

HK