

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60762 of 2019

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-304-305-18-19 dated 28.03.2019 passed by the Commissioner (Appeals), Central GST Commissionerate, Chandigarh]

Commissioner of Central Excise and Service Tax, Chandigarh-IAppellant
Plot No. 19, Central Revenue Building,
Sector 17-C, Chandigarh 160017

VERSUS

M/s Gautam BuildersRespondent
179 Sector 46A,
Chandigarh U T 160047

WITH

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APPEARANCE:

Shri Anurag Kumar and Shri G.D. Bansal, Authorized Representatives for
the Appellant

Shri Atul Goyal, C.A. For the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60410-60411/2026

DATE OF HEARING: 16.02.2026
DATE OF DECISION: 01.07.2026

S.S. GARG:

These two appeals filed by the Revenue are directed against the common impugned order dated 28.03.2019 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby two appeals filed before the Commissioner by the Respondent was allowed and Order-in-Original was set aside. Since, the issue involved in both the appeals is identical, therefore, both the appeals are taken together for discussion and decision.

The details of both the appeals are given here in below:

Sr. No.	Service Tax Involved	Penalty	Period of dispute
1.	Rs. 1,85,54,894/-	Rs. 9,25,000/- under Section 76 & 20,000/- under Section 77 of the Finance Act,1994	2013-14 to 2014-15

2. Briefly the facts of the present case are that the respondent are registered with the Department under Service tax for services under the category of Erection, Commissioning & Installation service, Construction of Residential Complex Service and Works Contract service falling under Section 66B of the Finance Act, 1994. During the scrutiny of ST-3 returns filed by the appellant for the year 2013-14, it was observed that they had reflected Nil taxable value in their returns. As per the copy of balance sheet, Form-26AS statement and work orders submitted by the Appellants for the year 2013-14 vide their letter dated 10.04.2015, it had been observed that they were issued a work contract memo No. W/EER-1/8340 dated 18.09.2013 by the Executive Engineer, Roads Division No.1, Municipal Corporation, Chandigarh for construction of multi level parking near Gurudev Studio, Sector-17, Chandigarh. This multi level parking appeared to be meant for commercial use. The total amount of work done by the Appellants during the year 2013-14 towards construction of this multi level parking was Rs. 11,08,42,048/-.

2.1 The Department entertained the view that the respondent is liable to pay service tax on the construction of multi level parking and has not paid the same, accordingly show cause notice dated 21.04.2015 and statement dated 07.04.2016 issued to the respondent demanding the service tax. The Original adjudicating authority after following the due process, confirmed the demand of Rs. 54,80,031/- and Rs. 1,30,74,863/- and recovery from the respondent under section 73 of the Act along with interest under

section 75 of the Act. The adjudicating authority also imposed penalty of Rs. 9,25,000/- under Section 76 of the Act and Rs. 10,000+Rs. 10,000/- under Section 77 of the Act. Aggrieved by the said orders, the respondent filed two appeals before the Commissioner (Appeals) and the Commissioner (Appeals) allowed the appeals and set aside the order passed by the original authority. Hence, the present appeal filed by the Revenue.

3. Heard both the parties and perused the material on record.
4. Learned Authorized Representative for the Department submits that the impugned order dropping the demand by giving the benefit of Notification No. 25/2012 is not sustainable in law. He further submits that the services provided by the respondent are not covered under S.No. 12(a) of the exemption Notification No. 25/2012-ST dated 20.06.2012. He further submits that for extending the benefit of exemption Notification, it is required to see in 'toto' and it is necessary to ascertain the use of the structure/building constructed by the respondent, policy adopted by the Municipal Corporation to run this Multi Level parking. He further submits that multi level parking constructed by the respondent is a commercial activity and therefore is subject to service tax.
5. On the other hand, learned consultant for the respondent defended the impugned order and submits that the respondent has constructed the multi level parking for the Chandigarh Administration solely for providing space for parking to the public at large and not

for the purpose of profit being non commercial in nature. He further submits that the case of the respondent is squarely covered by the Notification No. 25/2012 which provides that the construction of original works predominantly for use other than for commerce, industry, or any other business or profession are not taxable services as per the above mega exemption notification.

5.1 He further submits that this issue is no more res integra and has been squarely covered in favour of the respondent; he relied upon the following judgments:

- **M/s BG Shirke Construction Technology Pvt Ltd reported in 2014 (33) S.T.R. 77 (Tri.-Mumbai), 2013(11) TMI 870.**
- **M/s SRM Engineering Construction Ltd. Vs. Commissioner of Service tax, Chennai-II-CESTAT reported in 2018 (2) TMI 321.**

5.2 He further submits that Allahabad Bench of the Tribunal in the case of **Commissioner of Central Excise & S.T, Lucknow Vs. M/s Shalimar Corp Ltd. vide Final Order No. 70039/2019 dated 08.01.2019** has dealt with the identical case of multi level parking and has held that the assessee is not liable to pay service tax on the construction of the multi level parking because the said activity cannot be called commercial activity.

6. We have considered the submissions of both the parties and perused the material on record, we find that the only issue involved in the present appeals is regarding the applicability of the service tax

in respect of construction of multi level parking by the assessee. Further, we note that the respondent has constructed multi level parking for Chandigarh Administration solely for providing space for parking to the public at large and not for the purpose of profit being non commercial in nature. It is pertinent to refer to para 12A of the mega exemption notification No. 25/2012 which is reproduced here in below:

"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"

as per the para 12A above the services provided to a Local Authority in respect of construction of original works predominantly for use other than for commerce, industry, or any other business or profession are not taxable services as per the above mega exemption notification.

7. We also note that providing parking facilities for the citizen is for the benefit of public at large which is one of the main objectives/activities of Municipal Corporation, therefore, by constructing multi level parking, Municipal Corporation, Chandigarh is providing parking facility to the citizen with an objective not to earn

any profit but with an objective for the benefit of public at large. The main purpose of constructing multi level parking by the Municipal Corporation is to encourage the use of underground parking, to decongest the overcrowded surface parking areas and to have better utilization of under utilized parking areas.

8. Further, we find that the issue is squarely covered also by the decision of Division Bench of the Tribunal in the case of **Commissioner of Central Excise & S.T, Lucknow Vs. M/s Shalimar Corp Ltd.** (cited Supra), wherein also the identical issue was involved and the Tribunal has held as under :

2. After hearing both the sides we find that the dispute in the present appeal relates to the taxability of the construction of multilevel parking by the assessee in terms of the agreement entered with M/s Lucknow Development Authority. The Original Adjudicating Authority has dropped the demand on two grounds. First, that the demand was raised under the category of Commercial and Industrial Construction Services, whereas the same would be properly classified, if at all, under the 'works contract' category. Secondly, he has observed that construction of the multi story parking for Lucknow Development Authority cannot be held to be commercial activity. Lucknow Development Authority was established under the Uttar Pradesh Urban Planning and Development Act, 1973 and is responsible for planned development of Lucknow city. It is entrusted with the responsibility of

providing facilities for public amenity and providing multilevel parking is one of the duties of the said authorities. Merely because a small fee is being collected from the users will not make the said activity as a commercial activity, inasmuch as, providing of public amenity cannot be for generating profit. Accordingly, he has held that the activity is not covered under the category of any commercial or profit making activity. He has also observed that government parks or public travels constructed in many parts of the country are welfare measure for public convenience and availability. Even though some nominal fee is being charged, the same primarily remains public facility programs and cannot be considered to be commercial or industrial uses.

3. We find no infirmity in the above findings of the original adjudicating authority. There is no dispute that such multilevel parking stands constructed by the respondents for Lucknow Development Authority, whose main function is to provide public facilities. The multilevel parking are made for reducing traffic conditions and parkings on the road and is for betterment and development of the city. It cannot be said to be a commercial activity so as to tax the same. As such, we find no justifiable reasons to interfere with the impugned order of Commissioner.

4. Revenue's appeal is accordingly rejected. Cross objection which are in the form of written submission also stands disposed of.

9. Since, the issue is squarely covered by the above cited decision of the Tribunal and by following the same, we are of the considered opinion that there is no infirmity in the impugned order passed by the learned Commissioner (Appeals) and we uphold the same by dismissing both the appeals of the Revenue.

(Order pronounced in the open court on 01.07.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)