

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 2**

SERVICE TAX APPEAL NO. 50081 OF 2025

[Arising out of Order-in-Original No.229(AK)ST/JDR/2024 dated 02.05.2024 passed by the Commissioner (Appeals), Central Excise and Service Tax Commissionerate, Jodhpur]

M/s. Ganesh Builders

Jawahar Nagar, Sri Ganganagar

Appellant

Vs.

**The Commissioner of Central GST & Central
Excise, Jodhpur**

G-105, New Industrial Area, Basni,
Near Diesel Shed, Jodhpur-342003

Respondent

Appearance:

Present for the Appellant : Shri Mohit Gohlyan, Advocate

Present for the Respondent: Shri Kuldeep Rawat, Authorised Representative

CORAM:

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Date of Hearing/Decision: **21/05/2026**

Final Order No.50995/2026

RAJEEV TANDON:

The appellant is engaged in the business of road construction, site formation services and renting of immovable property services and carry out civil work and sub-contracts with regard to earth work/ site preparation activities from the principal contractors who are engaged in road construction activity. The appellant, therefore, carried out work relating to construction of road embankments with approved material obtained from borrow pits for the road from M/s. Gurbachan Singh Contractor and also undertook filling earth work on berms, rolling,

watering and loading in all kinds of respects from M/s. Shivam Construction Co. during the period 01.04.2015 to 30.06.2017 for which the appellant were paid an amount of Rs.15 lakh and Rs.28.40 lakh respectively, on which amount the revenue alleged non-payment of service tax by the appellant.

2. The case emanates out of the second-round of litigation before the lower authorities.

3. The learned adjudicating authority in remand proceedings (during the second-round of litigation) vide Order-in-Original dated 25.05.2023 dropped the demand to the extent of Rs.7,14,076/- raised vide show cause notice dated 21.12.2020 holding the very activity performed by the appellant was in relation to road construction and was therefore exempted from payment of service tax. In the appeal filed by the Revenue against the impugned order of the adjudicating authority, the said order was reversed holding that the appellant was carrying out service as were "preparatory" to road construction and hence not covered by the exemption. It therefore would be appropriate to examine the relevant clause of the mega exemption notification concerned in the matter:

"Notification No. 25/2012-Service Tax dated 20.06.2012-

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."

4. The issue that therefore, arises for consideration is whether earth work, embankment, construction and activities as associated and sub-

contracted would constitute as an integral component of road construction activity, entitled for exemption under Notification No.25/2012-ST dated 20.06.2012.

5. I have heard the learned advocate for the appellant who argues that the appellant was not entitled for payment of service tax as he was covered under the category of exemption. In support, thereof, he also produces for reference, the copy of the letter of acceptance with regard to which the work was undertaken.

6. Relevant pages of award of work are extracted herein below:

(i) M/s. Gurbachan Singh, Contractor:

Annexure - 131
13-317

OFFICE OF EXECUTIVE ENGINEER (C) PUNJAB MANDI BOARD, SHRI MUKATSAR SAHIB.
Letter No. 5580
Dated: 13/6/14

LETTER OF ACCEPTANCE

To,
**M/s Gurbachan Singh Contractor,
29081 Street No. 1, Janta Nagar,
Bathinda.**

This is to notify you that the undersigned namey Executive Engineer (C) , Pb. Mandi Board, Shri Mukatsar Sahib has accepted your Financial Bid Dated 03-06-2014 for execution of the work namely UP-GRADATION OF ROAD FROM TR-01 NH-09 (ABUL KHURANA TO SH-18 (CHAPPANWALI) MALOUT-SRI GANGA NAGAR ROAD) (PACKAGE NO. PB13-61) UNDER PMGSY-II (BATCH-1) BLOCK LAMBI DISTT. SRI MUKATSAR SAHIB. (LENGTH 5.32 KM) and its maintenance for 5 year for the Contract Price of Rupees 3,42,26,917/- (Rs Three Crore Forty Two Lacs Twenty Six Thousand Nine Hundred and Seventeen only) accordance with the instructions to Bidders is hereby accepted by Punjab Mandi Board with the approval of Chief Engineer (PMGSY) Punjab Mandi Board, Mohali Letter No. PMGSY/1B12 Dated 07.06.2016 on following rates and Conditions with the time Limit of 9 Months.

Up-gradation Cost. Rs 3,18,16,425/-
Maintenance Cost. Rs 24,10,492/-
Total Cost. Rs 3,42,26,917/-

| S.No | Brief Description of Items | Quantities | Unit | Rates (in ₹) |
|------|---|------------|------|--------------|
| 1 | Clearing and grubbing Road Land including uprooting wild vegetation, grass, bushes, shrubs, saplings and trees of girth upto 300 mm, removal of stumps of such trees cut earlier and disposal of unuserviceable materials and stacking of serviceable material to be used or auctioned, upto a lead of 100m including removal and disposal of top organic soil not exceeding 150 mm in thickness as per Technical Specification Clause 201. | 0.67 | Hec. | 22500.00 |
| 2 | Dismantling of flexible pavements & disposal of dismantled materials upto lead of 100m, stacking serviceable & un serviceable materials separately as per Technical Specification clause 202. & Scarifying Existing Bituminous Surface to a Depth of 150 mm by Mechanical Means. | 1383.97 | CUM | 177.00 |
| 3 | Excavation for sand/soil in soil by mechanical means including cutting and pushing the earth to site of embankment upto a distance of 100 m, including trimming bottom and side slopes in accordance with requirements of lines, grades and cross-sections. | 1961.41 | CUM | 24.00 |
| 4 | Construction of embankment with approved material obtained from borrow pits with a lift upto 1.5 mtr. Transporting to site, spreading, grading to required slope and compacting to meet requirement of Tables 300.1 and 300.2 with all leads as per Memo Specification clause 301.5. | 9230.40 | CUM | 167.00 |
| 5 | Carriage / Disposal of Cut Earth including connection | 753.35 | CUM | 85.00 |
| 6 | Construction of embankment with approved materials deposited at site from roadway cutting and excavation from drain and foundation of other structures graded and compacted to meet requirement of Tables 300.1 and 300.2 as per Technical Specification Clause 301.5 | 5602.18 | CUM | 31.00 |
| 7 | Loosening, leveling and Compacting original ground supporting embankment to facilitate placement of first layer of embankment, scarified to a depth of 150 mm, mixed with water at OMC and then compacted by rolling so as to achieve minimum dry density as given in Tables 300.1 and 300.2 for embankment construction as per Technical Specification Clause 301.4.1 | 5602.18 | CUM | 25.00 |

(PACKAGE NO. PB13-61) Page 1

For M/s Gurbachan Singh
Rajyjit
Partner



M/s. Gurbachan Singh Contractor
Govt. Contractor & General Supplier

OFFICE :
29081, St. No.1, Janta Nagar, Bathinda
Mob. 98145-99337, 99142-67777, 94173-25864

Ref: Letter No. 5580 dated 13/06/2016

WORK ORDER

To,
Ganesh Builders,
1 G-44, Jawahar Nagar,
Sri Ganganagr-335001

Subject: Up-gradation of L/Road from TR-01 Nh-09 (Abul Khurana Sh-16 (Chappianwali)),
Length:5.32Km

| Sr. No. | Description of item | Qty (Cum) | Rate | Amount |
|---------|---|-----------|--------------------|-------------|
| 1. | Construction of embankment with approved material obtained from borrow pits | 9230.4 | 162.5/- Per Cum | 15,00,000/- |

Terms & Conditions: -

- 1.All tax included in above rates except EPF & ESIC. EPF & ESIC will be Paid by you, nothing will be paid extra.
- 2.The Work should be completed as per PWD specifications.
- 3.The ime limit of work is 3 months.
- 4.any dispute related to work settled n Bathinda jurisdiction only.
- 5.Payment will be released in 7 days after submission of bill.
6. Qty of work will increase or decrease as per site requirement.

Thanks,

M/s. Gurbachan Singh Contractor

[Signature]
Partner
12/12/16

HOT MIX PLANT : Malout Road, Village Balluana
(Virk Kalan Road) Distt. Bathinda

For M/s Ganesh Builders
[Signature]
Partner

PAN AABFG1354Q

! JAI SHREE BALAJI !

MOB:- 94140-90082

GANESH BUILDERS

1-G 44 JAWAHAR NAGAR, SRIGANGANAGAR (RAJASTHAN)

TIN- 08143403672

Invoice

Ref. No. Work Order dated 12/12/2016

Date: 02.03.2017

To,
M/s Gurbachan Singh Contractor
29081, St. No. 1, Janta Nagar,
Bhatinda

Subject:- Running bill for work of Up-gradation of L/Road from TR-01 NH-09
(Abul Khurana SH-16 (Chappianwali), Length 5.32 Km

| S.No. | Unit | Qty. | Particular | Rate | Amount |
|-------|------|--------|---|-----------------|-------------|
| 1 | Cum | 9230.4 | Construction of embankment with approved material obtained from borrow pits | 162.5/- Per Cum | 15,00,000/- |
| | | | | Total | 15,00,000/- |

For M/s Ganesh Builders
गणेश
Partner

For M/s Ganesh Builders

गणेश
Partner

(ii) M/s. Shivam Construction Co.:

**EXECUTIVE ENGINEER, CENTRAL WORKS DIVISION, PWD
(B&R) BRANCH, NEAR ABOHAR BYEPASS, ABOHAR (PUNJAB)**

M/s Shivam Construction Co.,
Hot Mix Plant, Bhagwanpara Road,
Malout.

No. 2054

Date: 6/12/16

Subject:-

Raising & Strengthening in km. 372.900 to km. 376.240 and in km. 382.540 to km.385.190 on Abohar-Hamankhara road section of NH-15 (New NH-62) in the State of Punjab.(Job No.NH-15(New NH-62)-PB-2016-17-480 Dated 28/10/2016.)
Amounting to Rs. 16,04,39,788/-

Your bid for the above said work has been accepted by the Chief Engineer (NH), Punjab PWD, B&R Branch, Patiala vide their Memo No.5565/NH dated 30.11.2016 & Superintending Engineer, Central Works Circle, Ferozpur vide letter No. 430-39 dt. 30.11.2016 for Rs. 16,04,39,788/- (Rs. Sixteen Crore Four Lacs Thirty Nine Thousand Seven Hundred and Eighty Eight only) with a time limit of Eight (8) Months. As such this work is hereby allotted to your agency at the following rates coupled with the terms & conditions as exhibited in the approved DNIT subject to the financial regularities and availability of funds:-

| Sr. No. | Brief Description of items | Unit | Rates (in figure and words) |
|-------------------|---|------|--|
| Item No. 1 | | | |
| Road Work | | | |
| 1 | Dismantling of bituminous courses by mechanical complete as per IRC/MORT&H specification & to the entire satisfaction of Engineer-in-charge as per approved DNIT Item No.1 | Cum | Rs. 200/- (Two Hundred Only) |
| 2 | Earth Work in embankment in filling with all laid and lift including laying 20cms. layers, watering and rolling as per complete in all respect as per MORT&H specification & to the entire satisfaction of Engineer-in-charge. (5th Revision)2013 as per approved DNIT Item No.2 | Cum | Rs. 165/- (One Hundred Sixty Five Only) |
| 3 | Earth Work in sub grade 500mm thick in filling with all laid and lift including laying 20cms. layers, watering and rolling as per complete in all respect as per MORT&H specification & to the entire satisfaction of Engineer-in-charge. (5th Revision)2013 as per approved DNIT Item No.3 | Cum | Rs. 165/- (One Hundred Sixty Five Only) |
| 4 | Providing laying, spreading and compacting Granular Sub Base 200mm thick in layer of (with thickness of single layer not exceeding 200mm compacted) of natural sand, crushed gravel, crushed stone, crushed slag or combination thereof as per approved DNIT Item No.4 | Cum | Rs. 1857/- (One Thousand Eight Hundred Fifty Seven Only) |
| 5 | Providing, laying, spreading & compacting lean, crushed, graded aggregate & granular material, prepared with water to dense beds on a prepared sub grade/sub base /base or existing pavement as the case may be with the requirements of these specification. The material shall be laid in one or more layers as necessary to lines, grades & cross sections shown on the approved Drawings or as directed by the engineer, as per approved DNIT Item No.5 | Cum | Rs. 2000/- (Two Thousand Only) |
| 6 | Providing and applying Primer Coat with Emulsion (Rapid Setting) as per IS 8007 with approval of Engineer @ 65kg / 10 sqm area with pneumatic tired self propelled pressure sprayer equipped with self heating arrangement, suitable pump, adequate capacity compressor and spraying bar with nozzles for spraying material uniformly at specified rate including all kind of material and labour inclusive of cleaning of surface free from dust, as per approved DNIT Item No.6 | Sqm | Rs. 21/- (Twenty One Only) |
| 7 | Providing and applying Tack Coat with Emulsion (Rapid Setting) as per IS 8007 with approval of Engineer @ 2kg / 10Sqms area with pneumatic tired self propelled pressure sprayer equipped with self heating arrangement, suitable pump, adequate capacity compressor and spraying bar with nozzles for spraying material uniformly at specified rate including all kind of as per approved DNIT Item No.7 | Sqm | Rs. 7/- (Seven Only) |
| 8 | Providing and laying of Dense Graded Pavement - Macadam (Grading 1) of 100mm thick compacted thickness of single coat after laying tack coat @ 2 Kg / 10Sqms. area on existing black top surface over the base concrete prepared in accordance with Ministry of Road Transport & Highways specifications (5th revision), as per approved DNIT Item No.8 | Cum | Rs. 7000/- (Seven Thousand Only) |

For M/s Ganesh Builders
Partner

SEE

SHIVAM CONSTRUCTIONS CO.

Head Off. :
Bhagwanpura Road,
Vill. Malout

Works-cum Off.:
HOT MIX PLANTS
H.M.P. : Vill. Malout
H.M.P. : Vill. Bazidpur, Abohar Fazilka Road

Dated . 02/02/2017

To,
The Ganesh Builders
Sri GangaNagar,

Subject:- Work Order for Raising & Strengthening in km. 372.900 to 376.240 & in km. 382.540 to 385.190 on Abohar-Usmankhera road.

Dear Sir,

With reference to your interest and discussion regarding the above mentioned work at our office. So Please find the work order for the said work Raising & Strengthening in km. 372.900 to 376.240 & in km. 382.540 to 385.190 on Abohar-Usmankhera road.

| Sr.No. | Description of work | Quantity of work | Rates | Period of Contract |
|--------|---|------------------|-------------------|--------------------|
| 1. | Filling the Earth Work on road. Rolling & Watering in all kind of respect acc. to item no. 20 of letter 2054 dated 06/12/2016 | 15000/- cum | Rs. 190/- Per Cum | 28,50,000/- |

Terms & Conditions:-

1. Payment shall made on as per work done at site of work
2. Rolling & watering properly & achieve the proper density as per department satisfaction

M/s Shivam Construction Co

[Signature]
Partner

For M/s Ganesh Builders
[Signature]
Partner

6. It is seen there from the above that principal contractor M/s. Gurbachan Singh had awarded work for construction of embankment with approved material obtained from borrowed pits while M/s. Shivam Constructions Co. had raised work order in favour of the appellant for filling the earth work on road, rolling and watering in all kind of respect according to item 20 of the letter 2054 dated 06.12.2016.

7. The aforesaid scanned documents clearly indicate that the various description of work indeed are required for the execution of the work relating to road construction activity. Various items of this work, integral to road construction have been awarded to the appellant. There is no doubt that these are primary activities required to be undertaken for the construction/maintenance of roads and are an inherent component of road construction/ building activity. The scope of work as defined in the work orders are an intrinsic and essential components of the activity of road construction and are the fundamental premise for any road building activity.

8. The learned authorized representative for the department submits that the appellant was rendering taxable services by way of road site formation and had not paid the required service tax. It was only on the basis of the 26-AS statement, obtained from Income Tax Department for the impugned period, that the department could unearth the work executed by the appellant. It is thus then Revenue's case that the service executed by the appellant are prior to construction of road and are normally undertaken to make the land suitable for any road construction activity. It is, therefore, the Revenue's case that the two are quite

distinct from construction services, though undeniably may be necessary for ensuring the construction of the road. He thus submits that the appellant was essentially not involved in actual services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public' which were exempted, but was actually involved in providing services relating to preparatory work for construction. For these reasons, the learned authorized representative draws attention to the submission in para 10.06 of the Order-in-Appeal. It is, therefore, his case, with reference to Notification No.25/2012 dated 20.06.2012 that entry no.13(a), which reads as:

"Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public' are exempted"

would not entitle the appellant to its benefit.

9. I have considered the submissions made by the two sides and perused the case record. It is evidently clear that the appellant has undertaken work relating to raising, strengthening, earthwork, road rolling and water filling, construction of embankment with approved material obtained from borrow pits for the road work. These services are indeed necessary for executing the construction activity as stated aforesaid, though may be preparatory in nature and vital for the task of road preparation/construction. It cannot be held, therefore, that they are distinct from construction services as to execute the aforesaid works.

On the other hand it would be rather appropriate to refer to the said work as intrinsic and essential to the discharge of the road construction act for which the said mega exemption. The Revenue has also contended that the said services are distinctly pre-requisite for starting a construction, relating to road for road transportation to used by general public. That being so, it cannot be held as an activity alien and not connected with road construction services. It is established from records that the appellant was a sub-contractor for the work awarded to other contractors in connection with activities relating to road construction/maintenance activity. To hold that the appellant was providing services to the principal contractor, who therefore, discharged the road construction work would not be a complete reflection of the correct premise. The earth work and embankment preparation are necessarily the basic foundation for construction of road. It cannot be visualized that a road can be physically constructed without first raising the soil and preparing the embankment. Thus, no artificial barriers can be brought into road construction activity by hiving off site preparation work from the entire gamut of activity of road construction. In case the activity relating to road construction is considered to be shorn of site preparation by raising artificial barriers, it indeed would be an engineering marvel with regard to a road construction activity.

10. A closer reading and scrutiny of serial no.13(a) of the Notification would reveal that it relates to services provided in all forms or configuration, with regard to construction of the road and merely does not confine itself to some final stages of road preparatory work like road surfacing, etc. The term "Construction" would have to incorporate in its

ambit, the entire chain of activities that would culminate in the construction, obviously including site preparation for the road as a very preliminary activity. A harmonious reading of the Notification *ibid* would established that activities integral to road construction would be required to be treated as part and parcel of the "Construction" work to provide a meaningful and rational interpretation of the said term. It is also noted that the order passed by the adjudicating authority is well-reasoned and concisely brings out the reasoning as was adopted by him for dropping of the impugned demand relating to the road construction activity.

11. The coordinate Bench of the Tribunal in the case of **Quest Engineering & Consultant Pvt Ltd. vs. Commissioner, CGST & C.Ex., Allahabad**, vide Final Order No.70226/2021 dated 28.09.2021 had held that when a road construction is exempted every activity relating to the act of road construction service would indeed be exempted and has even allowed the benefit to service rendered by way of rendering of the consulting engineering service, related to road construction as exempted, in terms of Notification No.25/2012-ST dated 20.06.2012. Further, in the case of **GMR Project Pvt. Ltd. vs. Commissioner of Central Excise, Customs & Service Tax, Bangalore**, the Tribunal vide its Final Order No.20362/2020 dated 17.06.2020 had held even toll plazas, cattle/pedestrian crossing facilities, parking bay for buses/trucks, rest rooms for staff and common public, etc., to be a part of the road and were accordingly extended the said benefit. Even, establishing of greenery in the middle of the road, by way of a divider or on the side of the road or erection & setting up of crash barriers on the side of the road have been held to form part of the

road and not leviable to service tax. It may be pointed out that the Tribunal vide its order in the case of **SEM Construction vs. Commissioner of Central Excise, ST, Rajkot (2021(44)GSTL 385)** had held the activity of earth work removal etc., as to be a part and included it in construction of road activity and thereby exempted from payment of service tax. The said order was also affirmed by the Apex Court (2021(50) GSTL J74SC).

12. In view of the aforesaid, there is no doubt that the primary activities concerned with the road construction as undertaken by the appellant are in the nature of rendering of services with regard to road construction and are, therefore, entitled for the benefit of the mega-exemption vide notification-25/2012-ST Sr. No.13(a). Under the circumstances, the appellant is not required to make the payment of the said service tax amount of Rs.7,14,076/- as activities undertaken would lie within the exempted framework. There obviously is no question for demand of interest or levy of penalty in the matter.

13. In view of the aforesaid discussions, the order of the lower authority is set aside and the appeal filed is allowed with consequential relief, if any, as per the law.

(Order pronounced in the open Court)

RAJEEV TANDON
MEMBER (TECHNICAL)