

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

Service Tax Appeal No.52453 of 2022

[Arising of Order-in-Appeal No.208(BSM)ST/JPR/2022 dated 30.08.2022 passed by the Commissioner (Appeals), Customs, Central Excise and CGST, Jaipur]

M/s. Krishna Kunj Pvt. Ltd.,
D-44, Subhash Marg, C-Scheme,
M.I. Road,
Jaipur-302 001.

....APPELLANT

Vs.

Commissioner of CGST & Central Excise,
NCR Building, Statue Circle, C-Scheme,
Jaipur-302 005.

.....RESPONDENT

Appearance:

Shri Agarwal Sanjiv and Ms. Neha Somani, Chartered Accountants for the Appellant

Shri Aejaz Ahmad, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.50895/2026

Date of Hearing:09.04.2026

Date of Decision:15.05.2026

BINU TAMTA:

1. M/s. Krishna Kunj Pvt. Ltd.¹ is engaged in rendering the taxable services under the category of "Construction Services other than residential complex, including commercial/industrial building or civil structures". During the course of audit, it was noticed that the appellant had developed the agriculture land by the name & style of Solitaire Industrial Park-II Project (SIP-11) at Bagru, Jaipur with the

¹ The Appellant

prior approval of the Jaipur Development Authority² under Section 90-A of the Rajasthan Land Revenue Act, 1956, vide its order dated 08.02.2013 for conversion of the land into residential, commercial & industrial forms. Thereafter, JDA had approved and released layout plan of the said industrial Park-II for developing and subsequent use for Industrial Residential Complex, Group Housing. EWS/LIG, Commercial purposes.

2. The appellant developed the site by way of landscaping, demarcation of plots, boundary wall, construction of road, electrical installations, plumbing & sewerage works, foundation of GSS work for installation of Transformers for electricity supply in the project, construction of Overhead & Ground water tank etc. through various contractors under 'Works Contract Services'. For construction of road in the project, the appellant executed an agreement with one contractor M/s Devi Construction Company, Jaipur on 04.05.2015 for road works, laying of flooring in paved areas in pathways, Kerb stone, Saucer drains and the allied civil works and paid service tax under partial reverse charge basis-on construction of road under 'Works Contract Service' after availing the abatement of 60% provided under Notification No. 30/2012-ST dated 20.06.2012 by treating the work as 'Original Works' and availed CENVAT Credit of input service on the construction of road. Show Cause Notice dated 08.11.2019 was issued for wrongly availing CENVAT Credit amounting to Rs.35,50,371/- on "ineligible input service" for the period April, 2015 to June, 2017 by contravening the provisions of Rule 3 read with Rule 2 (I) of CENVAT Credit Rules, 2004 (CCR in short). On adjudication vide Order-in-Original dated

²JDA

11.03.2021, the demand of wrongly availed Cenvat Credit of Rs.35,50,371/- was confirmed and ordered to be recovered from the appellant along with interest under Rule 14 of the CENVAT Credit Rules, 2014 along with interest read with 73(2) & Section 75 of the Finance Act, 1994³. Penalties were also imposed upon the appellant under the provisions of Section 78 of Finance Act, 1994. The Commissioner (Appeals) by the impugned Order⁴ rejected the appeal filed by the appellant. Aggrieved by the impugned Order, the appellant has filed this appeal before this Tribunal.

3. Heard Shri Agarwal Sanjiv and Ms. Neha Somani, learned Counsels for the appellant and Shri Aejaz Ahmad for the Revenue.

4. The learned counsel for the appellant emphasised that the project of the Industrial Park was approved by the JDA as per the statutory provisions and had it been a public road, no such approval would have been required. The Industrial Park is a private property of the developer and the project included internal roads which are integral part of that infrastructure and was meant solely for units in the said Park and their business related users. The road inside the park is only meant for persons and vehicles, who have direct or indirect nexus with the activities carried out in the park. Since the roads in question are not for use by general public and the provisions of Entry 13(a) of Notification No.25/2012-ST dated June 20, 2012 would not apply or else refund could have been claimed of the service tax deposited, however, the amount has already been credited to the Consolidated Fund. It is also the case of the appellant that they cannot be penalised

³ The Act

⁴ Order-in-Appeal No.208 (BSM)ST/JPR/2022 dated 30.08.2022

by way of double taxation that is payment of tax and denial of CENVAT Credit. The learned counsel has also argued that there is no evidence of suppression/mis-statement/misrepresentation collusion/connivance or concealment with intent to evade service tax and therefore, the extended period of limitation cannot be invoked. All the facts were disclosed and reflected in the appellant's books of accounts and there was no wilful suppression and therefore, Section 73(1) of the Act cannot be invoked.

5. The issue on merits as considered by the Commissioner (Appeals) is whether the appellant is eligible to avail CENVAT Credit of input services used in construction of road in the 'Solitaire Industrial Park', which do not fall within the exempted category by virtue of Serial No 13(a) of Notification No.25/2012-ST dated 20.06.2012. As per Sl.No.13(a) of the Notification No.25/2012-Service Tax dated 20th June, 2012, the Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public is exempt from the payment of service tax and the service provider is not entitled to take the CENVAT Credit of Service tax on the exempted Services as envisaged under Rule 6 of the CENVAT Credit Rules, 2004.

6. Considering the facts of the present case, we find that roads were constructed in the Solitaire Industrial Park and as per the Brochure, the "Jaipur Master Plan" roads are crossing through the park and maximum roads are connected with already existing public roads. Therefore, the roads are not only to be used by the industrial Park, but the same are

to be used by the general public also. Merely because the road was constructed inside the private industrial park would not make the roads to be in the nature of private roads, having restricted and limited entry. The fact that roads in question are for the utility of the general public the same would fall within the scope of the exemption Notification No.25/2012-ST dated June 20, 2012 and as per S.No.13(a) services provided by way of construction, direction, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of road, bridge, tunnel or terminal for road, transportation for use by general public is exempt from the payment of service tax and therefore, the service provider is not entitled to take CENVAT Credit of service tax on the exempted services as per the provisions of Rule 6 of CENVAT Credit Rules, 2004.

7. The learned counsel for the appellant has referred to the decision in the case of **M/s. Paramount Infraventures Pvt. Ltd versus Commissioner of Service Tax-Delhi-II**⁵, where the appellant had constructed earthen embankment for F-I Race Track, (Formula One, Grand Prix) for M/s Jaypee Sports International Ltd, Noida and claiming it to be a road for general public and therefore, exempted from payment of service tax in terms of Notification No.17/2005-ST dated June 7, 2005. The Tribunal held that the appellant have wrongly availed the exemption under the said notification observing as under:

"5.3 Bare perusal clarifies that activity of construction of road which is meant for use by general public is exempted from whole duty. Admittedly appellant constructed car race track. Whether such track can be called as road for use by general public. What is exempted in the Notification No. 17/2005 is the service, as named in Entry No. 13 thereof, for construction of road for use of general public but not the

⁵ 2024 (6) TMI 347 (CESTAT, New Delhi)

services for constructing road simpliciter. Emphasis therein is on the word 'public'. "Public place" is defined in Section 2(34) of Motor Vehicles Act as "a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access. We are of the opinion that the accent is not on the circumstance that public have access, but it is on the circumstance that public have a right of access. Element of 'Right of Access' dominates the definition. Thus in order that a place may fall within the ambit of the definition of public place, the element of right of access of public on such road is a necessary concomitant. To hold that this definition is intended to rope in places where public have no right of access would amount to enlarge the definition to an unrecognisable proportion and in such a case, every private place, may have to be regarded as "public place". We draw our support from the decision of Hon'ble Karnataka High court in the case titled as Taxi Drivers' Union And Anr. vs Kerala State Road Transport decided on 10 March, 1982. We also look for the literal dictionary meaning of word 'Road". As per Collins Dictionary:

"A road is a long piece of hard ground which is built between two places so that people can drive or ride easily from one place to the other."

Marriam Webster describes road as:

"Road is an open way for the passage of vehicles, people, and animals."

Dictionary.com defines:

"Road a noun, as in path upon which travel occurs. Strongest matches, artery, avenue, boulevard, course, drive, expressway, highway, lane, line, parking lot, pathway, pavement, roadway, route, street, subway, thoroughfare, track, trail, way."

Seen from these definitions the race track constructed by appellant is definitely a "Road". But to avail the benefit of the Notification no. 17/2005 appellant should have constructed a road meant for use of public i.e. a public road/place. The race track constructed by appellant is apparently and admittedly is not meant for public access as a matter of right. In the light of discussion about definition of public place above, we hold that though impugned race track is a road but public has no access as a matter of right thereupon. Hence we hold that the impugned race tracks are not meant for public use, hence are not covered under Entry No. 13 of Notification 17/2005. The appellant is held to have wrongly availed the exemption under said notification."

The facts of the said case involving construction with reference to race track for Formula One Grand Prix are distinguishable as the entry to

the race track is restricted and therefore, the same is not applicable in the present factual matrix.

8. The demand has been raised by invoking the proviso to section 73(1) on the ground that the appellant had suppressed the fact of wrongful availment of CENVAT Credit. We do not find any merit in the submission of the Revenue for the simple reason that the appellant bonafide believed that the roads built by them were for specific use for Industrial Park and therefore, would fall in the category of private use, which is beyond the scope of the applicability of the exemption notification. In fact the appellant would have benefited by availing the exemption from payment of service tax under the Notification. By not claiming the exemption under the notification, they paid the service tax and as noted by the impugned order that if service tax was not payable, in the event the Department would have been liable to refund the said amount with interest. Therefore, it would have been a case of revenue neutral rather than a case of suppression of facts. Moreover, the issue seems to have been decided, conversely in the case of **M/s Paramount Infra Ventures Private Ltd versus Commissioner of Service Tax-Delhi-II**, where the race tracks constructed by the appellant were claimed to be a road meant for public use, however, the Tribunal held that the appellant is not covered under Entry 13 of Notification No.17/2005, as the race tracks were not meant for public use. Issue being one of interpretation, extended period of limitation cannot be invoked. Hence, we are of the considered view that the Revenue is not justified in invoking the extended period of limitation. The demand would, therefore, be sustainable only for the normal period.

9. We hereby, uphold the impugned order in so far as the issue on merits is concerned that the roads in question are meant for use of general public and are, therefore, exempted under the notification. Consequently, as noted by the Commissioner (Appeals), in that event the appellant is entitled to refund of the service tax amount paid by them which they were not liable to pay. Secondly, the impugned order is set aside in so far as it has upheld the invocation of the extended period of limitation in raising the demand. In view thereof, the matter is remanded to the adjudicating authority for the limited purpose of recalculation of the CENVAT Credit recoverable for the normal period along with interest and appropriate penalty thereon. The appellant will, consequently be eligible for refund of the Service Tax paid during that period. The appeal is, therefore, partly allowed by way of remand.

[Order pronounced on 15th May, 2026.]

**(BINU TAMTA)
MEMBER (JUDICIAL)**

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

Ckp.