IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 76709 of 2016

(Arising out of Order-in-Original No. 30/COMMR/ST-II/KOL/2016-17 dated 28.06.2016 passed by Commissioner of Service Tax-II, Kendriya Utpad Shulk Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Rahee Infratech Limited **: Appellant**
Flat No. 1C, 1st Floor,
4, Ho Chi Minh Sarani,
Kolkata – 700 071

VERSUS

Commissioner of Service Tax **: Respondent**
Service Tax-II Commissionerate, Kolkata,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Ajay Sanwaria, Advocate,
Smt. Tanima Ghosh, Advocate,
For the Appellant

Shri Mihir Ranjan, Special Counsel,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77742 / 2025

DATE OF HEARING: 11.11.2025

DATE OF DECISION: 21.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Rahee Infratech Ltd. (formerly, M/s. Rahee Industries Ltd.) (hereinafter referred to as the "appellant") has filed Service Tax Appeal 76709 of 2016 against Order-in-Original No 30/COMMR/ST-II/KOL/2016-17 dated 28.06.2016 (the impugned order) passed by the Ld. Commissioner of Service Tax-II, Kolkata, wherein he has confirmed the demand of service tax of Rs 5,72,02,687/- along with interest.

The Ld. Commissioner also imposed a penalty of Rs.5,72,02,687/- under Section 78 of the Finance Act, 1994. In the impugned order, the Adjudicating Authority has also appropriated Rs 71,33,015/- deposited by the appellant during the course of investigation, out of the confirmed demand of Rs 5,72,02,687/-

2. The facts of the case are that the appellant, M/s. Rahee Infratech Ltd., is registered with the Service Tax Department and provided taxable services of Business Auxiliary Service, Renting of Immovable Property Service, Management or Business Consultants Service, Rent-a-cab operator's service, manpower supply service, supply of tangible goods service, works contract service and commercial or industrial construction service. They received taxable services, including road transportation of goods, manpower supply agency services, rent-a-cab operators' services, scientific or technical services, and legal consultancy services.

2.1. Officers of the DGCEI developed intelligence that the appellant had been evading Service Tax by suppressing the facts about services provided and received by them, in their periodic ST-3 returns. Accordingly, they conducted searches at the office and other related premises of the appellant and recorded a statement from Shri Rajesh Goenka, the appellant's General Manager (Finance & Accounts). Investigators found that the appellant had not discharged their Service Tax liability since 2011-12, which they had admitted and accepted during the investigation, and had voluntarily paid Rs 71,33,015/- towards their Service Tax liability.

2.2. The investigation conducted revealed that during the period from 2009-10 to 2013-14, among other services, the appellant was mainly engaged in 'flash-butt welding'. They manufactured "railway track fastenings" components, such as ERC and nut bolts, using rounds, flats, and other materials as inputs in the construction of Railway infrastructure and bridges over rivers. The appellant provided these services directly to the Railways and also as a sub-contractor to the private parties, who received work orders from the Railways. The appellant discharged service tax as "business auxiliary service" when they acted as a sub-contractor for M/s Kalpataru Power Transmission Ltd., who obtained work from the railway. However, when they provided services directly to the Railways, they classified such taxable services as "Commercial or industrial construction" services and availed the benefit of the exemption of service tax in accordance with the definition of "commercial or industrial construction" under Section 65 (25(b) which did not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams. The Department believed that the service provided to M/s. Kalpataru Power Transmission Ltd. also required classification under "commercial or industrial construction" and was liable to Service Tax at the full rate, without any abatement or exemption.

2.3. As the period of dispute is from 2009-2010 to 2013-14, all the services provided before 01.07.2012 were under the pre-Negative List era and after 01.07.2012 under the Negative List regime.

2.4. On completion of the investigation, the demand of service tax payable by the appellant (provided by them or received by them during the material period)

was worked out as Rs. 6,28,62,791/-. The appellant had paid Rs. 56,60,104/- against their service tax liability. Accordingly, a Show Cause Notice was issued to the appellant alleging that they have evaded payment of Service Tax (including 'E. Cess' and 'S&H E. Cess') amounting to Rs. 5,72,02,687/- (i.e. Rs.6,28,62,791/- minus Rs.56,60,104) . The above computation does not include the payment of Rs.71,33,015/-, that the appellant had paid after the initiation of DGCEI's investigation. These amounts had been deemed 'payment made after initiation of investigation' and were proposed to be appropriated against the gross service tax liability of the Appellant.

2.5. The said Notice was adjudicated by the Ld. Commissioner vide impugned Order-in-Original No 30/COMMR/ST-II/KOL/2016-17 dated 28.06.2016, wherein the Ld. Adjudicating Authority has confirmed the demand of Service Tax amounting to Rs. 5,72,02,687/-, including Education Cess and SHE Cess, along with interest. He has appropriated the amount of Rs. 71,33,015/- paid by the appellant during investigation. He also imposed a penalty of Rs. 5,72,02,687/- in terms of Section 78 of the Finance Act, 1994, as amended. He, however, dropped the proposal for imposition of penalty under Section 76 of the Finance Act 1994.

2.6. After issue of the Show cause notice and before passing of the Order-in-Original No 30/COMMR/ST-II/KOL/2016-17 dated 28.06.2016, the appellant had paid an amount of Rs. 44,66,029/-. However, this amount was neither brought on record or appropriated in the Order-in-Original.

2.7. Aggrieved against the confirmation of the demands of Service Tax, along with interest and penalty, the appellant has filed this appeal.

3. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant has put forth various submissions, which are summarized as under:-

- Applicability of Service tax exemption on Commercial or Industrial construction services provided to Indian Railways (Disputed Demand – Rs. 3,49,07,819/-)

(i) The Appellant had undertaken "Flash Butt Welding of Rail Joints in connection with construction of roadbed". Flash Butt Welding was done by the Appellant to join sections of the mainline rail together to create Long Welded Rail (LWR) or continuous welded rail. This smoother rail reduces the wear on the rails themselves, effectively reducing the frequency of inspections & maintenance. Continuous welded rail is particularly used on high-speed rail lines because of the smoothness of the rail head. The said job of construction of Railway Lines using mobile flash butt Welding machine which is the nature of "original works" provided to the Railways is exempted from service tax under both negative and positive list regime of service. In this regard, attention is invited to Serial No. 14 of Notification No. 25/2012-S.T.dated 20.6.2012, which specifically covers "railways".

(ii) Similarly, the said service is also exempted under Serial No. 12(a) of the aforesaid notification which provides exemption on construction services provided to the

Government for use other than for commerce, industry, or any other business.

(iii) Similarly, the said services were exempt and excluded from the definition of commercial or industrial construction services as defined under Section 65(25b) of the Finance Act, 1994

(iv) The demand has been made solely on the basis of work-order bearing Ref. No. KPTL/WO/FBW/RVNL/JB/Rahee/13-14/316 dated 13.12.2013 awarded by M/s. Kalpataru Power Transmission Ltd (KPTL), on the which the Appellant had collected and discharged service tax. The Appellant is at a complete loss to appreciate as to how taxability of one contract will lead to automatic service tax liability on other contract even when such work is executed for Indian railways. Further, the Appellant's submissions that the work provided to Indian Railways is exempt were not considered and discussed in the impugned order. As such, the entire proceedings are fundamentally flawed and bad in law. The Appellant also invites attention to the following decisions wherein it has been observed and held that the activity of flash butt welding is not liable to service tax:

- *CCE vs. The India thermit Corporation Limited [2018(2) TMI 228-Tri Allahabad]*
- *Krishna Construction Co. vs. CCE [2022 (8) TMI 644 – Tri- Ahm]*

- Applicability of exemption of Service Tax on Works Contract Services provided in connection with Railways (Disputed Demand – 61,03,885/-)

(i) The appellant submits that that the reason for confirmation of demand is very vague and unclear and therefore it is not in a position to comment on it. On the merits of the case, it is humbly submitted that the work has been undertaken for construction of railway bridges which is specially exempted from the purview of service tax. In this regard, attention is invited to Section 65(105)(zzzza) of the Finance Act, 1994, which excludes "excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams" from the purview of taxable services.

(ii) The aforesaid exemption continued even under the negative list regime of services. In this regard, attention is invited to Serial No. 13(a) and 14(a) to Mega Exemption Notification, which exempts the services in regard to bridges/railways from levy of Service Tax.

(iii) Alternatively, and without prejudice it is also submitted that the allegation in the notice restricting benefits of exemption on railway construction work limited to "Indian railways" and not "Private concerns" is without merits and liable to be set aside. Reference in this regard is invited to the following decisions:

- *Afcons Infrastructure Ltd. vs. CCE [2013 (8) TMI 530 – Tri Mumbai]*
- *Konkan Railway Corporation Ltd vs. CCE [2023 (2) TMI 1175 – Tri- Mum]*

- *CCE vs. Konkan Railway Corporation Ltd [2023 (8) TMI 128 - SC]*
- *KVR Rail Infra Projects Pvt. Ltd. vs CCT [2019 (5) TMI 376 – Tri Hyd]*
- *R.K.D. Infrastructure Private Limited vs. CCE [2023 (9) TMI 811 –Tri]*
- *Hari Construction & Associates Private Limited vs. CCE [2023 (9) TMI 454 – Tri Kol]*
- *Triveni Engicons Private Limited vs. CCE [2024 (3) TMI 917 – Tri- Kol]*

- Non-payment of service-tax of Rs. 17,05,088/- on commission charges of Rs. 1,37,95,205/- received from M/s Pandrol UK (entity based outside India) under Business Auxiliary Services for the F.Y. 2013-14

(i) The Service Tax demand has been confirmed on representation services provided to M/s Pandrol UK on account of non-submission of documents. In terms of the agreement, the Appellant was providing market information and customer lead, customer evaluation, short listing and advice in relation to the product sales and such services were provided to on principal-to-principal basis. Since, the service provider is located in India, service recipient is located outside India, services are not covered under the negative list, place of provision of service is outside India, payment has been received in convertible foreign exchange and provider and recipient of service are not merely establishment of distinct persons, the services would qualify as export of service.

(ii) Copies of relevant documents such as agreement dated 01.01.2011 executed with Pandrol UK Limited, Commission ledger, Bank

payment advice, Bank statement evidencing receipt of payment, etc., have been furnished by the appellant which buttresses their stand.

- Non-payment of service tax on staff deputation and equipment hire charges recovered from Joint Venture [Disputed demand of Rs. 17,64,393/- on recovery of staff deputation charges and Rs. 6,47,209/- on equipment hire charges]

(i) The appellant submits that they have entered into a Joint Venture Agreement with GPT Infra projects Limited/ GPT Infrastructures Pvt. Limited, for executing railways infrastructure work from time to time. In terms of the arrangement between the parties, the profit and loss arising out of the contract was to be shared equally in the ratio of 50% each (or as agreed between the parties from time to time based on nature of work undertaken).

(ii) Principal-client relationship which is the basic tenet for applicability of service tax was not existing between the Assessee and the JV.

(iii) No income has been earned and the amount received is purely reimbursement of expenses for undertaking the work of the JV. Further, reimbursement of expenses not liable to tax before 14.05.2015

(iv) The relation between the Assessee and the JV was not that of a service provider and service recipient. The work undertake was towards self-service in a joint venture.

(v) The activities undertaken by a partner/co-venturer for the mutual benefit of the partnership/joint venture cannot be regarded as a service rendered by one person to another for consideration and therefore cannot be taxed. The relation between the co-venturer and joint venture is akin to that of a partner in a partnership firm and that any activity undertaken by the partner for the joint enterprise cannot be considered as a transaction between a service provider and the service recipient.

(vi) The element of consideration i.e. quid pro quo, which is a necessary ingredient of any service, is missing in this case. The activity undertaken by a co-venture (partner) for the furtherance of the joint venture (partnership) cannot be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). Whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

- *Mormugao Port Trust vs. CCE [2017 (48) STR 69 (Tri-Mum)]*
- *CCE vs. Mormugao Port Trust [2018 (19) G.S.T.L. J118 (S.C)]*
- *B.G. Exploration & Production India Ltd. vs. CCE [2021 (49) GSTL 143 (Tri-Mum)]*
- *B.G. Exploration & Production India Ltd. vs. CCE [2022 (63) GSTL 351 (Tri-Mum)]*

- *KPH Dream Cricket Pvt. Ltd. vs. CCE [2020 (34) G.S.T.L. 456 (Tri-Chan)]*
- *India Cements vs CCE [2024 (15) Centax 434 (Tri-Mad)]*
- *ACL Mobile Ltd vs. CCE [2019 (20) GSTL 362 (Tri-Del)]*

- Invocation of extended period of limitation

(i) Extended period cannot be invoked as there was no suppression with an intention to evade duty. The demand has been made on the basis of audited books of account and service tax return filed by the Appellant which is also a public document. As such, the charges for suppression on part of Appellant would fail. Reference in this regard is invited inter alia to the decisions in the cases of *Balajee Machinery vs. CCE, Patna [2022 (66) G.S.T.L. 440 (Tri. - Kol)]* and *CCE vs. Rajaram Maize Products [2010 (7) TMI 339 - CESTAT, NEW DELHI]*

(ii) Attention is also invited to the decision of Hon'ble Supreme Court in the case of *Pushpam Pharmaceuticals Company vs. CCE [1995 (78) ELT 401 (SC)],* wherein it has been held that extended period of 5 years would not be applicable just for any omission of assessee unless it is deliberate to escape from payment of duty. Further it is a settled principle that in order to invoke the extended period of limitation, it is necessary to establish that there has been intent to evade payment of duty which has occasioned through fraud, collusion etc. These ingredients postulate a positive act of fraud or collusion or wilful misstatement or

suppression of facts. However, in the instant case there was no suppression of the material fact and allegation of the department is not enough to invoke the extended period of limitation.

3.1. In view of the aforesaid submissions, the Ld. Counsel for the appellant prays for setting aside the captioned Order and drop the proceedings initiated thereunder, being legally unsustainable.

4. On the other hand, the Ld. Special Counsel representing the Revenue has inter alia raised the following grounds in the written submissions filed during the course of arguments: -

(a) The appellant did not submit any documentary evidence in their defence. Hence, the Adjudicating Authority has decided the case based on the available records in his possession.

(b) Under work orders dated December 13, 2013, M/s Kalpataru received an LOA from Rail VIKAS NIGAM LIMITED for 'Flash Butt Welding of Rail Joints in connection with construction of roadbed'. Thereafter, M/s. Kalpataru passed on the said work orders to the Appellant company for execution. Therefore, the appellant operated as a subcontractor in respect of the instant work order. The exemption for "construction of railways" applies only when service is directly provided to Railways; 'Civil structure' is intended to be a static or stationary structure. In that sense, 'railways' would fall under the category of civil structure. Now, services provided for the construction or building of civil structures fall under 'commercial or industrial

construction service'. Therefore, any services rendered for laying new railway tracks, which may include flash butt welding, fall appropriately under 'commercial or industrial construction service'.

(c) The same logic applies to work order No. McML/RVNLBBSR/1314/001 dated 02.09.13 and Work Order P. 0. 5000557 dated 17.6.2010 awarded by M/s. L&T Ltd The scope of work pertained to the said work order is " construction of major & minor bridges associated with Railway Infrastructure Works for Maithon Power Ltd. The Appellant's reference to Service Tax Circular No. 80/10/2004-ST, dated 17.09.2004, is not correct as construction of major & minor bridges associated with Railway Infrastructure Works' does not fall within the scope of 'railway transport terminal.'

(d) As regards services undertaken by them as the Joint Venture in respect of supply of tangible goods, the Appellant contended that they were one of the members of JV, the service provided to themselves did not attract service tax liability. In this regard, the respondent submits that a joint venture (JV) formed under any agreement holds a separate legal entity from its constituent members. In the instant case, M/s Rahee Infratech Ltd. (noticee) and M/s RaheeGPT(JV) both have separate legal status. In the event of services provided by the Appellant to M/s Rahee-GPT (JV); two separate entities, i.e., the service provider and service receiver, are identifiable. Under the erstwhile Service Tax law in India, services provided by a member to its

joint venture (JV) were taxable if rendered for consideration. Therefore, the Adjudicating Authority has correctly rejected the appellant's argument while holding them liable for payment of service tax.

(e) The Adjudicating Authority correctly did not accept the contention of the Appellant regarding receipt of commission against export of services and receipt in convertible currency in the absence of proper documentary evidence.

(f) The services provided by the Appellant are squarely classifiable under Works Contract Service and Commercial/Industrial Construction. These are taxable services under Section 65(105)(zzzza)/(zzq) of the Finance Act, 1994. The plea that the contracts related to "railway projects" and hence are exempt, is misconceived because-

> (i) the services were rendered to private entities (Kalpataru, L&T, TISCO), not to Indian Railways;
>
> (ii) exemption for "construction of railways" applies only when service is directly provided to Railways; and
>
> (iii) Sub-contractors providing works to private companies for commercial projects cannot claim exemption.

(g) The Adjudicating Authority has rightly relied on the scope of Notification No. 25/2012-ST, which does not extend exemption to commercial/industrial ventures or to subcontractors of non-railway entities.

(h) The extended period was rightly invoked: The appellant continued with non-payment of tax despite receipt of consideration. The Appellant's claim of bona fide belief is untenable, since there were multiple board circulars and clarifications establishing taxability. The appellant's conduct- non-payment and belated disclosure reflects mens rea.

(i) The Adjudicating Authority computed demand based on audited records, invoices and ST-3 RETURNS. The appellant failed to produce documentary evidence. The appellant failed to produce documentary evidence to rebut the computation. Hence, the burden of proof under Section 73(1) lies on the appellant, which they were unable to fulfil.

4.1. The Ld. Departmental Representative thus reiterated the above points and contended that the Ld. Adjudicating authority has rightly confirmed the demands of Service Tax, along with interest, and imposed penalty. Accordingly, he prayed for rejecting the appeal filed by the appellant.

5. Heard both sides, perused the appeal records and the submissions made by both the sides.

6. We observe that the impugned order has confirmed the demand of Service Tax amounting to Rs. 5,72,02,687/- along with Interest and Penalty. Out of above demand, the appellant has collected from their client and made a payment of Rs. 71,33,015/-, which has been appropriated in the impugned order. Further, the appellant had paid Rs. 56,60,104/-, which has been disclosed as admitted liability in their ST-3

returns. Furthermore, the appellant had also paid an amount of Rs.44,66,029/- against their service tax liability, which has not been appropriated. However, this amount has been accepted as pre-deposit payable by the appellant under Section 35F of the Central Excise Act, 1944. The demands of Service Tax confirmed in the impugned order can be broadly categorized under three headings, which are being separately examined hereunder:

Issue 1 – Applicability of Service tax exemption on Commercial or Industrial construction services provided to Indian Railways (Disputed Demand – Rs. 3,49,07,819/-)

7. Regarding the demand of Service Tax of Rs. 3,49,07,819/- on Commercial or Industrial construction services provided to Indian Railways, we observe that the appellant had undertaken the work of **"Flash Butt Welding of Rail Joints in connection with construction of roadbed**". Flash Butt Welding was done by them to join sections of the mainline rail together to create Long Welded Rail (LWR) or continuous welded rail. This smoother rail reduces the wear on the rails themselves, effectively reducing the frequency of inspections & maintenance. Continuous welded rail is particularly used on high-speed rail lines because of the smoothness of the rail head. The appellant's stand is that the said job of construction of Railway Lines using mobile flash butt Welding machine, is in the nature of "original works" provided to the Railways is exempted from service tax under both negative and positive list regime of service. They also contend that for the period post 01.07.2012, the said services were exempted by Serial No. 14 of Notification No. 25/2012-S.T.dated

20.6.2012, which specifically exempts construction service rendered to Railways. For ready reference, the said entry 14(a) of the Notification No. 25/2012-S.T.dated 20.06.2012 is reproduced herein below:

> *"14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-*
>
> *a) an airport, port or **railways**, including monorail or metro;"*

[Emphasis supplied]

7.1. We also observe that construction services provided to railways were exempt, as it is evident from the definition of commercial or industrial construction services, as defined under Section 65(25b) of the Finance Act, 1994. For ready reference, the said definition exempting services rendered to Railways is reproduced below:

> *"Section 65(25b) "commercial or industrial construction" means —*
>
> *a) construction of a new building or a civil structure or a part thereof; or*
> *b) construction of pipeline or conduit; or*
> *c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or*
> *d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,*
>
> *which is —*
>
> *(i) used, or to be used, primarily for; or*
> *(ii) occupied, or to be occupied, primarily with; or*
> *(iii) engaged, or to be engaged, primarily in,*
>
> *commerce or industry, or work intended for commerce or industry, but does not include **such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.."***

[Emphasis supplied]

7.2. Thus, from the above, it can be seen that services rendered to Railways are exempted from service tax, both in the Pre-Negative List regime and the Negative List regime. We find that the appellant has collected and discharged Service Tax in respect of services rendered under the contract to M/s. Kalpataru Power Transmission Ltd (KPTL). Revenue has cited this payment as example to demand Service Tax on other contracts. In this regard, we are of the view that just because the appellant has collected and paid Service Tax on one contract, it would not automatically lead to Service Tax liability on other contracts, when such work rendered was meant for Indian railways and specifically excluded from the levy of Service Tax in the definition itself. As the services rendered to Indian Railways are specifically exempted from Service Tax, we hold that the services of 'flash butt welding' rendered by the appellant to the Indian Railways are not liable to Service Tax.

7.3. From the above discussions, it is clear that the work of "Flash Butt Welding" provided to the Railways falls within the purview of "original works", which is exempted from levy of Service Tax under the Negative as well as Positive / Pre-Negative list regime of service. We also find that similar views have taken by the Tribunal in the cases of *CCE vs. The India Thermit Corporation Limited [2018 (2) TMI 228 - CESTAT Allahabad]* and *Krishna Construction Co. vs. CCE [2022 (8) TMI 644 – CESTAT Ahmedabad]*

7.4. Thus, in view of the foregoing, we hold that the demand of Service Tax confirmed in the impugned order on this issue is not sustainable and hence we set aside the same.

Issue 2 – Applicability of exemption of Service Tax on Works Contract Services provided in connection with Railways (Disputed Demand – 61,03,885/-)

8. Regarding the demand of Service tax of Rs.61,03,885/- on Works Contract Services provided in connection with Railways, we observe that the said demand has been raised and confirmed on the ground that the services were not rendered in relation to "public carriage of passengers or goods" and have not been provided in relation to 'railways', but for development of 'railway infrastructure' required for private parties which is essentially related to a commercial/ industrial venture and do not merit exemption, as envisaged for 'railways'. In this regard, we take note of the fact that the work has been undertaken for construction of railway bridges which is specifically exempted from the purview of works contract services as defined under Section 65(105)(zzzza) of the Finance Act, which reads as under:

> *"taxable service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding* ***works contract in respect of*** *roads, airports,* ***railways****, transport terminals,* ***bridges****, tunnels and dams.*
>
> [Emphasis supplied]

8.1. The aforesaid exemption continued even under the Negative List regime of services. The relevant Serial No. 13(a) and 14(a) to Mega Exemption Notification are reproduced below for ready reference:

"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;*

…..

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

*(a) an airport, port or **railways,** including monorail or metro;"*

[Emphasis supplied]

8.2. From the aforesaid entries, it would be evident that services provided in relation to construction of bridge/railways are exempt from payment of Service Tax and therefore, it is imperative that no Service Tax is payable by the appellant on the said services rendered by the appellant.

8.3. Regarding restricting the benefits of exemption on railway construction work limited to "Indian railways" and not "Private concerns", we observe that the said issue has been decided in favour of the appellant in the case of *Afcons Infrastructure Ltd. vs. Commissioner of C.Ex., Mumbai-II [[2015 (38) S.T.R. 194 (Tri. – Mumbai)].* The relevant part of the said decision is reproduced below for ease of reference:

> *"5.1 The definition of 'Commercial and Industrial Construction Service' as provided in Section 65(25b) excludes such activities relating to roads, ports, railways, dams, bridges, tunnels etc. There is no distinction between a monorail or metro rail or any other kind of rail and, therefore, the term 'railways' used therein has to be given its widest meaning to include all types of railways and all types of railway lines. Therefore, the distinction sought to be made*

by the adjudicating authority is not sustainable in law.

5.2 Secondly, we do not find any basis for the conclusion drawn by the learned adjudicating authority by referring to some decision of the Government while examining the scope of the terms 'railways' in the context of certain tax exemptions. There is no evidence before us to show that the Government examined the matter and came to such a conclusion nor is there any circular or notification issued by the Government in this regard. In the absence of any such decision which is in the public domain, we are unable to accept the contention raised by the Revenue in this regard and reject the same totally. In other words, the law has to be interpreted as it stood, as held by the Hon'ble Apex Court in the case of Doypack Systems Pvt. Ltd. [1988 (36) E.L.T. 201 (S.C.)] wherein it has been held that the notings in the Government files are not relevant for interpretation of the statutes and the statute has to be interpreted by the wordings explicitly used therein and if there is no ambiguity in the language used therein, there is no need to refer to the notings in the Government file. On that ground also, the observation of the adjudicating authority has no bearing to the facts on hand and has to be rejected.

….

7. It is also a well-known fact that the Indian Railway itself is an organization, which is meant to run on commercial basis. Recognizing these facts, there is a provision for a separate Railway-Budget to be presented before the Parliament and whenever there is a surplus, the Railways declared a dividend and pass it on to the Consolidated Fund of India. Therefore, the argument that only DMRC is run on commercial basis and not Indian Railway, is not an acceptable proposition. In view of the specific exclusion of 'railways' from commercial and industrial construction service, the question of imposing any Service Tax on the railways run by the DMRC does not arise at all."

8.4. We also find that a similar view has been taken by the Tribunal at Mumbai in the case of *Konkan Railway Corporation Ltd vs. CCCE [2023 (2) TMI 1175 – CESTAT, Mumbai],* wherein it has been held as under:

> *"2. The demand was raised in relation to payment of ₹ 2,58,24,30,000 and ₹ 170,00,000/- received in advance by the appellant between April 2015 and June 2017 from Mis National Thermal Power Corporation Limited in accordance with contract for construction and commissioning of railway sliding and signaling telecommunication systems including associated electrical and mechanical instruments for facilitating handling of coal at the Kudgi and Gadarwara super thermal power projects. The adjudicating authority discarded the claim of the appellant that notification no. 25/2012-ST dated 28th June 2012 Jat serial no. 14(a) incorporated by notification no 9/2016-ST dated 1st March 2016) covering*
>
> > *Services by way of construction, erection, commissioning, or installation of original works pertaining to,-*
> >
> > *"(a) railways, excluding monorail and metro.....*
>
> *applied to this receipt by holding that the said sidings are nothing but material handling system for private purpose and, therefore, not covered by*
>
> > *"(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-*
> >
> > *(a) all lands within the fences or other boundary marks indicating the limits of the fand appurtenant to a railway.*
> >
> > *(b) all lines of rails, sidings or yards, or branches used for the purposes of, or in connection with, a railway*
> >
> > *(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway.*
>
> *in section 2 of The Railways Act, 1989 though the benefit of exclusion of the 'goods component in composite contracts provided for in rule 2(a)(ii)(A)*

of Service Tax (Determination of Value) Rules 2006 was extended to them. The liability was computed by applying the tax rate on 40% of the amount so received.

3. According to Learned Counsel appearing for the appellant, the issue stands settled by several decisions of the Tribunal commencing with Afcons Infrastructure Ltd v. Commissioner of Central Excise, Mumbai - Il [2015 (38) STR 194 (Tri. Mumbai)] which held that

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8. Entitlement of every sort of railways to the exemption provided, either by exclusion from the definition of taxable service in the 'pre-negative list' regime or by specific exemption in the 'negative list' regime has been dealt with in several decisions of the Tribunal. While addressing the issue of commercial consideration' being the bench mark for determining eligibility for exclusion/exemption, the Tribunal, in re Hindustan Construction Company Ltd, held that

> *5. The exclusion, whether under the separate entry or within the umbrella of the new taxable service, of 'railways' continued unabated it would appear that the adjudicating authority was particularly impressed by the activity brought within the tax net to be ascertained on the basis of commerciality to bring it in conformity with the description of the taxable activity. Hence, according to him, the operation of the two recipients of service, being evidently commercial, did not merit the exclusion contained therein. For a better appreciation of the arguments, we deem it appropriate to record the particular finding the adjudicating authority that*
>
> *3.7 The Term "Railways mentioned in Section 65(25b) for the purpose of exclusion from the scope of levy of Service Tax needs to be understood in the appropriate context and especially the scheme of taxation of services under the Finance Act, 1994. The objective to levy Service Tax under Section 65(105)(zzzp) read with Section 65(25b) is clearly to levy Service Tax on Commercial or Industrial*

construction service. However Commercial or Industrial construction of building or structure in respect of "railways" is excluded from the scope of the levy.

3.8 It is the general principle followed in the levy of Service Tax that when Government undertakes commercial or business activity, then they should be treated on par with similar activity undertaken by non-govemmental bodies or any other persons for the purpose of taxation. This is essential to avoid competitive disadvantage to other similar nongovernmental service providers and to ensure level playing field to all similar service providers

3.9 Indian Railways under the Ministry of Railways is part of the Government of India and not on commercial basis. Therefore, Indian Railways cannot be compared or equated with MMO/DMRC, a Company formed under the Companies Act and is committed to run purely on commercial lines even if it is fully owned by the Government.... "Railway" in the Indian Context is popularly known as "Indian Railways and is more appropriately understood as Railways operated under the Indian Railways Act especially for the purpose of any special dispensations such as tax exemptions.

6. We find no authority for these sweeping statements on the intent of Finance Act, 1994, the scope of the taxable service under which the levy has been confirmed or the status of railway operations in the country. In the context of the claim of the appellants, limited to the exclusion from the taxability otherwise attached to commercial or industrial construction service", we are not required to define the scope of the taxable service, the test of commercial imperative of the impugned activity is not in dispute. All that we are required to ascertain is the conformity of the operation of the recipients of the service to the excluded aspect of the taxable service. The adjudicating authority is far from correct in assuming that the dutiability devolving, under Customs Act, 1962 and Central Excise Act 1944, on governmental transactions by specific inclusion in the statutes is, similarly, present in Finance Act, 1994. Nor does the reason ascribed by him as the prompting for such inclusion in the commodity tax statutes find resonance in any decision, circular or elucidation, Furthermore, to the extent of our

> *understanding, the operations, or its popular designation as 'Indian Railways, of Government-run Railways is not stripped of its commercial mantle. A stray reference to the statute governing railway operations does not establish the postulate of such definition to be applicable in every special dispensation.*
>
> *7. The definitions in the statute governing Railways is intended for fencing in the operational component to such objects as are included in that law. It is not appropriate to place reliance on such definitions save under the express authority of Finance Act 1994 It is also not correct to contend that the coverage of the statute governing Railways is limited to Government Railways, no such distinction is drawn except for the purposes of jurisdiction of the railway authorities specified therein for the governance of the Railways belonging to the Government.*
>
> *8. In the absence of any qualification for the 'railway' incorporated in the exclusion component of the taxable service, any railway, irrespective of ownership, is covered. Within the scheme of 'negative list', there is a specific exemption for metro or monorail within the broader exclusion available to Railways. The exclusion of metro or 'monorail' has occurred only after the period of dispute and therefore does not concern us.*

9. It is, thus, clear that the proposition of strict construction of intent of exemption notification must also go hand in hand with strict construction of every word/phrase therein. The exemption from tax is available to 'railways, excluding mono rail or metro, by notification no. 25/2012-ST dated 20th June 2012 after 1st July 2012 and, as conceded by the adjudicating authority, there being no definition of 'railway either therein or In Finance Act, 1994, the distinction between railway for private purpose and railway for public service cannot be artificially contrived to suit tax administration, neither can the definition in another statute be drawn upon for the purported purpose of illumination. The Railways Act, 1989 was enacted to authorize Government of India to operate the railway network of the country; it also affords a framework for administration of the railway services and jurisdictional monopoly The taxable service' in Finance Act, 1994 excluding 'railways' from the ambit of the service did not place any restriction on benefit going to private railways. The statute, too, did not consider it necessary to fall back on the definition of railways in another statute for determination of taxability and it is not open to the adjudicating authority to arrogate that privilege in

> *an executive capacity. The intent of exclusion prior to 1st July 2012, and exemption for the period, thereafter, is abundantly clear.*
>
> *10. Consequently, following the decisions of the Tribunal that have consistently interpreted the legislative intent of the exemption, we set aside the impugned order and allow the appeal."*

8.5. In view of the above findings, we hold that the demand of Service tax of Rs.61,03,885/-confirmed in the impugned order on Works Contract Services provided to Railways is not sustainable and hence, we set aside the same.

Issue 3 – Non-payment of service-tax of Rs. 17,05,088/- on commission charges of Rs. 1,37,95,205/- received from M/s Pandrol UK (entity based outside India) under Business Auxiliary Services for the F.Y. 2013-14

9. We find that the demand of service tax on commission charges has been confirmed under Business Auxiliary Services on account of non-submission of documents evidencing export of services. In terms of the agreement, we find that the appellant was providing market information and customer lead, customer evaluation, short listing and advice in relation to the product sales and such services were provided to M/s. Pandrol UK, an entity based outside India, on principal-to-principal basis. Since, the service provider is located in India, service recipient is located outside India, services are not covered under the negative list, place of provision of service is outside India, payment has been received in convertible foreign exchange and provider and recipient of service are not merely establishment of

distinct persons, we hold that the services rendered by the appellant would qualify as export of service. In this regard, we perused the following documents submitted by the appellant:

- Copy of agreement dated 01.01.2011 executed with Pandrol UK Limited
- Copy of Commission ledger
- Bank payment advice
- Bank statement evidencing receipt of payment
- Sample invoice
- Bank declaration for receipt of foreign currency

9.1. A perusal of the above documentary evidences submitted by the appellant categorically indicate that the services rendered by them to M/s. Pandrol, UK would qualify as 'export of service' and hence we hold that the demand of Service Tax confirmed in the impugned order on this count is not sustainable. Consequently, the above demand of Service Tax confirmed vide the impugned order stands set aside.

Issue 4 and 5 – Non-payment of service tax on staff deputation and equipment hire charges recovered from Joint Venture [Disputed demand of Rs. 17,64,393/- on recovery of staff deputation charges and Rs. 6,47,209/- on equipment hire charges]

10. Regarding the demands of Service Tax of Rs. 17,64,393/- on recovery of staff deputation charges and Rs. 6,47,209/- on equipment hire charges recovered from Joint Venture, we observe that the

demands of Service Tax under this head have been confirmed on the premise that a Joint Venture (JV) formed under any agreement is a separate legal entity from its constituent member, in which two separate entities i.e. service provider and service receiver are identifiable, and therefore, the Revenue has fastened these Service Tax liabilities on the appellant. In this regard, we have considered the fact that the appellant have entered into a Joint Venture Agreement with GPT Infra projects Limited/ GPT Infrastructures Pvt. Limited, for executing railways infrastructure work from time to time. In terms of the arrangement between the parties, the profit and loss arising out of the contract was to be shared equally in the ratio of 50% each (or as agreed between the parties from time to time based on nature of work undertaken). Further, the joint venture provides as under:

- all rights, interest, liabilities, obligations, working experience and risk and profit and loss after income tax arising out of the said contract shall be shared and borne by the parties in the said share / ratio.

- Each of the parties herein agrees to place at the disposal of the Joint Venture the benefits of its individual experience, technical knowledge and skill and shall in all respects bear its share of responsibility including the provision of information, advice and other assistance required in connection with the said contract

- That the parties shall be jointly and severally responsible to the said client for successful execution and of the contract in the event of the said contract being awarded to the Joint Venture

10.1. We find that the said contracts were amended from time to time with similar arrangement for other works executed for railways. From the agreements, we find that the Principal-client relationship, which is the basic tenet for applicability of service tax, was not existing between the Appellant and the JV. Further, no income has been earned and the amount received is purely reimbursement of expenses for undertaking the work of the JV. In this regard, we also take note of the fact that reimbursement of expenses were not liable to Service Tax before 14.05.2015. Thus, we find that the relation between the appellant and the JV was not that of a service provider and service recipient. The work undertaken was towards self-service in a joint venture.

10.2. It pertinent to note that activities undertaken by a partner/co-venturer for the mutual benefit of the partnership/joint venture cannot be regarded as a service rendered by one person to another for consideration and therefore cannot be taxed. The relation between the co-venturer and joint venture is akin to that of a partner in a partnership firm and that any activity undertaken by the partner for the joint enterprise cannot be considered as a transaction between a service provider and the service recipient inasmuch as whatever the partner does in a partnership, is done by him for his own benefit and not as a service to anybody. In the instant case before us, the element of consideration i.e. quid pro quo, which is a necessary ingredient of any service, is missing. The partner contributes into a common pool of resources required for running the joint enterprise and that if the venture is successful the returns that he gets from the same is his profits and not a consideration for any specific service rendered. Thus,

the activity undertaken by a co-venture (partner) for the furtherance of the joint venture (partnership) cannot be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture. A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service, is absent.

10.3. In support of the above view, we rely upon the decisionin the case of *Mormugao Port Trust vs. Commissioner of Cus., C.Ex. and S.T., Goa [2017 (48) S.T.R. 69 (Tri-Mum)],* wherein the demand of Service Tax has been quashed and set aside on amount received, being a JV partner. The relevant part of the order is reproduced below:

> *"17. The question that arises for consideration is whether the activity undertaken by a co-venture (partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for*

advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture. A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

18. In our view, in order to render a transaction liable for service tax, the nexus between the consideration agreed and the service activity to be undertaken should be direct and clear. Unless it can be established that a specific amount has been agreed upon as a quid pro quo for undertaking any particular activity by a partner, it cannot be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service. In Cricket Club of India v. Commissioner of Service Tax, reported in 2015 (40) S.T.R. 973 it was held that mere money flow from one person to another cannot be considered as a consideration for a service. The relevant observations of the Tribunal in this regard are extracted below :

"11. …Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. … The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.

12. … Unless the existence of provision of a service can be established, the question of taxing an attendant monetary transaction will not arise.

Contributions for the discharge of liabilities or for meeting common expenses of a group of persons aggregating for identified common objectives will not meet the criteria of taxation under Finance Act, 1994 in the absence of identifiable service that benefits an identified individual or individuals who make the contribution in return for the benefit so derived.

13. … Neither can monetary contribution of the individuals that is not attributable to an identifiable activity be deemed to be a consideration that is liable to be taxed merely because a "club or association" is the recipient of that contribution.

14. … To the extent that any of these collections are directly attributable to an identified activity, such fees or charges will conform to the charging section for taxability and, to the extent that they are not so attributable, provision of a taxable service cannot be imagined or presumed. Recovery of service tax should hang on that very nail. Each category of fee or charge, therefore, needs to be examined severally to determine whether the payments are indeed recompense for a service before ascertaining whether that identified service is taxable."

19. We are accordingly of the view that activities undertaken by a partner/co-venturer for the mutual benefit of the partnership/joint venture cannot be regarded as a service rendered by one person to another for consideration and therefore cannot be taxed.

20. We may mention here that there are situations where a co-venturer or a partner may render a taxable service to the joint venture or the firm. This may happen if, for instance, the partner in individual capacity enters into a separate contract with the joint venture/partnership for providing a specific service in lieu of a separate specific consideration. Such consideration for specific services provided under an independent contract between a co-venturer/partner and joint venture/partnership can be taxable, as such contracts are executed by the partners not in their capacity of the partners but as independent contractors and such a relationship is governed by a separate contract independent of the partnership/joint venture agreement. To illustrate, a partner in a partnership firm may enter into a

separate lease agreement with the firm for renting out his private property to the Partnership firm for a monthly rent. In this situation, the partner will be liable to pay service tax on the renting service rendered by him to the firm. On the other hand, if the partner chooses to grant the firm a right to use his office premises and regards this as his contribution to the hotch-potch of the partnership firm, the reward by way of profits which such partner may earn upon the success of the partnership venture will not be taxable as the profit earned by the partner in such circumstances is not a consideration for the service of renting out the property to the partnership firm. By placing the office at the disposal of the firm to conduct its business the partner agrees to receive only a share of profit which is contingent upon the firm earning profits in the first place. If the venture fails and the firm does not earn any profit, the partner may not receive anything in return for the contribution made by him. On the other hand, if the firm's venture is successful, the partner may earn profit which may be much more than the normal rent that he would have earned by simply leasing out the office to the firm for a fixed rent. The profits which the partner will earn in such circumstances is a reward due to an entrepreneur for the risk that he takes and cannot be regarded as a consideration for the renting of the office to the firm."

……

What the partner/co-venturer does is for his own benefit cannot ipso facto be considered as a service rendered to the partnership (joint venture). The mere fact that the partnership (joint venture) may also benefit from the same is irrelevant as there is no contract of service agreed upon or performed by the partner (co-venturer) to the partnership (joint venture). Additionally, there is no consideration agreed upon or provided. In the absence of there being a quid pro quo the essential requirement of the definition of service is not met with."

10.4. Accordingly, we hold that the share of income received by the appellant from the Joint Venture is not liable to Service Tax and hence, we set aside the same.

11. Regarding invocation of extended period of limitation to raise the demand, we observe that there was no suppression of fact with an intention to evade duty established in this case. The demand has been made on the basis of audited books of account and service tax return filed by the appellant, which are public documents. As such, the charges for suppression on part of appellant would not sustain. In this regard, we refer to the decision of this Tribunal in the case of *Balajee Machinery vs. CCE, Patna [2022 (66) G.S.T.L. 440 (Tri. - Kol)],* wherein this Bench has observed as under:

> *"10. In so far as the issue of limitation is concerned, we do not find any ingredient of fraud or suppression with an intent to evade payment of tax. In the case of Pappu Crane Services v. CCE, Lucknow (Final Order No. 71246 of 2019 in ST Appeal No. 70707 of 2018), the Co-ordinate Bench of Tribunal at Allahabad has held that where the demand is merely based on the data appearing in the Income Tax Portal, there cannot be said to any fraud or suppression so as to justify invocation of extended period of limitation. Therefore in the present case, in our view, the demand raised for the period up to March, 2015 is completely barred by limitation and accordingly the demand is set aside. Further, since there is no element of fraud or suppression, we are of the view that the entire penalty amount is liable to be set aside."*

11.1. As suppression of fact with an intention to evade payment of tax has not been established in this case, we hold that the demand of Service Tax confirmed by invoking extended period of limitation is not sustainable and hence we set aside the same.

11.2. For the same reasons, we also hold that no penalty is imposable on the appellant under Section 78 of the Finance Act. Accordingly, we set aside the penalty imposed under Section 78 of the Finance Act in the impugned order.

12. We note that demand of Service Tax, amounting to Rs. 5,72,02,687/-, including Education Cess and SHE Cess, along with interest, has been confirmed in the impugned order. The Ld. Adjudicating authority has appropriated the amount of Rs. 71,33,015/- paid by the appellant during investigation. In view of the findings in the preceding paragraphs, the demands of Service Tax confirmed against the appellant have been held to be unsustainable. However, we find that the amount of Rs. 71,33,015/- has been collected by the appellant from their clients and hence the said amount is liable to be paid to the Government account. Thus, we uphold the appropriation of this amount as done in the impugned order. We also find that the Appellant had paid Rs. 56,60,104/-, which has been disclosed as admitted liability in their ST-3 returns. Hence, we hold that this amount paid by the appellant is not liable to be refunded. We further take note of the fact that the appellant has paid an amount of Rs.44,66,029/- against their service tax liability, which has not been appropriated; the said amount has been accepted as pre-deposit payable by the appellant under section 35F of the Central Excise Act, 1944. As, in view of the findings in the preceding paragraphs, we have observed that the demand of Service Tax confirmed against the appellant is not sustainable and there is no service tax liable to be paid by the appellant, we hold that the appellant is eligible for the refund of this amount of Rs. 44,66,029/-, along with applicable interest, as provided under Section 35F ibid.

13. In view of the above findings, we pass the following order:

(i) The demand of Service Tax amounting to Rs.5,72,02,687/-, including Education Cess and SHE Cess, along with interest, confirmed in the impugned order, is set aside.

(ii) We uphold the appropriation of the amount of Rs.71,33,015/- paid by the appellant during investigation, as the same has been collected from the clients.

(iii) The penalty of Rs.5,72,02,687/- imposed on the appellant in terms of Section 78 of the Finance Act, 1994, is set aside.

(iv) The appellant is eligible for the refund of the amount of Rs.44,66,029/- along with applicable interest, as provided under Section 35F of the Central Excise Act, 1994.

14. The appeal filed by the appellant is disposed of on the above terms.

(Order pronounced in the open court on **21.11.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd