

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. – III

Service Tax Appeal No. 50157 of 2021

[Arising out of Order-in-Appeal No. 275(CRM) ST/JDR/2020 dated 25.08.2020 passed by the Commissioner (Appeals), Central Excise and CGST, Jodhpur]

M/s. Harish Chandra Patel

S-29, Ram Talkies Ki Gali,
Sagwara, Dugarpur
Rajasthan 314 025

... Appellant

VERSUS

The Commissioner

Central Goods & Service Tax Commissionerate

142-B, Hiran Mangri, Sector 11
Udaipur, Rajasthan

... Respondent

APPEARANCE:

Ms. Shagun Arora and Ms. Srishti Yadav, Advocates for the Appellant
Shri Anil Kumar, Authorised Representative for the Revenue

CORAM:

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

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

DATE OF HEARING: 19.05.2026

DATE OF DECISION: 30.06.2026

FINAL ORDER NO. 51098/2026

P V SUBBA RAO

M/s. Harish Chandra Patel¹ filed this appeal to assail the order dated 25.8.2020² passed by the Commissioner (Appeals) in which he upheld the order dated 22.11.2019 passed by the Assistant Commissioner and rejected the appellant's appeal.

2. We have heard learned counsel for the appellant and learned authorised representative for the Revenue and perused the records.

3. The appellant was a contractor and had provided some services. On the basis of third party information, an investigation was initiated into the

1. Appellant

2. Impugned order

appellant's activities and it was found that the appellant had provided services related to 'construction services other than residential complex, including commercial/industrial building or civil structures' and 'construction of residential complex services' and 'maintenance and repair service' which were taxable.

4. Accordingly, a Show Cause Notice dated 23.4.2019³ was issued to the appellant proposing demand of Rs. 35,14,080/- (including all cesses) under the proviso to section 73(1) of the Finance Act, 1994⁴ along with interest under section 75 of the Act. Penalties were proposed under section 77 and 78 of the Act along a late fee for not filing the return under section 70 of the Act.

5. The proposals in the SCN were confirmed by the Assistant Commissioner in his OIO dated 22.11.2019 which has been upheld by the Commissioner (Appeals) in the impugned order. Hence, this appeal.

6. The case of the appellant is that it was not liable to pay service tax at all and hence had not paid it. The demand of Rs.35,14,081 as service tax is on the income received by the appellant from various persons under five categories. The details of these are provided by the appellant as follows:

Sl. No.	Service Recipient/Amount Received	Service Tax Amount (As per Department)	Nature of activity explained by the Appellant	Findings in the OIA
I.	1. Bharat Singh Naval Singh (Rs. 8,71,009) 2. Shree Mewar Construction (Rs. 4,51,140) 3. Gajendra Singh (Rs. 3,70,800)	16,92,949	Services of construction of road. The Principal Contractor of Public Works Department ("PWD") had sub-contracted the activity of construction of roads to the appellant.	- Appellant submitted the sub-contractor agreements. However, terms and conditions are not enclosed to determine the nature of service. - Agreements with Gajendra Singh dated

3. SCN

4. Act

				<p>4.10.2013 were for supply of material which has been excluded from the computation of demand. Entire contract amount has been paid by the main contractor to the sub-contractor.</p> <p>- Entire contract amount has been paid by the main contractor to the sub-contractor.</p> <p>- There are inaccuracies in the dates mentioned in the sub-contract agreement executed by the appellant and the main agreement between PWD and the Principal Contractor.</p> <p>- With respect to Shree Mewa Construction, the agreement carries the GSTN of the recipient.</p>
II.	<ol style="list-style-type: none"> 1. Shri Gopal Kumar Bhoi (Rs. 4,88,220) 2. Shri Dinesh Sargiyaa (Rs. 2,57,071) 3. Shri Vikram Singh (Rs. 1,70,815) 4. Shri Ashok Kumar (Rs.1,02,588) 5. M/s Pitra Chhaya Construction, Proprietor Shri Dharmendra Kumar (Rs. 96,078) 	11,14,772	Construction of individual houses	<p>- Address of property not mentioned on the agreement.</p> <p>- Agreement does not mention it is for construction of house.</p> <p>- The appellant has not submitted documents related to ownership of land submitted and blue prints of house, not submitted.</p> <p>- Nature of service cannot be ascertained from the terms and conditions.</p>
III.	Amount received as 'bank interest'	5,67,266	Bank Interest is not taxable as service.	Demand is on 'construction receipt', from which interest is excluded as per Annexure - C of the SCN. Hence, plea of Appellant is rejected.
IV.	Vehicle and Machinery receipts	1,21,184	Benefit of Notification No. 33/2012-ST dated 20.06.2012	Rejected as turnover for FY 2014-2015 is Rs. 1,32,09,000. No exemption available.
V.	HR PWD	17,910	Benefit of Notification No. 33/2012-ST dated 20.06.2012	Benefit of Notification No. 33/2012-ST dated 20.06.2012 is

				denied.
	Total	35,14,081		

7. We now proceed to examine each of the above.

Demand of Rs. 16,92,949/- as service tax on the amounts received from Shri Bharat Singh Naval Singh, Shree Mewar Construction and Shri Gajendra Singh

8. The appellant does not dispute receiving consideration for services from these persons/entities. It is however, their contention that the services rendered by the appellant were construction of road for PWD as a sub-contractor and it involved both rendering service and using the material. Such services were exempted from payment of service tax, as per Notification No. 25/2012 dated 20.6.2012 [S. No. 13(a) and 29(h)]. These entries read as follows:

"NOTIFICATION NO. 25/2012- ST dated 20.6.2012 as amended

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994..... the central government exempts...

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of .-

(a) a road, bridge, tunnel or terminal for road transportation for use by general public;

.....

29. Services by the following persons in respective capacities-

...

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

9. The case of the appellant is that the client was the Public Works Department (PWD) and the activity was construction of roads contracts for

which contracts were given by to Shri Bharat Singh, Shree Mewar Construction and to Shri Gajendra Singh and the appellant was their sub-contractor. Since the activity was construction of roads for public use, the activity was exempted at the hands of the main contractor as per S. No. 13(a) of the notification. Since the appellant had executed the work as sub-contractor as a works contract, the appellant was also exempted from service tax by S. No. 29(h) of the notification.

10. In the impugned order, the Commissioner (Appeals) denied the benefit of the exemption on the ground that there were inaccuracies in the agreements supplied by the appellant. The Commissioner (Appeals) recorded in paragraph 7 of the impugned order as follows:

"7. It was observed that the exact nature of services provided to the following recipients could not be determined in absence of any contract/agreement and other details. Thus the services provided to Bharat Singh Naval Singh; Vikram Singh; Ashok Kumar; Gajendra Singh Contractor; Pitra Chhaya Construction; HR PWD and Accounts Office could not be held to be non taxable service or exempted service as it could not be ascertained as to what type of services were provided".

11. Learned counsel for the appellant has drawn our attention to pages 130-131 and 142-143 of the appeal and demonstrated that the contracts were for construction of roads as a sub-contractor.

12. The Commissioner (Appeals) also pointed out that the agreement with Shree Mewar Construction produced by the appellant contained the GSTIN which shows that it was signed or prepared after the introduction of GST in 2017 and it did not pertain to the relevant period. Learned counsel submits that they had re-constructed the agreement since the original agreement could not be found and hence the letterhead carried the GSTIN.

13. Given the evidence available on records, we are satisfied that the contracts of the appellant with these three persons/entities were for construction of roads as sub-contractor which were exempted by S. No. 29(h) read with 13(a) of the notification.

14. The demand on this count cannot be sustained and needs to be set aside.

Construction of individual houses for five persons

15. It is undisputed that the appellant had received consideration from Shri Gopal Kumar Bhoi, Shri Dinesh Sagiya, Shri Vikram Singh, Shri Ashok Kumar and M/s. Pitra Chaya Construction. According to the appellant, it had constructed individual houses for the five persons and such constructions were exempted by S. No. 14(b) of the Notification No. 25/2012-ST dated 20.6.2012.

16. The Commissioner (Appeals) did not agree with this submission for the reason that the addresses of the properties were not mentioned in the agreement, the agreements did not state that it was for construction of houses and the blueprints of the houses and details of ownership of land were not submitted.

17. We find that submission of documents of ownership of land or blueprints of construction or indication of complete addresses in the contracts is not essential to avail the benefit of the exemption notification. This part of the demand accordingly needs to be set aside and is set aside.

Amount received as bank interest

18. This part of the demand needs to be set aside because interest received from the bank cannot be said to be a consideration for any service.

Receipts for vehicles and machinery and HR PWD

19. The appellant received an amount of Rs. 8,35,750/- as taxable value on account of 'vehicle and machinery receipts' during 2015-2016 but contended that taxable services upto Rs. 10,00,000/- were exempted from service tax by Notification No. 33/2012-ST dated 20.6.2012.

20. The Commissioner (Appeals), however, denied the benefit of this exemption notification for the reason that the turnover of the appellant during 2014-2015 was Rs. 1,32,09,000/-. According to the appellant, the actual amounts received would show that the receipts for taxable services had not exceeded Rs. 10,00,000/- in any of the three years. The details are as follows:

Financial year	Service recipient	Taxable value (Rs.)
2013-14	HR PWD	1,34,386/-
2015-16	Vehicle and Machinery receipts	8,35,750/-
2016-17	HR PWD	8,688/-

21. We find from the above, that if the finding of the Commissioner that the taxable value has exceeded is based on his finding that other receipts were also taxable. Since we found in this order that other receipts were not exigible to service tax, these receipts will fall within the limit of Rs. 10,00,000/- during any financial year and were exempted under Notification No. 33/2012-ST dated 20.6.2012.

22. In view of the above, the impugned order cannot be sustained. It is accordingly set aside and the appeal is allowed with consequential relief to the appellant.

(Order pronounced in open court on 30.06.2026).

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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