

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

PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.50951 of 2020

[Arising out of Order-in-Appeal No.351(SM)/ST/JPR/2020 dated 09.07.2020 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jaipur]

M/s. Shri Balaji Construction Co.,
46, Venkateshwar Colony, Sodala,
Shyam Nagar,
Jaipur(Rajasthan)302 019.

Appellant

VERSUS

**Commissioner of Central
Excise & CGST,**
NCR Building, Statue Circle, C-Scheme,
Jaipur (Rajasthan) 302 019.

Respondent

APPEARANCE:

Ms. J. Kainaat, Advocate for the appellant.
Shri Rakesh Kumar, Authorised Representative for the respondent.

CORAM:

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

FINAL ORDER NO.50204/2026

**DATE OF HEARING:02.02.2026
DATE OF DECISION:04.02.2026**

BINU TAMTA:

1. Shri Balaji Construction Company ¹ is registered with the Service Tax Department for providing the service of "Management or Repair Service", "Construction of Residential Complex Service", and "Commercial Industrial Buildings or Civil Structures". On the basis of third-party information received from the Income Tax

¹The Appellant

Department during the financial year 2012-13, the appellant had received a sum of Rs.54,50,000/- on which TDS was deducted under Section 194C of the Income Tax Act, 1961. It appeared that the appellant had provided taxable service but had not paid service tax amounting to Rs.6,73,620/-. Accordingly, show cause notice dated April 26, 2018 was issued invoking the extended period of limitation. As the appellant neither submitted its reply to the show cause notice nor appeared for personal hearing, the Adjudicating Authority passed an *ex parte* order confirming the demand as proposed in the show cause notice. In the appeal filed before the Commissioner, the appellant submitted that they had executed the work of public roads as subcontract awarded by the Principal Contractor, Shri Miteesh Gupta, in respect of renewal of internal roads in Sector-5 in Zone, JDA, Jaipur. The said work was exempted from service tax as per Mega Exemption Notification No.25/2012-ST dated June 20, 2012 by Entry No.13 (a) and 29(h). By the impugned order ², the Commissioner (Appeals) observed that the exemption under the notification is available for construction of a road, bridge, tunnel, or terminal for road transportation for use by general public but the roads in question constructed by the appellant were internal roads which were meant for the residents of the complex and their guests. Since the appellant has not produced any document or evidence that these roads were for use by general public, the appellant is not entitled to avail the exemption under the notification. Hence, the present appeal.

² Order-in-Appeal No.351(SM)/ST/JPR/2020 dated 09.07.2020

2. Heard Ms. J. Kainaat, learned Counsel for the appellant and Shri Rakesh Kumar, learned Authorised Representative for the Department and perused the records.

3. The claim of the appellant is that the work executed by them is for construction of roads for use for general public and in support thereof has referred to the Work Order dated October 11, 2012, referring to renewal of internal roads in Sector-5 in Zone-5 Area, JDA, Jaipur. Ms. J. Kainaat, the learned Counsel for the appellant submitted that the Appellate Authority has ignored these documents placed by them.

4. Shri Rakesh Kumar, the learned Authorised Representative for the Revenue has reiterated the findings of the Authorities below that the appellant has miserably failed to cooperate with the proceedings whereas the onus to prove that they are covered by the exemption notification is on them.

5. Considering the fact that the appellant has neither responded to the show cause notice nor appeared before the Adjudicating Authority and even the Appellate Authority has recorded the finding that the appellant has not produced any document or evidence that these internal roads are for general public use, which is the basic requirement for availing the

exemption notification, we find it appropriate to remand the matter to the Adjudicating Authority to decide the issue of applicability of the exemption notification. However, at the same time, we would like to refer to the decision of this Bench in the case of **Warsi Buildcon Versus Principal Commissioner, Customs, Central Excise & Service Tax, Indore**³, where the work orders were awarded to the appellant by various developers or builders of the township and the issue whether construction of roads for the period July 2012 to 2013-14 was eligible for exemption under Notification No.25/2012 was considered. The relevant paras of the decision are as under:-

"10. The Notification No. 25/2012-ST dated 20.06.2013 w.e.f. 01.07.2012 granted exemption on services, provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of road, bridge, tunnel, or terminal for road transportation for use by general public. By virtue of the said notification the exemption on payment of service tax in respect of services relating to the construction of roads was limited only in respect of those roads which were meant to be used by general public. In other words the utility of the roads was linked with general public. The very clause of the exemption notification when it uses the words road, bridge, tunnel or terminal for road transportation implies the common services to be used by the general public and cannot be restricted, which is constructed for development of any township or residential complexes by a builder/developer/coloniser for the utility of the occupants therein. The two has to be distinguished on account of the nature of utility, whether the same is meant for common public or for private use by the buyers of the builders. Also, the definition clause (q) of the notification defines –general public|| meaning the body of people at large sufficiently defined by some common quality of public or impersonal nature. We have no doubt on the intent and the scope of the notification exempting the construction of roads for use by general public and as per the Rules of interpretation the exemption

³ 2024 (3) TMI 286 –CESTAT-New Delhi (Final Order No.54537/2024 dated

notification has to be construed strictly. Considering the activity of construction of roads by the appellant for the development of the township/residential complexes on behalf of the builders/ developers is specifically meant for the buyers of the plots/residential/commercial complexes and the same cannot be termed for the use of the general public in the sense it has been provided in the notification. Hence the appellant is not entitled to claim exemption from levy of service tax under the notification.

11. In addition to the notification, we find that CBEC had issued Master Circular D.O.F. No. 334/1/2012-TRU dated 16.03.2012 where it has been clarified that construction of roads for use by general public is exempt from service tax. Construction of roads which are not meant for general public use e.g. construction of roads in a factory, residential complex, etc would be taxable. This itself clarifies that the exemption in respect of construction of roads is not available where they are not meant for general public use whereas the majority of the services rendered by the appellant are —construction of roads|| within the residential complexes of the builders/developers, which cannot be construed to mean for general public use.”

6. In the circumstances, the Bench had also upheld the invocation of the extended period of limitation. With reference to the above decision, the learned Counsel tried to distinguish the facts of the present case as in the case of **Warsi Buildcon** the Work Orders were awarded by private builders or colonisers, whereas in the present case, the Work Order has been issued by Jaipur Development Authority, which is a Government Authority. Since the exemption has been sought under Entry No.13(a) and 29(h), the relevant issue to be decided is whether the construction of road is for use by general public. We therefore, remand the matter to the Adjudicating Authority to consider the documents so as to ascertain the nature of the Work Order and the eligibility to the exemption notification.

7. Consequently, the impugned order is set aside and the matter is remanded to the Original Authority to decide the issue afresh in all respects. The appeal is, accordingly allowed by way of remand.

[Order pronounced on 4th February, 2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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