CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 52841 OF 2018

[Arising out of Order-in-Appeal No. 530(CRM)ST/JDR/2018 dated 04.06.2018 passed by the Commissioner(Appeals), Central Excise & CGST, Jodhpur]

M/s G.R. INFRAPROJECTS LTD **...APPELLANT**
80 G.R. House, Hiran Magri, Sector-11,
Udaipur(Rajasthan) 313 001

Versus

COMMISSIONER OF CENTRAL EXCISE CGST,UDAIPUR **...RESPONDENT**
142-B, Sector-11, Hiran Magri,
Udaipur, Rajasthan-313 001

APPEARANCE:
Ms. Shagun Arora, Shri Kunal Aggarwal and Pratyush Pradhan, Advocates for the appellant
Ms. Jaya Kumari, Authorised Representative for the respondent

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

FINAL ORDER NO. 50059/2026

Date of Hearing:17.11.2025
Date of Decision:14.01.2026

BINU TAMTA:

1. G.R.Infraprojects Ltd[1]. has assailed the impugned order affirming the rejection of the refund claim filed by the appellant in view of the provisions of Section 102 and 103 of the Finance Act, 1994[2] (introduced by Section 159 of the Finance Act, 2016).

2. The case of the appellant is that they were awarded work relating to resurfacing of runway and allied work at Air Force Station, Naliya by the Chief Engineer, (Air Force), Military Engineer Service[3], Gandhinagar under contract dated 12.12.2013. The work undertaken

[1] **The Appellant**
[2] **Act 1994**
[3] **MES**

by the appellant included demolition of concrete and pavement and its subsequent reconstruction, laying of rigid overlay, resurfacing of flexible pavment, construction of RCC duct, and cable duct, construction, and relaying of bituminous road. According to the appellant, they did not pay service tax on the said services in view of the exemption under Sl. No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012, however, with effect from 01.04.2015, the said entry was omitted Vide Notification No. 06/2015-ST dated 01.03.2015. Consequently, the appellant paid service tax of Rs.3,60,15,853/- for the period during April, 2015 to February, 2016. Out of the said amount, Rs.3,40,58,797/- has been reimbursed by the service recipient and the remaining amount of Rs.19,57,056/- was borne by the appellant. Subsequently, Notification No. 9/2016-ST dated 01.03.2016 reintroduced the exemption in respect of contracts that were entered prior to 01.03.2015 under Sl.No.12A. With the introduction of Section 102 and 103 in the Act, the exemption which was withdrawn was restored retrospectively and allowing the refund of the service tax paid during the period between 1.04.2015 to 29.02.2016. In terms thereof, the appellant filed the refund claim on 02.11.2016. Show cause notice dated 29.11.2016 was issued to the appellant proposing to reject the refund claim. On adjudication, vide order in original dated 16.01.2017 the refund claim was rejected for the reasons:

> "1. The claim is not covered under clause (a) of sl. No. 12A of the notif. No. 09/2016-ST dt. 01.03.2016 as the work done is resurfacing of runway and allied work at Air force station, Naliya which is neither a civil structure nor any other original work.
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> 2. Refund claim under section 103 of the Finance Act is not admissible as the evidence of payment of stamp as well as certificate issued by the civil aviation of

Government of India regarding contract had been entered into before 01.03.2015 have not been provided. These are mandatory in nature and any deficiency in fulfilling these conditions cannot be called the procedural deficiency.

3. The claim is hit by unjust enrichment as the appellant has recovered service tax of the above mentioned amount from MES, who are the recipient of the service and hence the refund is liable to be rejected."

3. The appeal filed by the appellant was also rejected affirming the findings recorded by the Adjudicating Authority. The appellant has challenged the said order in the present appeal.

4. Heard both sides and perused the records of the case.

5. Ms. Shagun Arora, Advocate assisted by Shri Kunal Aggarwal, Advocate referring to the provisions of the Exemption Notifications and Section 102 and 103 of the Act submitted that the impugned services are eligible for exemption and the appellant is entitled to recover the service tax already paid by way of refund claim. The learned Counsel referred to the various conditions for applicability of Section 102 and 103 as under:-

I. The taxable service has to be provided to the Government.
There is no dispute that taxable service has been provided to MES which is the department of Ministry of Defence Government of India.

II. Activity should involve, inter alia (i) repair and maintenance of civil structure; or (ii) repair and maintenance of original works
III. The construction is not used for commerce, industry or any other business.
IV. Contract has been entered before 01.03.2015.
V. Stamp duty, wherever applicable is paid before 01.03.2015.
VI. Service tax has been collected from the service provider as the appellant has deposited the service tax with the Government.
VII. Application for the refund has to be made within six months from the date the Finance Bill receives the

assent of the President. The Finance Bill of 2016 received the assent of President on 14.05.2016. The refund claim was filed by the appellant on 02.11.2016.

VIII. So far as the applicability of Section 103 is concerned, the learned Counsel submitted that the services pertained to construction of 'original work' in respect of Air Force Station, Naia.

The principle of unjust enrichment prescribed under Section 11B of Central Excise Act do not apply in the case of refund claimed under the special provisions of Section 102 and 103 of the Act.

The provisions of Section 11B are not applicable to the deposits. The amount paid by the appellant, which is being sought as refund, is not in the nature of service tax in the absence of liability to pay such tax.

6. Ms.Jayakumari, the learned Authorised Representative for the Revenue reiterated the findings of the authorities below and submitted that the appellant failed to comply with the mandatory conditions as laid down in Section 102 and 103 of the Act. The appellant has not submitted the requisite documents, i.e. proof of payment of stamp duty prior to 01.03.2015 and certificate issued by the Ministry of Civil Aviation certifying that the contract had been entered into before the cut off date. The learned Authorised Representative relied on the decision of the Gujarat High Court in **Essar Bulk Terminal Salaya Ltd.Vs. Union of India**[4] affirmed by the **Apex Court**[5] to say that the petitioner has to comply with all the conditions mentioned in Section 103 of the Act. On the same analysis of Section 103, the decision of the Bombay High Court in **JSW Dharmatar Port Pvt. Ltd. versus Union of India**[6] was cited. Referring to the definition of 'original work' as defined in Rule 2A of the Service Tax (Determination of Value) Rules, 2006, the learned Authorised Representative submitted that

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[4] 2019 (25) GSTL 521 (Guj.)
[5]2021(47)GSTL J-18 SC
[6] 2019(20) GSTL 721(Bom.)

resurfacing of runway was neither a new construction nor was it covered under civil structure. Reliance has been placed on the decision of the Tribunal in **D.P. Jain and Company Infrastructure Private Limited versus Commissioner of CE, Nagpur[7],** which has been affirmed by the **Bombay High Court[8]** observing that scope of the terms 'road' does not include runways, which are specifically prepared along which aircraft takes off and lands. Challenge to the refund application has been maintained on the ground that the appellant has not modified the self assessment before filing refund claims. The learned Auhorised Representative referred to the decision in **M/s. Amit Rishabh Builders Pvt. Ltd[9]**, where the Division Bench disagreed with the view taken by the learned Single Member in **Khanna Constructions vs. Commissioner of Customs, CGST & C.EX., Jodhpur[10]** that Section 11B(2) of CEA will not be applicable as the amount was merely a deposit and not duty as such.

7. Considering the issue whether the services rendered by the appellant are covered under the provisions of Section 102 or Section 103 of the Act, we need to examine the legal provisions prevalent prior to the introduction of Section 102 and 103 in the Act. There is no dispute that the said services were provided by the appellant to the Air Force Station, MES even prior to 01.04.2015 and no service tax was paid in view of the exemption under the existing Entry 12(a) of the Exemption Notification No.25/2012 dated 20.06.2012. The Department never raised any objection to the applicability of the said exemption on the services rendered by the appellant. The exemption under Sl No. 12(a) was omitted w.e.f. 01.04.2015 vide Notification No.

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[7] 2014(33) STR. 668 (Tri.-Bom.)
[8]2016(43)STR507 (Bombay)
[9]Final Order Nos.51689-51692/2025 dated 23.10.2025
[10] 2020(33) GSTL 111(Tri.Del.)

6/2015 dated 01.03.2015 and as a result the appellant paid the service tax. The exemption was reintroduced under Sl No. 12A of Notification No. 9/2016 dated 01.03.2016. To examine whether the services rendered by the appellant with the introduction of Sl. No.12 A would still be entitled to exemption, we need to refer serial numbers 12(a) and 12A of the two notifications:-

Notification No. 25/2012	**Notification No. 9/2016**
"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) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;	**"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 pre-dominantly for use other than for commerce, industry, or any other business or profession; **under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date…."**

8. Except for the last part of Sl. No.12A providing for exemption in respect of contract, which has been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date, the contents of both the entries are absolutely same. There is no distinction in the nature of services prescribed in the two entries which are similarly worded and, therefore, the services which were eligible under Sl.No.12(a) continue to be eligible under Sl. No. 12A. It is not the case of the Revenue that the services provided by the appellant when Sl. No.12(a) was prevalent has undergone any change. When the same services have been continued to be provided by the appellant there is no reason to deny the exemption on the ground that they are not covered under the services referred in the entry, however, we would consider the nature of services with reference to the conditions specified in the notification in detail while examining the applicability of Section 102 and 103 of the Act.

9. Section 159 of the Finance Act, 2016 inserted Section 102 and 103 w.e.f. 14.05.2016 which reads as under:

> **"102. Special provision for exemption in certain cases relating to constructionof Government buildings.**
> (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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-
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> i. a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

ii. a structure meant predominantly for use as-

(i) an educational establishment;
(ii) a clinical establishment; or
(iii) an art or cultural establishment;

iii. a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Act, 2016 receives the assent of the President."

"103. Special provision for exemption in certain cases relating to construction of airport or port

(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of services provided by way of construction, erection, commissioning or installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date, subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st day of March, 2015.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Act, 2016 receives the assent of the President."

In principle, both the Sections granted retrospective exemption by way of refund in respect of services of construction, erection, commissioning, or installation during the period from 1.04.2015 to 29.02.2016. Since the condition enumerated in the two Sections are somewhat different, we may first consider the applicability of provisions of Section 102.

10. The basic requirements under Section 102 are identical to those provided in the Sl.No.12(a) and 12A enumerated in the two notifications. The first requirement is that the taxable service has to be provided to the government, which is not disputed in the present case as the service recipient is Chief Engineer (Air Force), Military Engineer Service, which is a Department of Ministry of Defence, Government of India. The second condition relates to the activity should involve, repair and maintenance of civil structure or original works. From the synopsis submitted by the appellant, we find that resurfacing of runway is a process of removing the old, damaged top layer of an airport runway and replacing it with a new, fresh surface to ensure safety, efficiency and longevity for aircraft operations. In this regard, the appellant undertakes various activities/services which are:

i.Survey of existing runway;
ii. Constriction of office, labour camp and shed;
iii. Material testing
iv. Employment of necessary staff,
v. Mobilization of equipment and material,
vi. **Demolition of concrete and flexible pavement which is to be constructed,**
vii. Construction of water storage tanks;
viii. **Application of rigid overlay (laying of new layer of rigid material)**
ix. **Resurfacing of flexible pavement of main runway (laying of new layer of asphalt on the runway);**
x. Construction of ducts and drains;
xi. Removal and refixing of lights,
xii. **Construction of bituminous roads and relaying of bituminous roads (complete removal of old,**

damaged top laver and replacing with a new, high qualify bituminous material);

3. The next issue requiring resolution is the types of activities that can be called as "construction of road" as against the **activities which should fall under the category of maintenance or repair of roads. In this regard the technical literature on the subject indicate that the activities can be categorized as follows, -**

(A) Maintenance or repair activities:

I.Resurfacing
II. Renovation
III. Strengthening
IV. Relaying
V Filling of potholes

(B) Construction Activities

I.Laying of a new road
II. Widening of narrow road to broader road (such as conversion of a two lane road to a four lane road)
III. Changing road surface (graveled road tometalled road/ metalled road/blacktopped/blacktopped to concrete etc."

11. As noticed above, the nature of services and the provisions of the two notifications read with Section 102 are the same and the fact that the appellant was availing the exemption under Sl.No.12(a) which the Department has not disputed, the appellant would be entitled to avail the same exemption on reintroduction and claim refund thereof under the provisions of Section 102. The Revenue has not pointed out any justification for taking a different view. In this regard, the appellant has relied on the following decisions, wherein it has been held that Department cannot take contrary stand during different periods when subject matter is identical and has been assessed earlier:-

- **Rosmerta Technologies Ltd. Vs. Commissioner of Central Excise & ST, LTU Delhi**[11]

[11] **2019 (11) TMI 1573- CESTAT Chandigarh**

- **Popular Carbonic Pvt. Ltd Vs. Commissioner of Central Excise, Chennai-I, Commissionerate** [12]
- **Hi-Tech Corporation Vs. Commissioner of Customs, Chennai**[13]
- **Fabworth (1) Limited Vs. Commissioner of Central Excise & Customs, Nagpur** [14]
- **Commissioner, Commercial Tax, U.P., Lucknow Vs. I.T.T. Ltd**[15]
- **Commissioner of Central Excise, Pune-II Vs. SS Engineers**[16]

12. Coming to sub-clause (a) of Section 102, the activity should be in relation to a 'civil structure' or any other 'original work'. The learned Counsel has emphasised on the term 'structure' as understood in the common parlance, which in the context of civil engineering refers to anything that is constructed or built from different – related parts with a fixed location on the ground. It is accordingly submitted that a civil structure would be any man-made structure which is built by applying the science of civil engineering, such as roads, runways, bridges etc. The learned Counsel has also referred to the definition of the term 'Civil Engineering', as given in Cambridge Dictionary, which is defined as the work of designing, building and repairing large public structures, such as roads, bridges, water systems and airports. Similarly, reliance has been placed on the definition of 'Civil Engineering' as given in Collins Dictionary that 'civil engineering' is the planning, design and building of roads, bridges, harbour, and public buildings. To further strengthen the argument, Ms. Shagun Arora, Advocate has placed reliance on the Standard Handbook for Civil Engineers, Chapter 18 titled as 'Airport Engineering' which involves

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[12] **2021 (8) TMI 240-CESTAT Chennai**
[13] **2021 (8) TMI 1214-CESTAT Chennai**
[14] **2007 (213) ELT 136 (Tri.- Kolkata)**
[15] **2017 (5) TM1 928-Allahabad High Court**
[16] **2023 (386) ELT. 192 (SC)**

design and construction of a wide variety of facilities for the landing, takeoff, movement on the ground and parking of aeroplanes, maintenance and repair of aeroplanes, fuel storage, and handling of passengers, baggage, and freight. Thus at an airport there are terminal buildings and hangers, pavements for aeroplane, runways, taxiways and aprons, roads, bridges, and tunnels for automobiles and walks for pedestrians etc. Reference has also been invited to the work description of Civil Engineering by the Airport Authority of India, according to which the civil engineering consists of civil structure, engineers, who undertake structural design of passenger and cargo terminal, aircraft, hangers, runways, and other pavements, technical buildings for installation of airport ground aids, etc. for AAI's in-house requirements and consultancy projects. What appears from the description provided in various datas is that narrow and conservative meaning cannot be attributed to the activities specified in Section 102 rather practical and workable concept as per modern times has to be applied. The Department having accepted that resurfacing and relaying of runways qualify as repair and maintenance of civil structure under Notification 25/2012 have no reasons to take a contrary stand when the subsequent notification and the nature of services provided by the appellant are the same.

13. The appellant has also taken alternate approach in terms of Section 102 that the activities undertaken are for maintenance and repair of 'original works' and in support thereof has referred to the definition of the term 'original work' borrowed from Rule 2A of the Service Tax (Determination of Value) Rules, 2006, which reads as:

"Rule 2A of the Valuation Rules defines 'original works' as:

> "original works" means-
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> (i) all new constructions;
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> (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable
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> (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise."

Sub-rule (ii) of Rule 2A has been couched very liberally so as to include all types of additions and alterations to abandoned or damaged structures that make them workable. Applying the same, the necessary conclusion would be that resurfacing and relaying of the runway would amount to additions and alterations to the damaged runway. The appellant has placed on record letter dated February 20, 2017 issued by Chief Engineer (Air Force), MES, Gandhinagar clarifying that the subject work (resurfacing of runway and allied work at AF Station Naliya) is an original work sanctioned by Ministry of Defence vide their letter No. Air HQ/36028/98/W (SWAC)/61/F/13/D (Air-III) dated March 13, 2013. These letters have been issued by the concerned Ministry of the Government of India and has to be given due weightage and it would not be appropriate for the Revenue which is another limb of the Government of India to ignore the same. MES being under Ministry of Defence is the service recipient and executed the work orders and are, therefore, competent to clarify the nature of work. In view thereof, we find force in the submissions of the appellant that the work undertaken would fall in the category of 'original work'. The services being rendered to MES, a Department of Ministry of Defence which is responsible for the security and safety of the nation, the requirement under Section 102(a) that services are

meant predominantly for use other than for commerce, industry, or any other business or profession is satisfied. The Division Bench of the Tribunal in **National Refrigeration and Air Conditioning Engineering versus CCE, Ludhiana**[17] has observed that as MES (a Department of Ministry of Defence) is not involved in any commercial activity, therefore, any service rendered to them is not taxable. The decision has been followed by the learned Single Member in **Khanna Constructions versus Commissioner of CUS, CGST &C.Ex, Jodhpur** and considering that MES is the construction and maintenance agency for Indian Army the construction/ maintenance services of MES since being linked to the structures or buildings which are not to be used for commercial purposes but for Ministry of Defence, any service rendered to MES is not taxable.

14. In so far as the date of execution of the agreement is concerned there is no dispute that it has been executed on 12.12.2013, which is much prior to the cutoff date,i.e. 01.03.2015. The Revenue, however has seriously opposed the exemption on the ground that appropriate stamp duty has not been paid as a requisite to claim exemption. The relevant clause in Section 102 reads as, "on which appropriate stamp duty, where applicable, had been paid before that date". The fallacy in the argument of the Revenue is that they have completely ignored the words, "where applicable", the simple interpretation of which is, where stamp duty is not applicable, the said requirement will not be enforced. In the present case the service recipient which is the Ministry of Defence, Government of India, were not required to pay stamp duty on such agreements. Reliance has been placed on the

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[17] 2011(23)S.T.R. 247(Tri. Del.).

provisions of the Indian Stamp Act, 1899[18] especially Proviso (1) to Section 3, which reads as:-

> **"3. Instruments chargeable with duty**—subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say—***
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> …
>
> **Provided that no duty shall be chargeable in respect of –**
>
> (1)any instrument executed by, on or behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;***

15. In view of the statutory provisions above, the agreement executed by the Ministry of Defence was exempted from payment of stamp duty. It is not open to the Revenue to take an argument which is contrary to the statute as well as to their own notification which has been consciously worded. The expression "wherever applicable" used in Section 102 has been considered by the Tribunal in **Shanti Construction Company versus Commissioner of CEX & ST, Rajkot**[19] and it was categorically observed that the Adjudicating Authority has missed the term "wherever applicable" while denying the refund of this amount on the ground that there is no evidence of payment of stamp duty on the contract. Further, Chief Engineer, (Air Force) MES in their letter dated 20.02.2017 on the basis of the office letter No. 88176/636/E8 dated December 20, 2016 clarified that government was not required to pay any stamp duty on the instrument executed by or on behalf of or in favour of the Government in terms of Section 3 of the Indian Stamp Act, 1899. The issue is crystal clear that under Section 102 stamp duty is chargeable

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[18] Stamp Act 1899
[19] 2021 (54) GSTL 164 (Tri. Ahmd.)

only wherever applicable and since in the present case the agreement has been executed by the Government of India, no stamp duty is leviable in view of express bar in Section 3 of the Stamp Act.

16. The distinguishing features in the applicability of Section 103 is that services are provided pertaining to an airport or port and subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India, certifies that the contract has been entered into before the Ist day of March, 2015. There is no dispute that work has been awarded pertaining to Air Force Station, Naliya and services of construction or repair/ maintenance pertains to an airport. In the refund application, it has been stated that the appellant provided services of construction of runway of airport under contract dated 12.12.2013. The appellant also reiterated in their reply to the show cause notice that the services of resurfacing of runway is an original work provided by them to Air Force Station, Naliya and is covered under Section 103. The objection by the Revenue is to the non-compliance of the mandatory condition requiring certificate to be issued by the Ministry of Civil Aviation certifying that the contract has been entered into before March 1, 2015 and has relied on the decision in the case of **JSW Dharmatar Port Private Limited versus Union of India,** where the Bombay High Court considered that exemption is subject to the condition that Ministry of Civil Aviation or as the case may be, Ministry of Shipping, certifies that the contract had been entered into before 1.03.2015. The Court noticed that sub-section (1) of Section 103 while granting exemption from payment of service tax for the past period in respect of contracts which were entered prior to 1.03.2015 made it conditional

that the certificate has to be issued by the concerned Ministry that the contract for service has been entered before 1.03.2015. The learned Counsel has placed on record the Standard Handbook for Civil Engineers by Frederick S Meeritt which says that there are two categories of airports, civil and military. Civil airports serve the scheduled airlines and all places of general aviation whereas the military airports serve as basis for Air Force, Army, Navy and Marine aviation which are developed through the Department of Defence. Although the same is with reference to United States, however the same is true in respect of any other country. The work orders in the present case have been awarded by the Ministry of Defence and not by Ministry of Civil Aviation or by Ministry of Shipping and, therefore, the certificate is required to be issued by Ministry of Defence. Keeping this in mind, the legislature has consciously used the phrase, "as the case may be" while enumerating the condition of getting the certificate from the Ministry of Civil Aviation or as the case may be, the Ministry of Shipping in the Government of India. If the option was between the two ministries there was no reason to add the words,"as the case may be" rather the purpose would have been sorted by merely adding the word 'or'. The legislature very well had in mind that apart from these two ministries there could be other Ministry responsible for certifying the execution of the agreement.

17. The decision relied on by the Revenue in **Essar Bulk Terminal Salaya Ltd versus Union of India** (affirmed by the **Apex Court**) the Gujarat High Court was actually dealing with the vires of Section 103(3) which prescribes the period of limitation of 6 months for making the refund claim, on the ground that it is discriminatory in

view of the limitation period of one year provided under Section 11B of Central Excise Act, 1944. Similarly, the decision of Bombay High Court in **JSW Dharmatar** dealt with the issue of limitation under Section 103(3). Here the limitation for filing the refund claim is not in issue and hence these decisions are of no relevance.

18. The learned Authorised Representative for the Department has opposed the refund claim on the ground that ST-3 returns filed by the appellant have not been modified before filing the refund claim and as per the assessment, the appellant is not entitled to any refund and placed reliance on the decision of the Delhi High Court in **B.T. India Private Limited**. The contention of the Revenue is unsustainable for the simple reason that the refund claim is not under the provisions of Section 11B of Central Excise Act and therefore the said provisions are not applicable. This is a case where the exemption omitted was reintroduced with retrospective effect and the tax paid during the interregnum period was allowed to be taken as refund by virtue of the provisions of Section 102/103 which were introduced for the specific purpose to enable the parties to be entitled to the exemption. The Gujarat High Court in **Essar Bulk Terminal** while interpreting the provisions of Section 103 observed that a policy decision was taken by the government to restore exemption retrospectively and allowing the refund of the service tax paid during the period between 01.04.2015 to 29.02.2016. It was in these circumstances, that the **Bombay High Court in JSW Dharmatar Port** has observed the Section 103 was introduced in the Finance Act with the specific purpose of granting exemption from service tax of certain services with retrospective effect and Section 103 is a complete mechanism for recognition of

exemption, refund of the tax so exempted with retrospective effect and the mechanism for claiming such refund.

19. Having held that Section 103 contains a self-contained code, a complete mechanism for claiming refund, the High Court rejected the contention that sub-section (3) of Section 103 retains the period of limitation of one year prescribed in the Excise Act and is aimed to protect such a refund application which cover the period beyond such period and concluded that for claiming refund under the said provision, limitation period prescribed elsewhere cannot be adopted ignoring the period prescribed in sub-section (3) of Section 103. Thus the applicability of the provisions of Section 11B are completely ruled out. The contention of the Revenue that the refund cannot be allowed because of the bar in terms of unjust enrichment for claiming refund would not apply to the refunds sought under Section 102/103, where the only requirement is that the assessee satisfies the mandatory conditions provided therein.

20. The principle of unjust enrichment as provided in Section 11B(2) of CEA will also not be applicable for the reason that in the refund claim, the appellant had categorically prayed that the amount of Rs.3,40,58,797/- be refunded directly to the account of the service recipient who have reimbursed the said amount to the appellant. In this regard, the learned Counsel has placed on record the communication dated October 17, 2016 issued by MES to All Command, CES suggesting the modalities to be followed for refund of service tax from the contractors, to the effect that the contractor will process refund cases to the Service Tax Department. While processing

refund, they would intimate clearly that this amount has already been reimbursed to them from MES, (the concerned name of GE/GE/(I) AGE(I) formation to be mentioned) and that the refund be directly credited to the account of GE/GE/(I) AGE(I). In view of the peculiar situation, the appellant cannot be said to have passed on the burden of tax to any other person. We, therefore, do not find reason to justify that the principle of unjust enrichment can be applied in this case.

21. On the issue whether amount was merely a deposit and not duty, we concur with the view taken by the Tribunal in **M/s. Amit Rishabh** that the amount of service tax cannot be considered to be merely a deposit as Section 102 (2) makes it clear that refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section(1) been in force all material times. Further, sub-section (3) also makes it clear that an application for the claim of refund of service tax shall be made within a period of six months. We also rely on the principle noted by the Bombay High Court in **D.P. Jain and Company infrastructure Private Limited** from the decision in **Commissioner of Income Tax vs. Shaw Wallace & Co.**[20] that, "what could be brought to tax alone can be exempted from it or the levy. If that was not taxable at all or from inception, then there is no question of grant of any exemption therefrom". Therefore, logically the amount in question cannot be construed as deposit.

22. We may now consider the recent decision of the Principal Bench of the Tribunal in **M/s. Amit Rishabh Builders Pvt. Ltd**., where in

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[20]**AIR 1932 SC 138**

similar situation, the amount of service tax deposited by the appellant was reimbursed by MES and it was observed that since the liability of service tax was borne by MES, they are the proper person, who could have filed the refund application under Section 102 of the Finance Act. The Bench, therefore remanded the matter to be re-examined by the Assistant Commissioner, on MES being impleaded as a co-applicant in the refund application as only MES can pursue the refund application. Following the same, we need to remand the refund application to be considered by the Assistant Commissioner after giving an opportunity to MES to be impleaded as a co-applicant therein.

23. The learned counsel has relied on the provisions of Section 11 B2(e) of CEA, which provides that amount of duty is refundable to the service recipient if such duty is borne by service recipient and the tax incidence is not passed to any other person. In view of the decision in **Amit Rishab Builders,** the same shall be considered by the Assistant Commissioner.

24. Lastly, we may clarify that the decision relied on by the Revenue in the case of **D.P. Jain** is not attracted as the controversy in the said case related to the provisions of Section 97 and 98 inserted by the Finance Act,2012 whereby, retrospective exemption was granted to the activity of management, maintenance or repair of road and non-commercial government building. On analysing the provisions of the two Sections the Court held that runways cannot be said to be covered under the term 'road' and hence the exemption extended to repair or maintenance of roads is not available with respect to the activity of repair or maintenance of runways. Here the services mentioned in

Section 102 and 103 are very different, using the term 'civil structure' or 'original work' and specifically 'airport or port'.

25. In view of the discussion hereinabove, we do not find any justification to sustain the impugned order and the same is hereby set aside. Consequently, the appellant is entitled to the refund as claimed, however, the same shall be decided by the Assistant Commissioner, on MES being impleaded as a co-applicant in the refund application. The appeal is, accordingly allowed by way of remand.

[Order pronounced on 14th January, 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp/RR