

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

SERVICE TAX APPEAL NO. 54194 of 2015

[Arising out of Order-in-Original No.11/ST/COMMR/MRR/2015-16 dated 24.07.2015 passed by the Commissioner of Central Excise and Service Tax, Rohtak (Haryana)]

M/s. Ajab Singh & Co.

Village-Gaurakhpur, Wazirabad Road, Shahdra,
New Delhi-110094

...APPELLANT

Vs.

**Principal Commissioner of Service Tax
Delhi I, New Delhi**

...RESPONDENT

Appearance:

Present for the Appellant : Shri A.K.Batra and Ms. Sakshi Khanna, Chartered Accountant

Present for the Respondent: Shri Mihir Ranjan, Special Counsel and Shri Rajeev Kapoor, Authorised Representative

AND

SERVICE TAX APPEAL NO. 54378 of 2015

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**Principal Commissioner of Service Tax
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Vs.

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Appearance:

Present for the Appellant : Shri Mihir Ranjan, Special Counsel and Shri Rajeev Kapoor, Authorised Representative

Present for the Respondent: Shri A.K.Batra and Ms. Sakshi Khanna, Chartered Accountant

**CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**Date of Hearing :08.12.2025
Date of Decision:01.04.2026**

Final Order No.50627-50628/2026

HEMAMBIKA R. PRIYA

These appeals are filed by M/s. Ajab Singh & Co.¹ and the Revenue² against the common Order-in-Original No. 11/ST/COMMR/MRR/2015-16 dated 24.07.2015 passed by the Commissioner of Central Excise and Service Tax, Rohtak (Haryana), wherein the appellant is in appeal against confirmation of the demand of service tax of Rs.9,59,565/- alongwith interest and penalty under section 75, 76, 77 and 78 of the Finance Act, 1994, whereas the Revenue is in appeal against the dropping of the part of the demand.

2. The brief facts are that the Appellant, M/s. Ajab Singh & Co., is a sole proprietorship concern of Mr. Ajab Singh, having his registered office at Village Gokulpur, Wazirabad Road, Shahdara, Delhi-110094. The Appellant was registered with the Service Tax Department vide registration no. AKDPS2160CSD001 dated 04.03.2010, under the taxable category of Renting of Immovable Property Services'. The appellant was a Class I Contractor with the Delhi Development Authority (DDA), engaged in execution of construction works for DDA. The scope of works executed, inter alia, included the following:

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- 1. Appellant no.1**
 - 2. Appellant no.2**

- (i) Construction and repair of roads.
- (ii) Construction and covering of drains.
- (iii) Construction of boundary walls for protection of land.
- (iv) Construction of parking facilities.
- (v) Construction of residential complexes.
- (vi) Upgradation and renovation of residential houses.
- (vii) Supply and installation of rainwater harvesting systems.
- (viii) Construction of temporary roads adjacent to the outer boundary wall near railway line in Commonwealth Games Village.
- (ix) Development of hard landscaping at the practice venue area during the Commonwealth Games, 2010.

The Department initiated the enquiry of the service tax records of the appellant. On completion of scrutiny of the documents, a show cause notice dated 22.11.2013 was served up on the appellant for the Financial Year 2011-12 whereby a demand for Rs.1,10,58,612/- was proposed under the taxable category of 'Construction of Residential Complex Services' along with interest under section 75 and penalties under section 76, 77 and 78 of the Act. The appellant submitted their reply against the Show Cause Notice. The Commissioner vide impugned order dropped the demand for Rs. 82,93,325/- and demand for Rs. 27,65,287/- was confirmed under the taxable category of Works Contract Services³. The Department appropriated the tax payment of Rs. 18,05,722/-. Aggrieved with the impugned order, the Appellant is before the Tribunal.

3. WCS

3. Learned counsel for the appellant submitted that the Department while issuing the Show Cause Notice had proposed the demand for service tax under the taxable category of 'Construction of Residential Complex Services'. Learned counsel stated that the Adjudicating Authority had confirmed the demand under 'WCS' thereby rendering the confirmation of demand beyond the scope of Show Cause Notice. Hence, the entire demand deserved to be set aside. He also stated that the definition of works contract services under Section 65(105)(zzza) of the Finance Act 1994, excluded works contract in respect of roads, therefore, the same was not taxable under the said category of service.

3.1 Learned counsel further submitted that the Department vide Circular No. 334/1/2007-TRU dated 08.03.2007 had clarified that the works contract in respect of roads is excluded from the ambit of WCS. He submitted that works contract in respect of specified infrastructure projects namely roads, airports, railways, transport terminals, bridges, tunnels and dams were specifically excluded from the scope of the levy. In this context, learned counsel submitted that the appellant had executed contracts in respect of construction of roads only.

3.2. Learned counsel further contended that the Department, vide Show Cause Notice dated 20.10.2011, had already proposed a service tax demand in respect of the contracts, as was evident from the said Show Cause Notice. He also contended that the demand pertaining to these very contracts were subsequently dropped by the Department vide Order dated 27.03.2018.

3.3 Learned counsel also stated that raising a fresh demand on the same contracts was wholly unwarranted and contrary to law. Once the Department had already adjudicated and dropped the demand in respect of these contracts, the same issue could not be reopened. Hence, the impugned demand was unsustainable. Further, learned counsel submitted that cum-tax benefit should be extended to the appellant.

4. Learned authorized representative submitted that construction of roads may be covered under exemption, however, the construction of International Centre and Restaurant Building including their plumbing and electrification works was not exempted. Learned authorized representative stated that it was obvious from the plain reading of description of the constructions that 'Restaurant Building' and 'International Centre' did not fall under non-commercial category. He further submitted that there was no provision in the Finance Act, 1994 for exemption from payment of service tax on such constructions. Learned authorized representative also submitted that the Adjudicating Authority had erred in holding that these categories of services were covered within the said exemption, alongwith roads, parks, civic amenities, etc. Hence, the appellant was liable to pay service tax on the receipts attributable to such constructions. Learned authorized representative stated that the findings of the Adjudicating Authority with regard to dropping of demand of service tax as stated above, were erroneous.

5. We have heard the learned Counsel for the appellant and the learned authorized representative of the Department and perused the records. We will address the contentions in respect of each appeal individually.

ST/54194/2015

5.1 This has been filed by the appellant against the order in original 11/ST/Commr/MRR/2015-16 dated 24.07.2015 wherein the Commissioner has confirmed the demand on works contract service of Rs.9,59,565/-.

5.2.1 Learned Counsel has submitted that the department has raised the demand under the taxable category of 'Construction of Residential Complex' whereas the demand has been confirmed under WCS. In this context, we take note of para 5 of the said show cause notice, which is reproduced hereinafter:-

"5. Further, as per ST-3 returns filed by them and balance sheet for the period 2011-12, it has been observed that the amount shown in ST3 return is Rs.1,18,182/- more than the amount shown in the balance sheet and they have paid their service tax at a lower rate I.e. 3.399% and enjoying the benefit of notification no.1/2006 dated 1.3.2006 whereas the service provided by the Noticee has been classified under 'Construction of Residential Complex.'"

We further note that the impugned order has confirmed the demand under works contract service. The relevant para is reproduced hereinafter:-

"28. As is evident, decision on point number 2 above would depend upon determination of classification of services provided by the noticee. I find from the case records that the noticee

executed different works in respect of construction of roads, houses, development of land, including roads, construction of boundary wall, and wire fencing, construction of community Hall, Coronation Park, installation of rainwater harvesting system on roads, upgradation of houses, etc. The said work was allotted to the noticee against what they call 'Award letters' or in layman terms 'contracts'. The noticee has submitted copies of these document with their written submissions dated 1712 2013. Noticee has also submitted the copies of corresponding agreements made with DDA. I have gone through these documents and find that these are composite contracts for supply of material and rendition of services. Notice is also submitted documents. Evidence payment of act on the material consumed for carrying out the jobs. As the contracts are composite one, I hold that the services provided by the notice are works contract Service as defined under sub clause(zzzza) of clause (105) of Section 65 of the Finance Act, 1994 which defines works contract as

5.3 Consequently, we find that the contention of the learned counsel in this regard is correct. The adjudicating authority cannot travel beyond the show cause notice. A Service tax demand cannot be confirmed under a different taxable head than the one proposed in the Show Cause Notice. A Show Cause Notice is the foundation of the case, and departing from its classification violates the principles of natural justice, as the assessee cannot defend a charge not originally leveled. A demand must align with the specific head proposed in the Show Cause Notice. If a service is classified under one head in the Show Cause Notice (e.g., Commercial Construction), it cannot be confirmed under another (e.g., Works Contract Service) in the final order. In this regard, we draw support from this Tribunal's Final Order No. 11580/2023 dated 24.07.2023 in respect of **M/s Goyal and**

Construction Ltd vs Commissioner, ST, Ahmedabad, wherein in a similar factual matrix, it was held as follows:-

"4. On careful consideration of the submission made by both the sides and perusal of records, we find that it is an admitted fact that the show cause notice has proposed the demand of Service Tax under construction of residential complex. However, in the impugned order the demand was confirmed under Commercial or Industrial Construction Service. Thus, the impugned order has travelled beyond the scope of show cause notice.

4.1 We are of the view that the show cause notice cannot be rectified by way of Adjudication Order passed in such show cause notice, therefore, on this ground alone demand is not sustainable....."

5.4 Similarly, the co-ordinate bench of this Tribunal in **Indian Tool Manufacturers Association vs. Commissioner of Central Excise, Panchkula**⁴ in its held as follow:-

"10. Coming to the second issue, as to whether demand raised under one Head can be confirmed under a different Head, we find that learned Commissioner finds that "even otherwise, a change in classification, when a previous classification and the proposed classification are both taxable services, such a change would not effect the taxability of service. The noticee has failed to establish that the impugned services covered under the instant show-cause notice are not taxable under the Finance Act, 1994. Hence, the submissions by the noticee are not tenable." We find that such an argument is spurious. It has been held in a number of judgments that the show cause notice is the foundation of the case and it is not open for the Adjudicating Authority to confirm a demand under some Heading whereas it was proposed to confirm the same under some other Heading. We find that Hon'ble Apex Court in the case of M/s 3i Infotech Ltd. (supra) held that:

10. "It is pertinent to note here that the first show cause notice dated 19th October 2009 contained a demand for service tax under the taxable service of "Management,

Maintenance and Repair” and the rest of the three notices contain a demand under classifiable service “Information Technology Software”. In the facts of the case, the demand was made on account of services provided by the assessee in respect of the supply of third-party software, software developed in house or customised software/ The assessee had temporarily transferred the right to use the said software to their clients. Thus, prior to 16th May 2008, such service was classifiable under the category of “Intellectual Property Service” and with effect from 16th May, 2008, it was classifiable under the category of “Information Technology Software”. In fact, the management, maintenance and repair services of computer hardware as well as software under the annual maintenance contract was covered by the category of “Management, Maintenance or Repair” services which was defined under Section 65(64) of the Finance Act. Thus, the classification mentioned in the first show cause notice was completely erroneous. Therefore, CESTAT was right in holding that the first show cause notice was illegal. Elementary principles of natural justice required that the adjudication on the basis of show cause notice should be made only on the basis of classification stated in the show cause notice. Assessee cannot be subjected to a penalty on the basis of a show cause notice containing a completely erroneous category of service. Therefore, the demand made on the basis of the first show cause notice was illegal. Therefore, we find that there is no merit in the appeal preferred by Revenue.”

5.5 In view of the settled legal position, we hold that the demand confirmed under WCS cannot be sustained and the same is set aside.

CROSS APPEAL ST/54378/2015:

6. This appeal has been filed by the Department on the grounds that the dropping of demand on the construction of Coronation Park included construction of International Centre and Restaurant which are

commercial in nature. Hence, there was no exemption available in this regard. In this context, learned Counsel has submitted before us that the Coronation Park is a historical monument and is eligible for exemption. The construction of the parking lot is also exempted as it is for the benefit of the tourists who visit the monument.

6.1 In order to appreciate the arguments, it is important to consider the exemption in the mega Notification 25/2012-ST dated 20.6.2012.

“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) ***

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) ***

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) ***”

6.2 In the instant case, we note that as per Wikipedia, the Coronation Park is a park located at Burari Road near Nirankari Sarovar in Delhi, India. It was the venue of the Delhi Durbar of 1877 when Queen Victoria was proclaimed the Empress of India, and was also used to celebrate the accession of King Edward VII in 1903. This park was the venue for the Durbar commemorating the coronation of King George-V as Emperor of India that took place on 12 December 1911, subsequent to his coronation at Westminster Abbey in June

1911. The decision to hold the Coronation Durbars in Delhi at the vast open ground at Coronation Park was a move to emphasise the historical significance of Delhi as the former capital of the Mughal Empire. Coronation Park also has the largest and tallest statue of King George V. The statue was moved here in the mid-1960s from a site opposite India Gate in the centre of New Delhi. It is opposite an obelisk called the Coronation Memorial, which commemorates the 1911 Durbar, when George V laid the foundation stone for the new capital city of New Delhi.

6.3 From the foregoing, it is apparent that the Coronation Park is a historical site and of importance to the history of this nation. Hence, we hold that the same is eligible for exemption under the said notification. Further, provision of parking in such parks is for public utility, and charging of nominal charges does not make it commercial. We find that the Principal Bench of this Tribunal in its decision in the case of **M/s Road Infrastructure Development Company of Rajasthan Ltd vs Commissioner, Jaipur-I⁵**, held as follows:-

"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."**

(emphasis supplied)

6.4 In the instant case, it is evident that the parking constructed next to a historical site cannot be considered as commercial in nature. Further, the exemption contained in sl no 12 of Notification no. 25/2012 is available to the appellant. Further, as the demand has been confirmed under WCS, whereas the demand was raised under a

different head, hence even if there was a demand on the construction of International Centre & Restaurant, the same cannot be upheld.

7. In view of the above discussions, we reject the cross appeal filed by the Department. Consequently, the appeal is allowed.

(Order pronounced on **01/04/2026**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana