BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.10.2024

PRONOUNCED ON : 28.01.2025

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.3938 to 3942 of 2024
and
W.M.P.(MD).Nos.3819, 3820, 3822, 3823, 3893, 3895
and 3897 to 3900 of 2024

STS-KEC(JV),
Having office at Sushma Nagar,
2nd Floor, Bypass Road,
Valliyur North, Tirunelveli – 627 117.
Represented by its Authorised Signatory,
Mr.Sanjay Desai. ... Petitioner in all petitions

Vs.

1.The State Tax Officer,
Commercial Taxes Building,
Perumbattu Kalakadu Road,
Nanguneri – 627 108.

2.Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
No.137, North Block,
New Delhi – 110 001. ...Respondents in all petitions

Prayer in W.P.(MD).No.3938 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records comprised in the impugned order in Form GST DRC-07 bearing Reference No.ZD331223075175N dated 12.12.2023 passed by the respondent No.1 and quash the same, for being violative of Articles 14 and 19(1)(G) of the Constitution of India.

Prayer in W.P.(MD).No.3939 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records comprised in the impugned order in Form GST DRC-07 bearing Reference No.ZD331223076047N dated 12.12.2023 passed by the respondent No.1 and quash the same, for being violative of Articles 14 and 19(1)(G) of the Constitution of India.

Prayer in W.P.(MD).No.3940 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records comprised in the impugned order in Form GST DRC-07 bearing Reference No.ZD331223077166K dated 12.12.2023 passed by the respondent No.1 and quash the same, for being violative of Articles 14 and 19(1)(G) of the Constitution of India.

Prayer in W.P.(MD).No.3941 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records comprised in the impugned order in Form GST DRC-07 bearing Reference No.ZD331223077690J dated 12.12.2023 passed by the respondent No.1 and quash the same, for being violative of Articles 14 and 19(1)(G) of the Constitution of India.

Prayer in W.P.(MD).No.3942 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records comprised in the impugned order in Form GST DRC-07 bearing Reference No.ZD331223078565D dated 12.12.2023 passed by the respondent No.1 and quash the same, for being violative of Articles 14 and 19(1)(G) of the Constitution of India.

For Petitioner in all W.Ps.	:	Mr.Abishek A.Rastogi
For R-1 in all W.Ps.	:	Mr.R.Sureshkumar Additional Government Pleader
For R-2 in all W.Ps.	:	Mr.V.Malaiyendran Central Government Standing Counsel

COMMON ORDER

This batch of five Writ Petitions are filed challenging the impugned orders in Form GST DRC-07 dated 12.12.2023, for the assessment years 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23, whereby the petitioner's claim for concessional rate of 12% on works contract services of original works executed pursuant to a contract entered with Tvl.Rail Vikas Nigam Limited (hereinafter referred to as 'RVNL') was rejected, instead the impugned order's levies tax at 18%.

1.1. Since the issue that arises for consideration in all these writ petitions are one and the same, these petitions are disposed of by way of a common

order.

2. Brief facts:

2.1. The petitioner is a joint venture of M/s.Stroytechservice LLC, Russia and KEC International Limited, formed for executing various railway projects in India. The petitioner was assigned the following works contract vide Letter of Acceptance No.RVNL/ED/P/MAS/MEJ-NCJ Doubling/OT-2 dated 11.10.2018, for a total contract value of INR 712.48 Crores by RVNL for *"Doubling of track between Vanchi Maniyachchi to Nagercoil, construction of roadbed, minor bridges, platforms, buildings, water and effluent treatment facilities, wagon / coaching maintenance infrastructure, supply of ballast, installation of tracks and other electrical, signalling and telecommunication infrastructure in Madurai and Thiruvananthapuram Divisions of Southern Railway"*.

2.2. During the period April 2018 to March 2019, the petitioner paid GST at the rate of 12%, on the above contract. The petitioner had discharged taxes at the rate of 12% on the premise that the said contract constitutes works contract services of original works pertaining to Railways covered under Serial No.3(v) (a) of the following notifications viz.,

a) Notification No.11/2017 dated 28.06.2017 issued by the Central Government;

b) Notification No.8/2017 – Integrated tax (Rate) dated 28.06.2017; and

c) G.O.Ms.No.94, Commercial Taxes and Registration Department dated 22.08.2017.

2.3. The petitioner classified its services under the following entries during the impugned period viz., 2018-19 to 2022-23. During the period 2018-19, the relevant entries under Notification 11 of 2017 CGST (RATE) dated 28.06.2017 as amended vide Notification No.20/2017 dated 22.08.2017 and Notification No.8 of 2017 Integrated Tax (Rate) dated 28.06.2017 and G.O.Ms.No. 94 dated 22.8.2017 CT &RE are identically worded and hence collectively referred to as "subject notifications" read as under:

Sl. No	**Chapter, Section of Heading**	**Description of Service**	**Rate (percent.)**	**Condition**
(1)	(2)	(3)	(4)	(5)
1	**Chapter 99**	**All Services**		
2	**Section 5**	**Construction Services**		
3	**Heading 9954** (Construction Services)	(...) (v) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017,	(6)	-

		supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, including monorail and metro; (...)		

2.4. The above entry was amended vide Notification 3 of 2019 whereby the highlighted portions were inserted w.e.f. 01.04.2019:

Sl No	**Chapter, Section of Heading**	**Description of Service**	**Rate (percent.)**	**Condition**
(1)	(2)	(3)	(4)	(5)
1	**Chapter 99**	**All Services**		
2	**Section 5**	**Construction Services**		
3	**Heading 9954** (Construction Services)	(...) (v) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017 **other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above,** supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-	(6)	-

		(a) railways, including monorail and metro; (...)		

2.5. It appears to me that the above amendment may not materially alter or have a bearing on the petitioner's claim under the above notification as it originally existed and as subsequently amended.

2.6. On a reading of the above notifications, it is clear that a composite supply of original works as defined in clause (119) to Section 2 of the CGST Act, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if), by way of construction, erection, commissioning or installation, pertaining to railways, including monorail and metro is liable to be taxed at 12%.

3. While so, the petitioner was served with an intimation in Form GST DRC-01A dated 21.12.2022. The said notice proceeds on the premise that the subject contract between the petitioner and RVNL is liable to tax at 18%, instead the petitioner had erroneously discharged taxes at lower/concessional rate of 12% on the works contract executed by the petitioner on the following premise viz.,

i. RVNL does not function under the direct control of Railways;

ii. RVNL is a subsidiary of Indian Railways incorporated under the Companies Act, 1956;

iii. RVNL is a public sector undertaking listed on the stock exchange;

iv. Employees working in RVNL are not considered as employees; and

v. RVNL undertakes corporate social responsibility initiatives.

3.1. The said intimation also extracted the definition of *'railways'* as provided under the Indian Railways Act, 1989, while stating that the petitioner is liable to tax at 18%. The first respondent also stated that the petitioner was liable to penalty for allegedly not maintaining Input Tax Credit register in terms of Section 35(1) of the CGST Act.

3.2. The petitioner was thereafter issued with a show cause notice in Form GST-DRC-01 dated 30.01.2023, proposing to demand differential GST of 6%, on services provided by the petitioner to RVNL for the reasons set out in Form GST-DRC-01A.

4. In response to the above notice in Form GST-DRC-01, the petitioner submitted its reply on 01.03.2023, wherein, it was *inter-alia* submitted that the contract between the petitioner and RVNL, is entitled to the concessional rate

of 12%, as the same is covered by Sl No.3(v)(a) of the subject notifications (Rate) as it stood during the relevant period *inter alia* for the following reasons:

a) Services supplied by the petitioner constitute works contract services of construction, erection, commissioning, or installation;

b) That the works contract services are original works, and

c) That the works contract services "pertain to railways";

d) That the petitioner had paid GST at the rate of 12% on the subject supplies in terms of Sl.No.3(v)(a) of the Rate Notifications.

4.1. With regard to the issue of maintenance of Input Tax Credit register, it was submitted that the same was maintained electronically but could not be furnished at the time of inspection, since the concerned person was unable to extract the same through SAP software due to technical issues. However, it has since been submitted to the first respondent thus no longer an issue.

5. The first respondent proceeded to pass the impugned orders in Form GST-DRC-07 dated 12.12.2023, confirming the proposal rejecting the petitioner's claim for concessional rate of 12%, on the works contract services of original work pertaining to railways executed by the petitioner pursuant to the contract entered with RVNL, on the same grounds as was set out in the

show cause notice.

6. <u>CASE OF THE PETITIONER:</u>

6.1. The above orders of adjudication dated 12.12.2023, are the subject matter of challenge in this batch of Writ Petitions *inter alia* on the following grounds, viz.,

a) That the scope of the petitioner's services would clearly fall within the scope of Sl.No.3(v)(a) of Notification No.11/2017, thus the levy of the higher rate of tax at 18% is arbitrary.

b) That the impugned orders have been passed without proper consideration of the reply and thus suffers from non-application of mind to relevant factors thereby vitiating the order.

c) That the impugned orders suffers from error apparent on the face of the record, inasmuch as the impugned order relies upon an advance ruling of AAR, Gujarat in M/s.SKG-JK-NMC Associates (JV), 2021(1) TMI 425, overlooking the fact that the said ruling has since been reversed by the Appellate AAR, Gujarat in M/s. SKG-JK-NMC Associates (JV), 2021 (10) TMI 152.

d) The impugned orders are contrary to the rulings delivered by AAR of other States, wherein it was held that the GST on services similar, if not

identical, to those rendered by the petitioner, would be entitled to the concessional rate of 12%.

7. <u>CASE OF THE RESPONDENT:</u>

7.1. To the contrary, it is submitted by the learned Additional Government Pleader for the 1st respondent and the learned Counsel for the 2nd respondent, that the impugned orders have been passed after issuing notice in Form DRC-01A followed by DRC-01 and on proper consideration of the replies submitted by the petitioner. It was further submitted that exemption notification must be strictly construed and reiterated that the petitioner was not entitled for the concessional rate of tax for the following reasons:

i. RVNL does not function under the direct control of Railways;

ii. RVNL is a subsidiary of Indian Railways incorporated under the Companies Act, 1956;

iii. RVNL is a public sector undertaking listed on the stock exchange;

iv. Employees working in RVNL are not considered as employees; and

v. RVNL undertakes corporate social responsibility initiatives.

8. Heard the learned counsels on both sides and perused the materials

available on record.

9. Against the above background, question arises as to whether the petitioner's contract with M/s.RVNL is entitled to the concession granted in terms of Sl.No.3(v)(a) of the notification, in other words liable to tax at 12%.

10. Before proceeding to examine the issue, it may be relevant to keep in mind that the following aspects are not in dispute, viz.,

a) Services supplied by the petitioner constitute works contract services of construction, erection, commissioning, or installation;

b) That the works contract services are of original works, and

c) That the works contract services pertain to railways;

d) That the petitioner has paid 12% GST on all these services in terms of Sl.No.3(v)(a) of the relevant Notifications.

11. RELEVANT NOTIFICATION:

11.1. Before proceeding further, it may be necessary to extract the relevant portion of the subject notification, which falls for consideration and the same reads as under:

"Sl No.3(v)(a) of the Central GST Notification (as it stood during the impugned period), is reproduced below. The petitioner had classified its services under this entry, during the impugned period.

Sl No	***Chapter, Section of Heading***	***Description of Service***	***Rate (percent.)***	***Condition***
(1)	*(2)*	*(3)*	*(4)*	*(5)*
1	***Chapter 99***	***All Services***		
2	***Section 5***	***Construction Services***		
3	***Heading 9954*** *(Construction Services)*	*(...)* *(v) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017* ***other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above**,*** *supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-* *(a) railways, including monorail and metro;* *(...)*	*(6)*	-

12. Status/ Features of RVNL**:**

12.1. It is relevant rather necessary to note the features of RVNL, with whom the petitioner had entered into the subject contract.

(a) RVNL functions as an extended arm of the Ministry of Railways

**the highlighted portion is inserted vide notification No.3/2019 – Central Tax (rate) w.e.f. 01.04.2019.*

("MoR") and works for and on behalf of MoR.[1] The Central Government (ie. President of India acting through MoR) presently holds 78.20% equity share capital of RVNL.[2] The Board of Directors of RVNL includes nominee directors appointed by MoR. RVNL functions under the direct control of Railways. The functions of RVNL and Indian Railways are inseparable from each other and both work in tandem to develop the rail transport infrastructure of the country.

(b) As per the latest Annual Report Publication (FY 2023-24) of RVNL, RVNL was incorporated with the objective of bridging the infrastructure gap in Indian Railways, implementing projects relating to creation and augmentation of capacity of rail infrastructure on a fast-track basis and raising of extra-budgetary resources for special purpose vehicle projects. The vision of RVNL is to create state-of-the-art rail transport infrastructure to meet the growing demand and the mission is to emerge as the most efficient provider of rail infrastructure, with a sound financial base and global construction practices, for timely completion of projects.

13. Relevance of definition under Indian Railway Act, 1989:

13.1. With this background in view, we shall now proceed to examine the contention of the Respondent, premised on the definition of 'Railway' under

1 https://rvnl.org/home
2 Rail Vikas Annual Report 2021-2022

the Indian Railways Act, 1989 (hereinafter referred to as 'IRA')

13.2. It may be relevant to note that “Railways”, has not been defined under the GST Act. Thus, the expression “railway” employed in the above notification, ought to be understood applying the common parlance test. It is also relevant to keep in view that a definition contained in a particular enactment cannot be incorporated into another enactment unless the enactments are *pari materia*. The definition in one statute may not afford a guide to construction of the same words or expressions in another statute unless the same are *pari materia* legislations or specifically provided or incorporated in the other statute. It may be relevant to note that there are several definitions under the GST Act, wherein, the definitions under other enactments have been referred to/incorporated, some of them being,

> *“(23) —'chartered accountant' means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;*
>
> *(35) —'cost accountant' means a cost accountant as defined in clause (b) of sub-section (1) of Section 2 of the Cost and Works Accountants Act, 1959;*
>
> *(41) —'document' includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000;*

(101) —'securities' shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;"

13.3. The above illustrations would clearly show that whenever the legislature intended to incorporate the definitions contained in other enactments, it has provided expressly. There is no definition for 'railways' under the GST Act. It is trite law that legislature must be imputed with wisdom of the legislations in force at the time of its enactment. If the legislature intended to incorporate or refer to the definition of 'railways' as contained under the Railways Act, 1989, it would have done so expressly as could be seen from the above illustrations. The attempt by the respondent/authority to understand the scope of the notification by looking to the expression *'railways'*, as defined under the Railways Act, 1989, appears to be in conflict with the legislative intent in the absence of incorporation or reference to the above definition under the GST Act. In this regard, it may be relevant to refer to the following judgments:

a) ***CCE v. Fiat India (P) Ltd., reported in (2012) 9 SCC 332:***

> *"**39.** It is well settled that whenever the legislature uses certain terms or expressions of well-known legal significance or connotations, the courts must interpret them as used or understood in the popular sense if they are not defined under the Act or the Rules framed thereunder. "Popular sense" means "that sense which people conversant with the subject-matter, with which the statute is dealing, would attribute to it."*

b) ***Feroze N. Dotivala v. P.M. Wadhwani, reported in (2003) 1 SCC 433:***

> ***"11.** It appears that the legislature only intended that in cases where the landlord residing in a premises, parts with possession of a part of it, it would always be open to him to regain the possession of the whole as and when the licensor may so deem necessary. The question of acquiring common lease right by a person not a member of the family may not arise. This is a plain and simple meaning flowing from the definition of the words "paying guest" under the Act. Introducing any other element or ingredient to give meaning to the words "paying guest" as may be prevalent under any other law or under English law will be doing violence to the definition of the words "paying guest" as defined under the Act."*
>
> *(emphasis supplied)*

c) ***Tata Consultancy Services v. State of A.P., (2005) 1 SCC 308:***

*"**40.** The Copyright Act and the Sales Tax Act are also not statutes in pari materia and as such the definition contained in the former should not be applied in the latter.*

***41.** In the absence of incorporation or reference, it is trite that it is not permissible to interpret a word in accordance with its definition in other statute and more so when the same is not dealing with any cognate subject."*

(emphasis supplied)

13.4. Thus the impugned order insofar as it looks to the definition of Railways as defined under the Indian Railways Act, to construe the scope and width of the notification is wholly misdirected.

14. Applying the definition of Railways under Indian Railways Act, 1989:

Having found that the definition of railways under IRA may not have relevance in understanding the scope of the notification in question viz., Notification 11/2017. Let us examine the consequences that may follow assuming the definition of "Railways" under IRA is treated as applicable to the subject notification. Railway as defined under IRA:

"(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 land 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;

(d)all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e)all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f)all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include—

(i)a tramway wholly within a municipal area; and

(ii)lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;

14.1. A reading of the above definition would show that the above definition includes everything that would possibly have connection or is in relation to railway. Importantly, from a reading of the above definition it would appear that the definition is not with reference or in relation to a particular entity i.e., Indian Railway, but intended to cover a utility / industry viz., railway.

14.2. On applying the definition of Railway as defined under IRA it appears that the contract between the petitioner and RVNL for doubling of track between Vanchi Maniyachchi to Nagercoil, construction of roadbed, minor bridges, platforms, buildings, water and effluent treatment facilities, wagon / coaching maintenance infrastructure, supply of ballast, installation of tracks and other electrical, signalling and telecommunication infrastructure in Madurai and Thiruvananthapuram Divisions of Southern Railway, would constitute 'Railway' even under the definition of Indian Railways Act, more particularly covered under clauses (b), (c) and (d) to Section 2(31) of the Indian Railways Act.

15. Expression “Railway” under the Notification – Not confined to Indian Railway:

15.1. Importantly, if one reads the relevant entry to the notification it

would be clear that the expression "Railway" is not employed with reference to an entity viz., Indian Railway, as conceived by the respondent. The above assumption by the respondent in the impugned order overlooks the fact that the expression "Railway" employed in the said notification is with reference to an industry / utility rather than qualifying a specific entity viz., "Indian Railway". This would be even more evident from the fact that the notification is not confined to original work pertaining to railway, but also original work pertaining to mono rail and metro rail. Mono Rail and Metro Rail are primarily funded, operated and managed by private entities, as would be evident from the following illustrations of metro/ mono rails:

PSUs / JVs / Companies / Societies (16)

1. Braithwaite and Co Limited
2. Central Organisation for Modernisation of Workshops, COFMOW
3. Centre for Railway Information Systems (CRIS)
4. Container Corporation of India Limited (CONCOR)
5. Dedicated Freight Corridor Corporation of India (DFCCIL)
6. IRCON International Limited
7. Indian Railway Catering and Tourism Corporation Ltd. (IRCTC)
8. Indian Railway Finance Corporation Limited (IRFC)
9. Integral Coach Factory, Chennai
10. Konkan Railway Corporation Limited
11. Kutch Railway Company Limited, Delhi
12. Mumbai Railway Vikas Corporation Limited (MRVC)

13. Pipavav Railway Corporation Limited
14. Rail India Technical and Economic Service Limited (RITES)
15. Rail Vikas Nigam Limited
16.RailTel Corporation of India Limited.

15.2. If the expression railway employed in the notification were to be construed to be confined to Indian Railway in its operation it may produce results which are incongruous inasmuch as the relevant entry under the notification covers original works pertaining not only to railways but also Mono Rail and Metro Rail which is undisputedly not part of the Indian Railway. The reference to Mono Rail and Metro Rail is only to show that the object does not appear to be to grant concession under the relevant entry to the subject notification of the qua an entity instead the object / intent appears to be to extend the benefit / concession to industry / utility mentioned therein viz., Railway, Metro Rail and Mono Rail.

16. Relevance of the expression “pertaining to”:

16.1. Having found that the contract entered into between the petitioner and M/s.RVNL, would be covered by the definition of “railway” as understood in common parlance (or) on applying the definition of “Railways” under the Indian Railways Act, we shall now turn to examine the scope of the expression,

"pertaining to" employed in the subject notification with reference to railway.

The expression "pertaining to" employed in the subject notification with reference to railways is one of very wide import. In this regard, it may be relevant to refer to the decision in ***Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299,*** wherein, it was held as under:

> *"**48.** ..The expressions "pertaining to", "in relation to" and "arising out of", used in the deeming provision, are used in the expansive sense, as per decisions of courts, meanings found in standard dictionaries, and the principles of broad and liberal interpretation in consonance with Article 39(b) and (c) of the Constitution."*

16.2. The use of the expression "pertaining to" would show that the legislation intented to give an expansive meaning to the expression "Railway". If we bear this in mind the contract in question for doubling of track between Vanchi Maniyachchi to Nagercoil, construction of roadbed, minor bridges, platforms, buildings, water and effluent treatment facilities, wagon / coaching maintenance infrastructure, supply of ballast, installation of tracks and other electrical, signalling and telecommunication infrastructure in Madurai and Thiruvananthapuram Divisions of Southern Railway, between the petitioner and RVNL, would constitute original work pertaining to railway for the purpose of the subject notification.

17. Exemption not to be curtailed by importing conditions:

17.1. The expression "Railway" employed in the notification does not incorporate the definition under Indian Railway Act nor is it with reference to or limited in its operation to Indian Railway. In any view, assuming that the definition of "Railways" as defined under the Indian Railways Act, 1989 does apply to the subject notification, the definition of Railway under IRA extracted above does not appear to limit its operation to any particular entity or in particular Indian Railways instead covers the entire industry / utility viz., Railway. Thus any attempt to suggest that the expression "railway" employed in the subject notification would only cover "Indian Railways" would fall foul of the settled principle that exemptions cannot be curtailed by artificially narrowing down the width of the exemption or by importing conditions. It may be relevant to keep in mind that while exemption notifications must be strictly construed, it certainly would not mean that the scope of the exemption notification can be curtailed by importing conditions or giving an artificially restrictive meaning to the words in an exemption notification. In this regard, it may be relevant to refer to the following judgments:

i) ***CCE v. Himalayan Cooperative Milk Product Union Ltd., (2000) 8 SCC 642 :***

> ***"8.*** *Such notifications by which exemption or other benefits are provided by the Government in exercise of its statutory power, normally have some purpose and policy decision behind it. Such benefits are meant to be provided to the investors and manufacturers. Therefore, such purpose is not to be defeated nor those who may be entitled to it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it.*

ii) ***Innamuri Gopalam and Maddala Nagendrudu and others v. State of Andhra Pradesh and another, (1963) 14 STC 742 :***

> *"..... The entire matter is governed wholly by the words of the provision. If the taxpayer is within the plain terms of the exemption he cannot be denied its benefit by calling in aid any supposed intention of the exempting authority."*

iii) ***Commissioner. of Customs (Import), Mumbai v. Dilip Kumar & Co., and others (2018) 9 SCC 1 :***

17.2. The Constitution Bench of the Supreme Court while resolving the rule of interpretation to be placed while examining/ considering an exemption, while holding that an exemption notification must be strictly construed and any doubt must be resolved in favour of the Revenue unlike a charging provision where any ambiguity or doubt ought to be resolved in favour of the assessee, importantly approved and reiterated the law laid down by the Supreme Court in the case of Hansraj Gordhandas, wherein it was held that if the taxpayer is within the plain terms of the exemption it

cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. The relevant portions of the judgment is extracted hereunder:

> ***"44.*** *In Hansraj Gordhandas v. CCE [Hansraj Gordhandas v. CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] [hereinafter referred to as "Hansraj Gordhandas case", for brevity], wherein this Court was called upon to interpret an exemption notification issued under the Central Excise Act. It would be relevant to understand the factual context which gave rise to the aforesaid case before the Court. The appellant was the sole proprietor who used to procure cotton from a cooperative society during the relevant period. The society had agreed to carry out the weaving work for the appellant on payment of fixed weaving charges at Re. 0.19 np. per yard which included expenses the society would have to incur in transporting the aforesaid cotton fabric. In the years 1959 and 1960, the Government issued an exemption notification which exempted cotton fabrics produced by any cooperative society formed of owners of cotton power looms, registered on or before 31-3-1961. The question before the Court was whether the appellant who got the cotton fabric produced from one of the registered cooperative societies was also covered under the aforesaid notification. It may be of some significance that the Revenue tried to interpret the aforesaid exemption by relying on the purposive interpretation by contending that the object of granting the above exemption was to encourage the formation of cooperative societies which not only produced cotton fabrics but also consisted of members, not only owning but having actually operated not more than four power looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society to produce clothes. It was argued that the goods produced for which exemption could be claimed must be goods produced on his own and on behalf of the society. The Court did not countenance such purposive interpretation. It was held that a taxing legislation should be interpreted wholly by the language of the notification.*
>
> ***45.*** *The relevant observations are: (Hansraj case [Hansraj Gordhandas v. CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] , AIR p. 759, para 5)*
>
> *"5. ... It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the*

notification. If the taxpayer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. A. Salomon & Co. Ltd. [Salomon v. A. Salomon & Co. Ltd., 1897 AC 22 (HL)] : (AC p. 38)' "Intention of the legislature" is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.'

It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in Crawford v. Spooner [Crawford v. Spooner, 1846 SCC OnLine PC 7 : (1846-50) 4 Moo IA 179] .

'... we cannot aid the Legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there.'

The learned counsel for the respondents is possibly right in his submission that the object behind the two notifications is to encourage the actual manufacturers of handloom cloth to switch over to power looms by constituting themselves in cooperative societies. But the operation of the notifications has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent."

17.3. As stated supra the definition of Railway under the Indian Railway Act, 1989, may not be relevant in construing the subject notification. In any view, even applying the definition of Railway as defined under the Indian

Railway Act, 1989, to the contract between the petitioner and M/s.RVNL which is for doubling of track between Vanchi Maniyachchi to Nagercoil, construction of roadbed, minor bridges, platforms, buildings, water and effluent treatment facilities, wagon / coaching maintenance infrastructure, supply of ballast, installation of tracks and other electrical, signalling and telecommunication infrastructure in Madurai and Thiruvananthapuram Divisions of Southern Railway, it appears to me from the discussion supra that it would still constitute original work pertaining to Railway for the purpose of the subject notification and thus covered under Sl.No.3(v)(a) of the said notification.

18. Construction that leads to Consistency:

18.1. The impugned order places reliance upon the Advance Ruling Authority in Re: M/s SKG-JK-NMC(JV),2021 (1) TMI 425 ,over looking the fact that the above AAR has been overruled by the Appellate Advance Ruling Authority in Re: M/s.SKG-JK-NMC Associates (JV), 2021 (10) TMI 152 and thus the impugned order suffers from error apparent on the face of the record thus stands vitiated. Importantly there are Advance Ruling Authorities of other States wherein similar if not identical contracts have been found to be covered under the very same entry in terms of the above notification, some of them

being:

Clauses (Indian Railways Act)	Case Title	Relevant Paragraph/Ruling
Section 2 (31)(d) – Construction, supply, installation, testing and commission of electrification, signalling, and telecommunication and associated with double track.	Order No. KAR ADRG 93/2019 (Quatro Rail Tech Solutions Ltd) by Karnataka (27/09/2019)	The contract work of the applicant to the main contractor, who is executing the works contract to M/s. DRCCIL, is liable to tax at 6% under CGST Act and at 6% under KGST Act or 12% under IGST Act, 2017. The relevant entry is entry no. 3(v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017- Central Tax (Rate) dated 22.08.2017.
Section 2(31) (b) – project management consultant for the construction of railway infrastructure including the commissioning of the Railway system to handle coal and oil fuel traffic of RTPS	Order 27WBAAR/2018-19 (Rites Limited) by West Bengal AAR (05/10/2018)	Construction of a private railway siding for the carriage of coal and oil fuel to Raghunathapur TPS, as described in the agreement between the applicant and DVC, is a composite supply of works Contract, taxable at 12% under Serial No 3(v)a of Notification No 11/2017-CT(Rate) dated 28.06.2017
Section 2 (31) (d) – works contract supplied by way of construction, erection, commissioning or installation of original works pertaining to railways	Order No.MAH/AAAR/SS-RJ/15/2018-19 Shree Construction Maharashtra AAAR Order (03/01/2019)	Thus, the condition specified under item (v) of SR 3 of the said notification is completely fulfilled and therefore the service provider by sub-contractor would attract a concessional rate of 12% GST
Section 2 (31) (b), 2(31)(d) – Works Contract by way of construction, erection, commission, installation, completion, fitting out, repair, maintenance, renovation or alteration of a structure including for	STC/AAR/03/2020/ 41 Dee Vee Projects by Chhattisgarh (08.10.2020)	The rate of tax applicable to the composite supply of works contract as defined in Clause 119 of Section 2 of CGST 2017 is 18% till 21/08/2017 a stipulated under Notification No 11/2017 – Central Tax (rate) dated 28/062017 and is 12% thereafter, with effect from

educational, clinical or cultural establishment or a road bridge, tunnel, etc.,		22/08/2017

18.2. It is trite law that consistency in law is as important as correctness, if not greater as held in *Paper Products LTO vs. Commissioner of Central Excise* reported in *(1999) 7 SCC 84*, the relevant portion of which is extracted hereunder:

> ***"4.*** *..... Consistency and discipline are, according to this Court, of far greater importance than the winning or losing of court proceedings...."*

18.3. Thus the impugned order being contrary to Appellate Advance Ruling and Advance Ruling Authorities referred above would lead to uncertainity and inconsistency which ought to be avoided.

18.4. In view thereof, the impugned orders are set aside and the contract for doubling of track between Vanchi Maniyachchi to Nagercoil, construction of roadbed, minor bridges, platforms, buildings, water and effluent treatment facilities, wagon / coaching maintenance infrastructure, supply of ballast, installation of tracks and other electrical, signalling and telecommunication infrastructure in Madurai and Thiruvananthapuram Divisions of Southern

Railway, between the petitioner and RVNL would be covered by Notification 11 of 2017 CGST (RATE) dated 28.06.2017 as amended vide Notification No. 20/2017 dated 22.08.2017, Notification No.8 of 2017 Integrated Tax (Rate) dated 28.06.2017 and G.O.Ms.No. 94 dated 22.8.2017 CT & RE and liable to tax at 12%.

19. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

28.01.2025

Index : Yes / No
Internet : Yes/ No
spp

To:
1.The State Tax Officer,
Commercial Taxes Building,
Perumbattu Kalakadu Road,
Nanguneri – 627 108.

2.The Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
No.137, North Block,
New Delhi – 110 001.

MOHAMMED SHAFFIQ, J.

spp

W.P.(MD).Nos.3938 to 3942 of 2024

28.01.2025