CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Service Tax Appeal No. 51703 of 2022

(Arising out of Order-in-Appeal No. 63(SM)/ST/JPR/2022 dated 11.03.2022 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur Rajasthan.)

M/s. Chandpole Bazaar Vyapaar Mandal Samiti, ... **Appellant**
314, Chandporle Bazaar, Chandpole, Jaipur (Raj)

Versus

The Commissioner (Appeals), Central Excise & CGST Jaipur, Rajasthan ...... **Respondent**
New Central Revenue Building,
Statue Circle, Jaipur

APPEARANCE:

Ms. Suchi Sethi, Advocate for the appellant
Mr. Mehboob Ur Rehman, Authorised Representative of the department

CORAM:

HON'BLE MS. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 06.08.2026
DATE OF DECISION: 28.09.2026

FINAL ORDER NO. 51535/2026

DR. RACHNA GUPTA:

In the present appeal M/s. Chandpole Bazaar Vyapaar Mandal Samiti[1] was observed to have been receiving the taxable value as was observed from the information received from Income Tax department for the assessment year 2015-16 (Financial Year 2014-15). The said documents revealed that the appellant had received a gross amount of Rs. 12,66,063/- for rendering services in terms of Provisions of Section 66B(44) of Finance Act, 1994. The appellant was required to provide

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1 **The appellant**

requisite documents to explain the same, however, the appellant failed to appear. In absence thereof, the activity of the appellant did appear to fall under negative list of the services as defined under Section 66D of Finance Act, 1994 nor was observed exempted under any exemption notification. Appellant was accordingly, alleged liable to pay service tax on the aforesaid gross value.

2. A show cause notice bearing no. 149/14-15/2019 dated 05.11.2019 was served upon the appellant proposing the recovery of service tax amounting to Rs. 1,56,485/- alongwith the interest under section 75 of the Finance Act, 1994. The penalties of Section 77 and 78 of the Act were also proposed to be imposed. The said proposal was confirmed vide Order-in-Original No. 59/20 dated 04.02.2021 appeal against the said order has been allowed by way of remand directing the original adjudicating authority with the direction to pass these speaking order afresh. Considering all the aspects, as dealt with by Commissioner (Appeals) and the submissions put forth by the appellant before Commissioner (Appeals) and following the principles of natural justice still being aggrieved the appellant is before this Tribunal.

3. We have heard Ms. Suchi Sethi, learned counsel for the appellant and Mr. Mehboob Ur Rehman, learned DR for the department.

4. Leaned counsel for the appellant has submitted that the findings in the impugned order that the appellant has provided taxable services to Jaipur Metro Rail Corporation[2] under Section 65B (44) of the Act is based merely on the assumptions and a result of narrow interpretation without considering the factual material placed by the appellant. It is further submitted that the appellant had actually received an amount of compensation on behalf of the shopkeeper of

2 JMRC

Chanpole Bazaar due to the loss caused to them by JMRC in the said market, on account of construction of Metro therein, receiving the compensation against the loss is wrongly held to be the consideration towards rendering a taxable service. There is absence of quid pro quo between the appellant/ the trade association and JMRC, the order under challenge is liable to be set aside on this ground itself. Learned counsel has referred two minutes of various meetings, between the appellant and JMRC to prove that the amount in question is actual the amount of compensation on account of loss by metro construction. The perusal of those minutes/correspondences clearly establishes that the amount was received as financial assistance towards reimbursement of expenses incurred by the shop owners to overcome the loss due to metro construction. The findings are, therefore, alleged to be wholly erroneous contrary to the facts on record and are reflective of biased appreciation of the evidence by the department. It has arbitrarily been interpreted that the sanction order dated 17.10.2014 is an amount of consideration paid by JMRC towards the provision of service with the submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

5. Learned counsel has relied upon Hon’ble decision in the Supreme Court in the case of **State of West Bengal. Vs. Calcutta Club Ltd reported as 2019 (29) GSTL 545 Supreme Court** and also another decision of the Apex Court in **CTO vs. Youngmen India Association reported as 1970 (1) SCC 462.** While rebutting the said submission, learned DR has reiterated the findings arrived at by the adjudicating authority below, it is submitted that the Commissioner (Appeals) has rightly remanded the matter to the original adjudicating authority. Learned DR pointed out that from the sanction letter dated 17.10.2014

it is coming out that the amount was given to the appellant against display of banners and model of Jaipur Metro Rail it being an activity not covered under negative list nor being exempted vide any notification. The service tax demand has rightly been confirmed. With these submissions, the appeal is prayed to be dismissed.

6. Having heard both the parties we observed it to be an admitted fact that the appellant had receive amount of Rs. 12,66,063/- from JMRC vide the sanction letter dated 17.10.2014, the appellant apparently, has reflected the said amount in their Income Tax Return. The said payment has been released admittedly vide the sanction order dated 17.10.2014, we have perused the said letter which reads as follows:

> **<u>Sanction Order</u>**
>
> Approval of Chairman & Managing Director, Jaipur Metro Rail Corporation (JMRC) is hereby conveyed for release of financial assistance of Rs. 11.00 lacs (Rupees Eleven lacs only) to Chandpole Bazaar Vyapaar Mandal for organizing lighting & decoration in Chandpole Bazaar along with display of Jaipur Metro banners and live model of Jaipur Metro Rail during Diwali festival. The Chandpole Bazaar Vyapaar Mandal will also arrange the banners and other display materials with a view to welcome Metro in the walled city in cordination with General Manager (Project Cordination), JMRC.
>
> The Chandpole Bazaar Vyapaar Mandal will keep separate accounting of income and expenditure against this financial assistance and submit Utilization Certificate along with statement of income & expenditure, within two weeks of conclusion of the diwali event. The balanced amount, if any, shall be returned back to JMRC.

7. The bare perusal reveals that JMRC has given Rs. 11 lakh for getting Jaipur Metro banners displayed at the occasion of Diwali by way of lighting and decoration in Chandpole Bazaar. The documents sufficiently reveal the nexus between the money in question and the activity required by JMRC while making payment of said money. This observation is sufficient to reject the contention of the appellant that

there is no quid pro quo between the amount in question and the alleged activity of the appellant.

8. No doubt the appellant has relied upon/referred several communications to the JMRC and the minutes of meeting between the appellant and JMRC where the appellant has reflected grievances of the Shopkeepers/ Members of its association/Members of appellants association about incurring loss due to JMRC construction in front of their shops but the letter dated 17.10.2014 is not at all the amount sanctioned as a compensation to overcome on the loss rather JMRC has expected publicity/advertisement of Metro constructed by them at the occasion of major foot fall at the various shops of the appellants association.

9. Section 65B 44 defines service as follows:

> "**(44)** "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-
>
> **(a)** an activity which constitutes merely,-
>
> **(i)** a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
>
> **(ii)** such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (294) of article 366 of the Constitution; or
>
> **(iii)** a transaction in money or actionable claim;
>
> **(b)** a provision of service by an employee to the employer in the course of or in relation to his employment;
>
> **(c)** fees taken in any Court or tribunal established under any law for the time being in force".

10. The above discussed fact squarely falls under the aforesaid definition. Apparently, the activity of providing facility of advertisement and publicity is not covered under section 66D of the Finance Act/the negative list. Appellant has not produced any document which may prove that this activity of publicity/advertisement was ever granted exemption from payment of service tax. The appellant has placed on

record the extract of their balance sheet perusal thereof reveals that the amount in question, as and when spent, has been recorded as advertisement expenses (the utilization of total amount was to be submitted to JMRC as is mentioned in sanction order dated 17.10.2014). Keeping in view these observations but the definition of service, we hold that the amount in question was received.

11. The Commissioner (Appeals) has remanded the matter to the original adjudicating authority by holding as follows:

> "Without prejudice to the above, even otherwise also, the activity otherwise undertaken by the appellant do not in any way classifies within the clauses of Section 65(104)(c) or 65(105) (zzzs) or 65(86c) of the Chapter V of Finance Act 1994. In fact in the whole OIO no effort has been made to explain as to under which specific clause of these services the activities of the appellant allegedly falls."

12. Since the entire period of demand period of demand i.e. April 2014 to March 2015 is post introduction of negative list of Section 66D we hold that the concept of clauses as mentioned in the above para has become redundant. It is only 65B (44), as discussed above which is relevant for the purpose hence we hold that the Commissioner (Appeals) has wrongly remanded the matter to the Original Adjudicating Authorities. Commissioner (Appeals) has simultaneously observed, "rather from the letter dated 17.10.2014 it is coming out that the amount was given to the appellant against the display of banners and model of Jaipur Metro Rail. In other words, the appellant had not received any amount as assistance but the amount was given against the services provided". We are inconformity of these observations. In the totality of entire above discussion, **the direction of remand given by the Commissioner (Appeals) IS hereby set aside however the other findings as recorded above are hereby**

endorsed. The order under challenge stands modified accordingly. The appeal stands disposed off accordingly as partly allowed.

(Order pronounced in the Open Court on 28.09.2026)

(RACHNA GUPTA)
OFFICIATING PRESIDENT

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

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