

INDEX**IN THE COURT OF GOODS AND SERVICES TAX, TRIBUNAL****IN THE CASE OF M/S RV CONTRACTORS,
KAROL BAGH, NEW DELHI****RV CONTRACTORS -APPELLANT****Vs.****COMMISSIONER DGST, NEW DELHI – RESPONDANT**

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FORM GST APL – 05
[See rule 110(1)]
Appeal to the Appellate Tribunal

1. **GSTIN/ Temporary ID /UIN** -07AAFBPXXXX1ZM
2. **Name of the appellant** - RV CONTRACTORS
3. **Address of the appellant** - Karol Bagh, New Delhi
4. **Order appealed against** - XXXXXXXXXXXX Number-XXXX Date- 08.02.2025
5. **Name and Address of the Authority passing the order appealed against** – JOINT COMMISSIONER (APPEALS), NEW DELHI
6. **Date of communication of the order appealed against** - 10.02.2025
7. **Name of the representative** - CA Gunjan Jain
8. **Details of the case under dispute:** Rejection of Refund Application under RFD 01 due to reason of, “*Application filled beyond limitation*”
 - (i) Brief issue of the case under dispute – RFD 01 dated 10.11.2024
 - (ii) Description and classification of goods/ services in dispute: - Works Contract Service
 - (iii) Period of dispute: - FY April 2021- March 2022 (Bill of March 22)
 - (iv) Amount under dispute: - 13,10,000

Description	Central tax	State/ UT tax	Integrated tax	Cess
a) Tax/ Cess	6,55,000	6,55,000	-	-
b) Interest	-	-	-	-
c) Penalty	-	-	-	-
d) Fees	-	-	-	-
e) Other charges	-	-	-	-

(v) Market value of seized goods- N/A

9. **Whether the appellant wishes to be heard in person?** Yes
10. **Statement of facts** - Mentioned in Appeal attached
11. **Grounds of appeal** - Mentioned in Appeal attached
12. **Prayer** - Mentioned in Appeal attached
13. **Details of demand created, disputed and admitted** – As per table below

Particulars of demand	Particulars		Central Tax	State/UT tax	Integrated tax	Cess	Total amount
	Amount demanded/ rejected >, if any	a) Tax/Cess	6,55,000.00	6,55,000.00			13,10,000.00
		b) Interest	-	-	-	-	-
		c) Penalty					
		d) Fees					
		e)					

		Other Charges						
	Amount under dispute (B)	a) Tax/Cess	6,55,000.00	6,55,000.00			13,10,000.00	
		b) Interest						
		c) Penalty						
		d) Fees						
		e) Other Charges						
	Amount Admitted (C)	a) Tax/Cess						
		b) Interest						
		c) Penalty						
		d) Fees						

14. Details of payment of admitted amount and pre-deposit: (a) Details of amount payable:

Particulars		Central Tax	State/UT Tax	Integrated Tax	Cess	Total amount
a) Admitted Amount	Tax/ Cess	-	-	-	-	-
	Interest					
	Penalty					
	Fees					
	Other charges					
b) Pre-deposit [10% of disputed tax/cess but not exceeding Rs.20 crore each in respect of CGST, SGST or cess or not exceeding Rs.40 crore in respect of IGST]	Tax/ Cess	NA	-	-	-	-

(b) Details of payment of admitted amount and [pre-deposit of 10% of the disputed tax and Cess but not exceeding Rs. 50 crore each in respect of CGST, SGST or Cess or not exceeding Rs.40 crore in respect of IGST and Rs. 20 crores in respect of Cess] NA

Sr. No	Description	Tax payable	Paid through Cash/ Credit Ledger	Debit entry no.	Amount of tax paid			
					Integrated Tax	Central Tax	State/UT Tax	CESS
1	2	3	4	5	6	7	8	9
1	Integrated Tax	-	Cash Ledger		NA			
			Credit Ledger					
2	Central Tax	-	Cash Ledger			NA		
			Credit Ledger					
3	State/UT Tax	-	Cash Ledger				NA	
			Credit Ledger					
4	CESS	-	Cash Ledger					
			Credit Ledger					

(c) Interest, penalty, late fee and any other amount payable and paid: 0

Sr. No.	Description	Amount payable				Debit entry no.	Amount paid		
		Integrated Tax	Central tax	State/UT tax	CESS		Integrated tax	Central Tax	State/UT tax
1	2	3	4	5	6	7	8	9	10
1.	Interest	-	-	-	-	-	-	-	-
2.	Penalty	-	-	-	-	-	-	-	-
3.	Late fee	-	-	-	-	-	-	-	-
4.	Others (specify)	-	-	-	-	-	-	-	-

15. [Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 14 (item (a)), if any NA

Place of Supply (Name of State/UT)	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7] ⁵¹
	Admitted amount [in the Table in sub-clause (a) of clause 14 (item (a))]					

VERIFICATION

I, Raj Veer Singh (Proprietor RV Contractors), hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed.

Place: New Delhi

Date : 10.04.2025

-----s/d-----

Signature
Raj Veer Singh
PROPRIETOR

FORM GST APL – 02
[See rule 108(3)]

Acknowledgment for submission of appeal

Name of the Applicant –Raj Veer Singh GSTN-07AAFBPXXXX1ZM

Your appeal has been successfully filed against ARN xxxxxxxxxxxxxx

1. **Reference Number-** xxxxxxxxxxxx
2. **Date of filing** – 15.04.2025
3. **Time of filing** -12:52 P.M.
4. **Place of filing** – NEW DELHI
5. **Name of the person filing the appeal-** Raj Veer
6. **Amount of pre-deposit-** Not Applicable/Required
7. **Date of acceptance/rejection of appeal-** ACCEPTED
8. **Date of appearance Date: Time: 12.07.2025 AT 12:30 P.M.**
9. **Court Number/ Bench Court: Bench: xxxxxxxx**

Place: NEW DELHI

Date:15.04.2025

SIGNATURE

NAME-XXXXX

DESIGNATION

On behalf of Appellate Authority/Appellate Tribunal/Commissioner /
Additional or Joint Commissioner

GOODS AND SERVICES TAX TRIBUNAL FEE CHALLAN**Paid on 10.04.2025**

TAX PAYABLE	FEE	DEBIT ENTRY	TOTAL
Nil	1,000/-	DDVXTXXXX	1,000/-

Rupees 1000 for every 1 Lakh

GOODS AND SERVICES TAX ADDITIONAL EVIDENCE CHALLAN**Paid on 10.04.2025**

TAX PAYABLE	FEE	DEBIT ENTRY	TOTAL
Nil	5,000/-	DDVXAXXXX	5,000/-

Pre Deposit Challan is not required since the tax in dispute is already deposited in full.

Before the Hon'ble Goods and Services Tax Appellate Tribunal

New Delhi

In the matter of:

RV Contractor
Karol Bagh

...Appellant

Versus

NHAI Delhi

...Respondent

Appeal No. XXXXXX

Date of Hearing: 12.07.2025

Application for Production of Additional Evidence by the Appellant

To,

The Hon'ble Members of the GST Appellate Tribunal, Delhi

The Appellant respectfully submits as under:

1. That the appellant has filed the above-mentioned appeal before this Hon'ble Tribunal against the order dated 06.02.2025 passed by First Appellate Authority.
2. That during the adjudication/appellate proceedings before the lower authority, the appellant was unable to produce certain relevant documents/evidence due to non-availability of records at the relevant time.
3. That the following additional evidence/documents are now sought to be produced, which are material and relevant for just and fair disposal of the present appeal:

List of Documents –

- GSTR-7A TDS Certificate
- Bank Statement FY 2021-22

4. That the said evidence could not be produced earlier due to unavailability of the same.

Contd...

5. That the production of this additional evidence is essential to substantiate the appellant's contentions to prove that transaction was genuine.
6. That the production of additional evidence is being made in accordance with Rule 5 of the GST Appellate Tribunal (Procedure) Rules, 2023 (or relevant applicable provision).

Prayer

In view of the above, it is most respectfully prayed that this Hon'ble Tribunal may kindly, Allow the appellant to produce the additional evidence/documents as mentioned above; and pass such other order(s) as deemed fit and proper in the interest of justice.

Place: New Delhi

Date: 12.07.2025

Signature of Appellant Name:

Proprietor

Mobile:

Application for Condonation of Delay (Appeal to Tribunal)

**IN THE GOODS AND SERVICE TAX TRIBUNAL, BENCH NEW DELHI, NEW
DELHI**

IN THE MATTER OF:

PROP: RAJ VEER SINGH RV CONTRACTORS.

GSTN: 07AAFBPXXXX1ZM

KAROL BAGH

NEW DELHI

..... APPELLANT

VS

COMMISSIONER, DGST, DELHI

..... RESPONDENT

Appeal under Section 112 of DGST Act read with Rule 110 and 111, of Delhi GST Rules 2017, against the impugned order of the First AA, Zone 2, dated 08.02.2025

Disputed Demand: There is no amount for a disputed demand, although this is an appeal for granting of refund of wrongly paid GST.

Hon'ble President of the Tribunal and his Companion Members,

Respectfully sheweth:

1. That feeling aggrieved with the order of the first AA dated 08.02.2025 whereby He rejected the appeal on the grounds that the same was beyond the prescribed time limit for filling the refund application, the Appellant is filing the present appeal before this Hon'ble Tribunal. Order of First AA is annexed.
2. The order by the Adjudicating Authority was received on 10.02.2025 and Appeal is being filed to on 15.04.2025 to First Appellate Authority (within 3 months' time limit)
3. The order from First AA issued on 08.02.2025 and the appeal has been filed against the order of the first AA on 15.04.2025 (within 3 months' time limit). therefore, the appeal is filed within the limitation period as prescribed under Section 107;
4. The appeal has been signed by the Proprietor of the firm,
5. Required fee as per Rule 110 has been affixed and
6. All the annextures to this appeal are true copies of the originals.
7. Power of Attorney in the favour of the arguing counsel is also annexed.
8. Pre-deposit is not required hence not paid in this case.

Facts of the case

1. The appellant is a works contractor and is engaged in the business of construction and maintenance of buildings. In instant case before you involves an all-inclusive contract that he was awarded in order to construct a government building and the awarder was an agency of the Central government itself.

(Contract Copy Annexed)

2. The appellant raised the invoice for the services dated XX-March-21 rendered by him plus the GST @ 18% over the same and consequently payment was received by the appellant in month of Nov 2021 on the invoice value after the deduction of TDS for both Income Tax as well as GST TDS over the same.

(Invoice Copy Annexed)

3. The assessee paid the GST on outward supply of services upon the guidance of a tax expert on services rendered by him to such govt agency. This tax was paid in Nov 2021 wide GSTR 3B returns.

(Opinion Annexed)

4. After some time, a demand letter dated 15.12.2022 was received by appellant by the above-mentioned contract awarder (govt agency) stating that the tax paid to them was paid erroneously and hereby recovery is being done from them since as per the opinion of their auditor the said services rendered by the appellant was exempted in nature and hence was not implicated with any GST liability whatsoever so the GST amount paid as per the invoice value stated in the mentioned invoice in point number 1 above stands to be recovered.

(Letter Annexed)

5. Seeking upon the letter mentioned in point no 4 above, we had kept this matter in discussion in table and upon pointing out by our auditors upon the same, we had applied for the refund on 10.11.2024 vide RFD-01 having ARN: ZDASXXXXXX12
6. Now, after the above application, a show-cause notice under RFD 08 dated 09.01.2025 was issued to the appellant asking to show cause that, *“why shouldn’t our refund application be dismissed since it was filled beyond limitation of two years?”*

(Notice Annexed)

7. The reply was filled in response to such notice, but the same was overruled by keeping in adherence to the timelines given in section 54 and a final order under DRC 07 was thereby passed rejecting the said refund on the grounds of limitation.

(Reply Copy Annexed)

(Order Copy Annexed)

8. Aggrieved by the response in the above order, the appellant has moved to the 1st appeal and had filled the appeal in as per the mentioned procedure and time limit with the proper authority and had presented the facts of the matter and plead for acceptance of the refund application. The appeal authority also upheld the order given by the proper officer under DRC 07 initially and was of the opinion that such order was beyond the time limit and hence the said application be set aside.

(Appeal Order Annexed)

9. The appellant, aggrieved with the order passed by the first authority of first appeal, then moved to the appellate authority in light of some additional evidence and facts that as came up during case discussion with. Hence, the appellant hereby pleads before you to kindly admit and hear the application and facts to the case.

The appellant says and submits that a key question of law that this Hon'ble Tribunal may be required to address is:

A. Whether the application filled by the appellant is within the time limits as per section 54 of the CGST Act, 2017?

B. If no, then is the government exchequer entitled to keep monies that do not form a part of its revenue only upon a technicality of time limit over a transaction that was not taxable at the first place itself and benefit itself over a wrong doing of the taxpayer?

The appellant is therefore filing this appeal, inter alia, on the following grounds:

Contd...grounds of appeal

Grounds of Appeal

1. Factual Merit Unseen

The authorities below have passed the order in gross violation of Law and without appreciating the factual evidence that is on record and the statutory provisions on the issue.

2. Error of judgment on both parties to the appeal

According to Section 51 of the CGST Act, 2017 The Contractor, If government agency as in this case needs to deduct TDS on supply of taxable services and in our case since the government paid us value inclusive of taxes on the invoice raised by us, They considered it a part of taxable services and simultaneously had deducted TDS as a part of their modus operandi which also reflected an error of judgment on part of the contractee. Due to this chain of events we did not initially saw it as a part of any confusion and hence did not act upon filling of refund instantly.

3. Interpretation of concept of relevant date

As per Section 54, “any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, **may** make an application before the expiry of two years from the **relevant date** in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ¹[such form and] manner as may be prescribed.”

From the plain reading of the above section, it is clear that a tax payer needs to

- Have paid tax in excess in order to claim refund
- Make an application in the prescribed manner and format
- Within 2 Years from the relevant date

Contd....point 3

The word returns in sub section (1) as highlighted above is **“MAY”** make an application thereby stating that the wording of the provision was directory in nature and not mandatory since the law makers generally use “shall”, “should”, “has to be” when a mandatory and pressing provision needs to be implicated.

In our case all the above conditions have been satisfied and the proper officer has not raised any query or remarks for the first two conditions as laid down. Now in our humble opinion the concept of relevant date can be understood by seeking help of the explanation (2) of Section 54 sub point (h) where it has been clearly explained that relevant date means in any other case the date of payment of tax which in our case is 15.11.2022 and the RFD application was done on 10.11.2024.

This error of outcome seems to be due to the reason that the invoice was dated 20.03.2022 so the proper officer during the previous litigation stage had misinterpreted the concept of relevant date by taking the invoice date as relevant date instead of the date actual payment of tax.

This delay in payment of taxes/returns was due to our lack of working capital since the contractee was unable to pay the bill dues thereby pushing us into a temporary financial crunch.

4. Interdependence of Section 54(1) with Article 265 of the Indian Constitution

Section 54(1) provides the legal mechanism for GST refunds, covering the following cases prima facie:

- Excess tax payments (due to errors, provisional assessments).
- Zero-rated supplies (exports, SEZ supplies).
- Inverted duty structure refunds (unutilized ITC due to higher input taxes)

Contd...point 4

The conditions read with grounds set in point Number 3 page 18.

Now, if tax is paid under say a provisional assessment or say under a mistake of belief and later found excessive, Section 54(1) mandates refund, in the case of the appellant, the GST was not payable on the first place itself. Here, Article 265 comes into play.

When we read Article 265 of the Indian Constitution, it summarizes as below and it serves as a fundamental check on the taxing powers of the state, ensuring:

- No tax without law: A tax can only be levied if explicitly authorized by statute.
- No retention of illegal collections: If tax is collected without authority, it must be refunded.
- Judicial oversight: Courts can strike down arbitrary tax demands or refund denials.

Further to put things into context, Time Limit Under Section 54(1) Applies Only to "Validly Collected" Tax applies to legally collected GST (e.g., excess payments, provisional assessments). If no GST was payable at all, the levy itself was unconstitutional, and Article 265 supersedes the time limit.

So as to summarize the above stated arguments:

1. No GST was leviable on the transaction.
2. Tax collection was unconstitutional, even though it was voluntarily deposited by the appellant (Rs.13,10,000) (violates Article 265). (Ref case: *Bhagwandas S. Tolani v. Union of India (2021)*)
3. Time limit under Section 54(1) does not apply when the levy itself was illegal and hence No estoppel against fundamental rights should be present as delay does not legalize an unconstitutional levy/ collection.
4. Government cannot retain money collected without authority (Ref: case of *Maftalal Industries*).
As per para 77 of the judgement, "*Article 265 mandates that no tax shall be levied or collected except by authority of law. Any tax collected without such authority is liable to be refunded, and the State cannot resist such refund on the ground of delay or laches*",

Contd.... point 4

As per Para 108, “While Parliament may prescribe reasonable procedural conditions for refunds, no law can extinguish the right to recover taxes collected without authority. Such right flows from Article 265 and is indefeasible”.

Further, as per **Godrej & Boyce Mfg. Co. v. CCT**, Maharashtra, it was clarified under para 32, that, *“even if statutory procedures are not fully complied with, illegal tax retention violates Article 265. The constitutional mandate against unjust tax collection supersedes rigid procedural compliance.”*

5. Applicability of Indian Contract Act 1872

The proper officer has disengaged himself from commenting upon the applicability of Section 72 of the Indian Contract Act, since the first stage. Even in the order appealed against the officer has mentioned that, “The provision of Indian Contract Act have not been adopted by way of reference in the GST Act”.

This statement in our humble opinion finds lack of interpretation since the very first documents that the appellant and the respondent became a contractor and a contractee was on the basis of works contract executed between the government of India and the appellant. This makes the Contract Act a part and parcel of the undergoing chain of events since inception.

As explained in earlier appeals under Section 72 of the Contract Act it is established in the crystal-clear manner that the person to whom money has been paid, or anything delivered, by mistake or under coercion, **MUST** repay or return it. The proper officers have not commented or distinguished this matter in a reasonable manner.

6. Unjust Enrichment for the government exchequer

The proper officers in the previous stage of litigation were unable to comment upon the correctness of this double tax collection by the

Contd.... Point 6

government exchequer, once while payment in form of GST and another in form of recovery by the appellant thereby enriching himself by additional Rs 13,10,000 /-. This constitutes a clear violation of Article 265 of the Constitution of India whereby a tax is collected without the authority of law.

The appellant hereby would like to put this as a ground of appeal as well in order to get proper closer regarding the same. Courts have held that unjust enrichment cannot be a ground when the tax was illegal (*Sinkhai Synthetics v. CCE (2002)*).

7. Case Laws squarely applicable

The appellant respectfully submit cases where the honorable High Court have granted relief in similar matters involving issues of limitation and mistake of law.

In case of **Cosmol Energy PVT LTD VS State of Gujrat**, the court clearly held that limitation prescribed under Section 54 of the CGST Act would not apply where GST is not chargeable in the first place and had been deosited under a mistake of law.

Other Cases in defense to our submission and which are squarely applicable to the instant case are also submitted for your pursuer where in the court has repeatedly upheld that if an amount is deposited under mistake should be refunded irrespective of the limitation.

The case of **Lenovo (India) (P) Ltd** quoted by the proper officer during appeal involved two distinguishing factors firstly it was a case of IGST refund on supply of goods to SEZ and secondly there were supporting documentation missing at the time of initial filling which made the application not in line with the procedure said under Section 54 which is not similar in our case since our documentation and tax payments did not involve such facts.

Further, the mentioned cases by the proper officers involved refund of taxes paid on exports which in itself is a cumbersome activity and involves precise documentation and interpretation which should not be made applicable to our case due to a simple reason that what we had paid was not a part of tax in the first place but monies belonging to us wrongly deposited in the account of government.

In view of the above the appellant prays as under:

Prayers

In view of the above the appellant prays that the order dated 08.02.2025 passed by the respondent may be quashed and the proper officer be directed to allow the refund which was rejected by him.

It is prayed that since the error in nature is only interpretational, so if the Hon'ble Tribunal decides to give an inclination towards rejecting the said appeal, it may if pleases order the system to let us allow to adjust the said extra payment of monies against future liabilities so that we are not burdened with the double taxation.

The appellant undertakes to provide any other relevant document if required within a period of one week from the date of favorable order that may be passed by this Hon'ble Tribunal in the case of the appellant.

It is prayed accordingly.

**For RV Contractors
Prop.**

**Through
CA GUNJAN JAIN
COUNSEL FOR THE
APPELLANT**

VERIFICATION

I, RAJVEER SINGH, hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed.

Place: Indore

Date: 12.07.2025

Signature

-----s/d-----

**RAJVEER SINGH
PROPRIETOR**

GSTAT FORM-04
(see rule 72)
Memorandum of Appearance

To
The Registrar,
The Goods and Services Tax Appellate Tribunal
New Delhi Bench, New Delhi

In the matter of Rajveer Singh Proprietor of M/s RV Contractors. Petitioner. Vs. Commissioner (Appeals) Respondent (Appeal No xxxxxxxxx of 2025) Sir, please take notice that I, CA Gunjan Jain, authorized representative/ practicing Chartered Accountant, duly authorized to enter appearance, and do hereby enter appearance, on behalf Mr. Rajveer Singh petitioner in the above-mentioned petition. A copy of the authorization/vakalatnama issued by the Appellant authorizing me to enter appearance and to act for every purpose connected with the proceedings for the said party is enclosed, duly signed by me for identification.

For GPA & Co.
CA Gunjan Jain
Indore
9893723639

Annexure 1
Copy of the Show Cause Notice

BEFORE THE ASSISTANT COMMISSIONER (ZONE 2) DGST DEPARTMENT, NEW DELHI.

DIN NO. 12345678900.

9.1.2025

RV CONTRACTORS
KAROL BAGH
NEW DELHI.

SHOW CAUSE NOTICE IN REFD 08 - WHY SHOULD THE REFUND OF 13,10,000/- BE NOT REJECTED AS TIME BARRED UNDER SECTION 54 OF THE DGST ACT - THE APPLICATION HAVING BEEN FILED MUCH BEYOND TWO YEARS.

Whereas you are a works contractor and provide services of various kinds in connection with your contracts with the Government or private parties.

Whereas you had entered into an all-inclusive contract with the Government of India for construction of a Government Building and as per your contract your contract price was stated to be all inclusive of taxes under GST or any other law for the time being in force.

You raised a bill on the Government but Government disputed the payment of Rs 13,10,000/- which in their opinion was not payable in terms of Notification issued under the GST Act,

The payment had been made to you and now the Government deducted the above amount from your bills payable and further stopped the payment of GST that was included in your tax invoices issued to the Government.

Faced with this situation you filed application for refund under section 54 of the DGST Act when your supply did not fall either under zero rated or supplies made to SEZ or under inverted duty structure (works contract is a service as declared in the GST law)

Whereas you have filed an application under Section 54 of the DGST Act claiming refund of Rs 13,10,000/-

The application is much beyond the time limit of two years from the relevant date as per Section 54 of the DGST Act and hence why should it not be dismissed.

Therefore you are required to show cause as to why your application be not rejected on the ground of limitation as well as on merits as there is no case made out for claiming refund within the four corners of law as provided in Section 54 of the DGST Act?

You are requested to file the reply within a mandatory period of 15 days from the date of this show cause notice which has been put on the portal under the Head Notices etc. Also you are advised to attend the personal hearing with all documentary evidence or legal submissions that you may have to canvass in support of your application for refund. You are requested to appear before the undersigned on 24.1.25 with your detailed reply and other evidence.

ASSISTANT COMM (ZONE 2)
DIGITALLY SIGNED

Annexure 2

Copy of the Reply to Show Cause Notice

BEFORE THE ASSISTANT COMMISSIONER ZONE 2 GST DEPT

DIN. 12345678900.

24.1.25

IN THE MATTER OF: RV CONTRACTORS
KAROL BAGH
NEW DELHI

REPLY TO THE SHOW CAUSE NOTICE DATED 9.1.25

THE TAXPAYER respectfully submits as under:

1. That the taxpayer was misled in law when it was given an advice from a tax expert Mr. ABC who opined that the services to the Government qua the construction were not exempt from GST and accordingly an all-inclusive price was quoted and bills raised after the due dates as agreed to between the parties.
2. The Government paid the amount. However, during the audit of these invoices the Government expert advised the Government that the construction activities were not taxable and there is an exemption available in terms of Notification 13/2017 issued by the Government.
3. The Government then issued a letter (Annexure 1) to the taxpayer proposing that a sum of Rs `13,10,000/- paid to the taxpayer be refunded with interest as per law as the tax was not payable and the price quoted inclusive of taxes was thus erroneous. Government accordingly issued a demand letter dated 15.12.22 when this extra payment made to the taxpayer was noticed.
4. Realising this when we audited our accounts we realised that the refunds needs to be applied and accordingly we filed application. We realised this on 15.12.22 and after taking opinions and internal discussions the matter was kept pending. Finally when our statutory auditors wanted to quality our balance sheets on this score, we were advised by an expert to apply for refund and we are accordingly applying for refund.
5. The transactions related to a period of financial. Year 2021-22 and the bills were raised oil 20th March 22 and payment was made on 15.11.22.

We have been advised that we are entitled to refund as the Government cannot keep the tax what was not due to it and further that limitation of 2 years may not be applicable in this case. Hence, we request that your show case notice dated 9.1.25 be dropped. We have already filed all the required documents including the bills raised, notification copy, the payments received and the letter of demand from the Government. Undoubtedly the tax was paid out of a wrong interpretation of law and hence cannot be retained by the Government as it would amount to unjust enrichment.

Annexure 3

Copy of the Personal Hearing

PERSONAL HEARING

PRESENT CA MS RENU SHARMA FOR THE TAXPAYER

She has reiterated the above reply filed. Further she has quoted Section 72 of the Contract that the amount paid under a mistake of law cannot be kept and must be refunded to the party who paid the same. Relying on this provision she has vehemently argued that the present case is para material to the provisions of Section 72 and hence section 54 and the limitations contained therein may not be applicable at all in this case. She has not quoted any judgment in the matter. When further questioned she said there is nothing else they have to submit in the matter as the case is quite clear and Government cannot retain the money in the form of a tax which was not leviable and hence if retained it would violate Article 265 of the Constitution of India.

Heard, Kept for orders.

ASSISTANT COMMISSIONER (ZONE 2)

DIGITALLY SIGNED.

Annexure 4**Copy of the Order Passed by Adjudication officer**BEFORE THE ASSISTANT COMMISSIONER ZONE 2 GST DEPT

DIN. 12345678900.

8.2.25

IN THE MATTER OF: RV CONTRACTORS
 KAROL BAGH
 NEW DELHI

ADJUDICATION ORDER UNDER SECTION 54 OF THE DGST ACT READ. SHOW CAUSE NOTICE DATED 9.1.25

THE TAXPAYER HAS APPLIED FOR A REFUND AFTER THE TIME LIMITATION OF TWO YEARS, ADMITTEDLY. HENCE A SHOW CASUE NOTICE WAS SENT ON 9.1.25 PROPOSING REJECTION OF REFUND ON THE GROUND OF LIMITATION AS WELL AS ON MERITS. THE TAX PAYER HAS REPLIED AS UNDER AND ALSO ARGUED AT THE TIME OF PERSONAL, HEARING . The contentions in the written reply and arguments at the time of personal hearing are quoted below that are duly signed by her on the order sheet. She had nothing else to say before the arguments were closed in the matter.

1. That the taxpayer was misled in law when it was given an advice from a tax expert Mr ABC who opined that the services to the Government qua the construction were not exempt from GST and accordingly an all-inclusive price was quoted and bills raised after the due dates as agreed to between the parties.
2. The Government paid the amount. However, during the audit of these invoices the Government expert advised the Government that the construction activities were not taxable and there is an exemption available in terms of Notification 13/2017 issued by the Government.
3. The Government then issued a letter (Annexure 1) to the taxpayer proposing that a sum of Rs `13,10,000/- paid to the taxpayer be refunded with interest as per law as the tax was not payable and the price quoted inclusive of taxes was thus erroneous. Government accordingly issued a demand letter dated 15.12.22 when this extra payment made to the taxpayer was noticed.
4. Realising this when we audited our accounts we realised that the refunds needs to be applied and accordingly we filed application. We realised this on 15.12.22 and after taking opinions and internal discussions the matter was kept pending. Finally when our statutory auditors wanted to quality our balance sheets on this score, we were advised by an expert to apply for refund and we are accordingly applying for refund.
5. The transactions related to a period of financial. Year 2021-22 and the bills were raised oil 20th March 22 and payment was made on 15.11.22.

We have been advised that we are entitled to refund as the Government cannot keep the tax what was not due to it and further that limitation of 2 years maY not be applicable in this case. Hence, we request that your show case notice dated 9.1.25 be dropped. We have already filed all the required documents including the bills raised, notification copy, the payments received and the letter of

demand from the Government. Undoubtedly the tax was paid out of a wrong interpretation of law and hence cannot be retained by the Government as it would amount to unjust enrichment.

DISCUSSION AND ORDER

Under the DGST ACT, Section 54 mandates that a person claiming refund may make an application before the expiry of two years from the relevant date. Upon a plain reading of the provision, it appears to be clear that there is a time-limit of 2 years specifically prescribed for different situations and such time-limit is to be considered as mandatorily applicable.

Assessee had therefore ensured the filing of refund applications within such prescribed time limit of 2 years from the relevant date as applicable.

If there is a mistake committed by the Assessee, whether on account of law or facts, the remedy has to be only under the statute and therefore, provision of limitation, as provided under the statute, will have to be applied. And hence I do not find any justification in accepting the application for refund which is admittedly filed beyond a period of two years. The application is thus rejected.

Assistant Commissioner Zone 2
DIGITALLY SIGNED

Annexure 5
Copy of the Order of the Appellate Authority

BEFORE THE JT COMMISSIONER(Appeals) Zone 2 GST Dept

DIN. 6767676767.

19.3.25

IN THE MATTER OF: RV CONTRACTORS
KAROL BAGH
NEW DELHI

APPELLATE ORDER UNDER SECTION 107 OF THE DGST ACT 2017 AGAINST THE IMPUGNED ORDER DATED 8.2.25

The appellant has filed an appeal under Section 107(1) against the order passed by the proper officer rejecting the refund application for a sum of Rs 13,10,000/00 as a time barred under section 54 of the DGST Act.

The brief facts are that the appellant is a Government contractor and pursuant to work done by him by way of a works contract service he raised a bill as per contractual terms and conditions.

The contractual conditions admittedly provided that the price quoted is all inclusive including of all taxes, cess, royalties etc.

The appellant raised a bill and the Government cleared the payment including GST amount of 13,10,000/0

The transactions related to a period of financial. Year 2021-22 and the bills were raised on 20th March 22 and payment was made on 15.11.22.

The proper officer duly served and show cause notice in the prescribed form proposing to reject the refund application as time barred. The appellant filed a detailed reply solely on the ground that the tax was charged and received as per mistaken legal interpretation and hence the tax was not payable and should be refunded to the appellant and for this purpose no limitation period should be applicable ; more so, in terms of section 72 of the Indian Contract Act.

Section 72 of the Indian Contract Act **deals with the liability of a person to whom the money is paid or thing delivered, by mistake or under coercion**. This section states that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

The provisions of Indian Contract Act have not been adopted by way of reference in the GST Act. Further the proper officer has dealt this issue in detail.

I agree with him that for a refund remedy all situations must fall strictly within the parameters of Section 54 of the DGST Act including limitation. Since the Act does not provide for such situations, I tend to concur with the view of the proper officer and hence dismiss the appeal of the appellant. The counsel has quoted many judgments in the excise regime, but I am afraid the same may not hold good for GST as the scheme of both the Acts is different.

The appeal is therefore dismissed. The order has been uploaded in the appropriate column on the portal

**JT COMMISSIONER (APPEALS)
DIGITALLY SIGNED**

“The petitioner provided services of preparation of Detailed Project Report for the purpose of development of Metro Rail Project for the City of Surat, Gujarat. The said service was exempt from GST. However, the Petitioner paid GST on the same under ‘mistake of law. The payment was made in August, 2017. The Petitioner file refund claim in May, 2022. The adjudicating authority rejected the refund claim on the ground of time bar. The Petitioner challenged the said order by way of writ petition.

The Delhi High Court observed that the Gujarat High Court in *Cosmol Energy Private Limited v. State of Gujarat* – SCA No. 11905/2020, involving identical issue, directed refund of the GST paid under a mistake notwithstanding that the application for refund was made after expiry of a period of two years. The department has not challenged the said order. Accordingly, the Court held that period of limitation for applying for a refund as prescribed under Section 54 of the CGST Act, would not apply where GST is not chargeable and it is established an amount has been deposited under a mistake of law. The Court directed the department to sanction the refund.

Delhi Metro Rail Corporation Ltd. vs. Additional Commissioner – WP(C) No. 6793 of 2023 (Del. HC)

The Petitioner rendered services for the preparation of aforementioned Detailed Project Report and on 11.08.2017, the petitioner raised an amount of Rs.19,04,520/- (Rupees Nineteen Lakhs Four Thousand Five Hundred Twenty Only) for the services rendered. The Petitioner raised a final invoice of Rs. Rs. 2,90,520/- (Rupees Two Lakhs Ninety Thousand Five Hundred Twenty Only) inclusive of the 18% Goods and Services Tax (GST)

The Respondent No. 3 paid an amount of Rs. 16,14,000/- (Rupees Sixteen Lakhs Fourteen Thousand Only) against the invoice, but er, Respondent No.3 did not pay the amount of GST which was included in the amount asked by the petitioner. In order to ensure that there was no failure in complying with its statutory provisions, the Petitioner deposited a sum of ₹2,90,520/- (Rupees Two Lakhs Ninety Thousand Five Hundred Twenty Only) with the GST Authorities under Form GSTR-3B for the month of August, 2017

Thereafter, the Petitioner was informed by the Respondent No-3 that in pursuance to the Notification **No.12/2017 – Central Tax (Rate) dated 28.06.2017**, issued by the Ministry of Finance, Government of India, , the services billed under the invoice provided by the Petitioner were not chargeable under GST.

Consequently on 02.05.2022, the Petitioner filed an application for refund before Respondent No-2 for the period of August, 2017. However, the application was rejected by an order dated 04.07.2022 on the grounds that application for refund was filed after the expiry of two years from the relevant date. (hereinafter referred to as the **"Rejection Order"**)

The Petitioner preferred an appeal against the rejection order before the Additional Commissioner, Central Goods and Services Tax Appeals II (hereinafter referred to as **"Respondent No.1"**). The appeal was rejected by the Respondent No.1 *vide* order dated 24.02.2023 (hereinafter referred to as the **"Impugned Order"**)

Hence, being aggrieved by the Impugned Order, the Petitioner has filed the present Petition.

CONTENTIONS OF THE PARTIES

The Petitioner contended that retaining the amount paid under a mistake would amount to collection of tax without the authority of law and thus, it was violate of Article 265 of the Constitution of India, 1949 (hereinafter referred to as the **"Constitution of India"**).

The Petitioner relied upon *State of Madhya Pradesh & Anr. v. Bhailal Bhai [AIR 1964 SC 1006]* and *M/S Cosmol Energy Private Limited v. State of Gujarat: [R/Special Civil Application No. 11905/2020, decided on 22.12.2020]* and argued that refund can be granted irrespective of the limitation when an amount is deposited as tax under mistake.

The Respondents contended that the refund application was filed after 2 years and hence, was time barred under the provisions of law and hence, it could not be processed.

DECISION AND FINDINGS

The Delhi High Court observed that Article 265 of the Constitution of India prescribes any levy or collection of tax except by authority of law. It was further observed that the GST was not payable for the services rendered by the Petitioner, and the amount paid by the Petitioner in respect of GST was based on an enormous belief, and the same cannot be retained by the Respondents.

The Delhi High Court relied upon *M/s. Cosmol Energy Private Limited (supra)* and held that the period of limitation for applying for refund as prescribed under Section 54 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the **"CGST Act"**) would not apply where the GST was not chargeable at the first place; and also when it is established that the amount has been deposited under a mistake of law.

The Delhi High set aside the Impugned Order and Rejection Order and, directed the Respondents to process the Petitioner's claim for refund of Rs.2,90,520/- (Rupees Two Lakhs Ninety Thousand Five Hundred Twenty Only) .

The Delhi High Court discussed the scope of Section 54 of the CGST Act regarding the limitation period for filing of refund application as prescribed under the law.

However, when an amount is deposited by mistake by the taxpayer, such limitation period would not apply while filing the refund application as the tax was not payable by the taxpayer at the first place. Moreover, an amount deposited which is not payable as tax is in contravention to Article 265 of the Constitution of India and hence, should not be held by the Department. Therefore, directed for the refund of the amount.

Since, the tax is paid by the citizens in adherence of law, it is equally important for the authorities to fulfill their duty and address the situation of the taxpayer and do the needful like in the present case where the tax was paid when it was not chargeable as under the CGST Act. Retaining such amount by the department would lead to injustice to the tax payer who in good faith make timely payments.

Messrs Aalidhra Texcraft Engineers & Anr. Vs Union of India & Ors. (Gujarat High Court) Refund of voluntarily deposit of GST cannot be rejected on the ground of limitation but no interest eligible on such refund: Gujarat High Court It was held that when the petitioner has deposited voluntarily the amount of Rs. 40,00,000/-, the same would not be covered by the provisions of Section 54 of the GST Act and the same is required to be refunded by the respondent authorities as the same could not have been rejected on the ground of limitation under Section 54(1) of the GST

Under the GST Regime, Section 54 of the Central Goods and Services Act, 2017 (CGST Act) contains similar language, stating that a person claiming refund may make an application before the expiry of two years from the relevant date. Upon a plain reading of the provision, it appears to be clear that there is a time-limit of 2 years specifically prescribed for different situations and such time-limit is to be considered as mandatorily applicable. This position had also been unambiguous and clear during the erstwhile regime as held in the decisions of the Supreme Court¹, and as a general practice during the present regime....

Assessee had therefore ensured the filing of refund applications within such prescribed time limit of 2 years from the relevant date as applicable. The Department had also been interpreting such timeline to be strict, due to which various refund applications filed by assesseees were rejected on account of being filed beyond the prescribed time-limit. While the position regarding time-limit for applying for refund seemed settled, the Madras High Court (HC) recently provided a different interpretation of the time-limit specified in Section 54 of the CGST Act. In *Lenovo (India) (P) Ltd. v. Commr. of GST (Appeals-I)*², writ petitions were filed against certain order-in-appeals wherein applications filed seeking refund of IGST paid on supply of goods to special economic zone units were rejected. One of the grounds for rejection was that certain supporting documentation was not submitted at the time of filing applications but was furnished at the time of filing reply/personal hearing, and the same was barred by limitation. The Madras High Court specifically referred to the language used in Section 54(1) of the CGST Act which specifies that an assessee “may” make application before 2 years from the relevant date, thereby stating that the wordings of the provision meant it was not mandatory to make a refund application within 2 years and, the time-limit under Section 54(1) of the CGST Act was directory in nature, not mandatory. It was further held that in “appropriate cases”, applications may be made even beyond two years and in such cases, the legitimate refund claims of the assessee could not be denied. This proposition was reiterated in *ARS Energy (P) Ltd. v. Commr. (Appeals)*³ wherein petitioners had discharged IGST on ocean freight charges and sought refund of the same, in light of a judgment of the Supreme Court⁴. In this case, the refund application was rejected on merits and also on the grounds that it was filed beyond the limitation period as prescribed under Section 54 of the CGST Act. When a writ petition was filed against the refund rejection order, the Madras High Court relied on the judgment in *Lenovo case*⁵ to reiterate that the limitation period under Section 54(1) of the CGST Act was directory in nature and not mandatory. Based on the

interpretation of Section 54(1) of the CGST Act in the aforementioned judgments, a relief seemed to have been bestowed upon assesseees across various industries, both for those with ongoing proceedings where refund applications may have been rejected on the grounds of limitation, as well as in respect of future refund applications. Although there seemed to be no ambiguity regarding the interpretation of the time-limit in Section 54(1) of the CGST Act, the interpretation adopted by the Madras High Court in the aforementioned cases were beneficial for assesseees and therefore, was nevertheless a welcome interpretation. However, attention may also be drawn to the judgment of the Delhi High Court in *Sethi Sons (India) v. Commr. 6* wherein a writ petition was filed against an order-in-original rejecting the claim of refund of unutilised input tax credit accumulated on account of export without payment of IGST under bond/LUT. While referring to the findings in *Lenovo case*⁷, the Delhi High Court categorically mentioned that they respectfully have reservations regarding the view in the aforementioned case. While the Delhi High Court did not expressly provide its views regarding the interpretation of Section 54(1) of the CGST Act, it can be said that there seems to be an implied divergence from the interpretation adopted by the Madras High Court. Consequently, while it seems that the Madras High Court granted relief to assesseees, there arises doubt regarding whether such benefit can be availed by the assesseees primarily due to the fact that no express view has been provided by the Delhi High Court, thereby leading to an ambiguity regarding the interpretation of the provision. A question also arises as to whether the benefit arising out of the interpretation would be applicable only in the State of Tamil Nadu since the favourable judgments were rendered by the High Court in Tamil Nadu. Additionally, while adopting a beneficial interpretation of Section 54 of the CGST Act, the Madras High Court specified that refund applications may be filed beyond two years in “appropriate case”, without specifying the situations which would fall within the ambit of “appropriate case”. This leads to a doubt regarding whether such benefit is applicable in all cases or only in appropriate circumstances and if the latter, what would suffice to constitute an “appropriate case”. Lastly, considering that such beneficial interpretation has been provided almost 6 years after the introduction of GST, there arises uncertainty regarding the applicability of this interpretation, that is, whether such benefit can be used by assesseees only for ongoing refund proceedings at any stage of litigation for applications filed beyond 2 years or for future periods allowing assesseees to file applications beyond the period of 2 years or even to reopen past cases where refund applications were rejected solely on the grounds of limitation. While the Madras High Court did pronounce a landmark judgment by conferring such a benefit to assesseees, a new-found ambiguity has now arisen regarding the interpretation of the time-limit imposed under Section 54 of the CGST Act, as the same had been strictly interpreted as mandatory since the inception of GST, both by assesseees and the Department. Such ambiguity has been exacerbated by the reservation of the Delhi High Court, making the once seemingly settled position regarding time-limit under Section 54 of the CGST Act, now unsettled. Such ambiguity may cause a hindrance to assesseees in availing benefit of the interpretation of the Madras High Court, although the same has been expressly provided by not just one, but two judgments of the Madras High Court. It is therefore essential for the Government to clarify the correct interpretation of the provision and strengthen the same, whether in favour of the assessee or otherwise. This may be done by an amendment to the provision itself. Alternatively, considering that diverging views have been adopted by two High Courts of different jurisdictions, it is to be seen if such case might travel the course of litigation to reach the Supreme Court and thereafter gain clarity by way of a judgment of the Supreme Court that would be binding and applicable uniformly across all jurisdictions. ...

The Hon'ble High Court held that the limitation under Section 11B(1) does not apply to refund claims for service tax paid under a mistake of law. The Court directed the Revenue to process the refund, citing the principles of restitution under Section 72 of the Indian Contract Act, 1872. The Court also affirmed that a writ petition under Article 226 is maintainable in such cases.

List of Cases Cited

- Bengal Investments Ltd. v. Assistant Commissioner — 2016 (42) S.T.R. J274 (S.C.)— Referred [Para 8]
- Commissioner v. K.V.R. Construction — 2012 (26) S.T.R. 195 (Kar.) — Referred [Para 4]
- Mafatlal Industries Ltd. v. Union of India — 1997 (89) E.L.T. 247 (S.C.) — Relied [Para 10]
- Shashidhar Bhat v. Union Of India — W.P. No. 53664 of 2016, decided on 21-1-2020 by Karnataka High Court — Referred [Para 4]
- Singh Enterprises v. Commissioner — 2008 (221) E.L.T. 163 (S.C.) — Referred [Para 8]

List of Notifications Cited

- Notification No. 3/2013-ST, dated 1-3-2013 [Paras 3, 9, 12]

There was a very categorical provision, which required paying Service Tax under RCM basis in a particular situation. The Appellant felt that they were falling within the ambit of the said provision and therefore, liable to pay under RCM basis. Therefore, this was not mistake of law. In fact, it was mistake of fact as they were informed about the payment of 100% tax liability later on and it was not an interpretation issue or mistake of law that they ended up paying under RCM basis. From the facts, it appears that they had, at that point of time, rightly interpreted their liability and discharged the same under RCM basis. Therefore, it is not a case of payment under mistake of law rather it is a case of a double payment of tax due to some communication gap or for that matter, due to reconciliation of accounts at a later date between service provider and the Appellant. Be the case as it may, the fact remains that the refund of any nature has to be within the four walls of statutory provisions governing the grant of refund, which may arise on account of various situations including mistake of law or mistake of fact. The question is under what circumstances the limitation would not be applicable while considering the claim filed by the claimant before the statutory authority, who is a creature of statute and has to examine the claim within the provisions of the statute itself. The statute has clearly provided for limitation within which a claim can be filed and the authority in power to consider and grant such refund has to consider the claim within the provisions of statute itself and has no power to allow any refunds outside the statutory provisions governing limitation. It is settled position that the authorities created by the statute are the creatures of the statute and have to operate within the purview of the said statute under which they have been created. Therefore, the Original Authorities have rightly held that these claims are hit by time limit and therefore, liable to be rejected.

I also find that learned AR has relied on many case laws, which explicitly covers the situations where irrespective of whether paid under mistake of law or otherwise, the limitation would be applicable. Apart from relying heavily on the majority decision of Hon'ble Supreme Court in the ST/30022/2024 & ST/30277/2023 case of Mafat Lal Industries Vs UOI (supra), the reliance placed by learned AR on the following judgments, which are also quite relevant to the present issue and its ratio are applicable to the facts of the present case:-

- a) MGM International Exports Ltd Vs Assistant CST, Chennai (2021-TIOL- 989-HC-MAD-ST)
- b) Cannanore Handloom Exports Vs CCE, C & ST, Calicut [2021 (44) GSTL 345 (Ker)]

c) Uniroyal Marine Exports Ltd Vs CCE, Kozhikode [2021 (54) GSTL 156 (Ker)]

d) CC, NS-II Vs Purab Textile Pvt Ltd [2019 (365) ELT 285 (Bom)]

e) M/s Oil & Natural Gas Corporation Ltd Vs CGST, CE, Tiruchirapalli [Excise Appeal No. 41682/2015 - Final Order No.40696/2024 dt.20.06.2024]

19. On going through these judgments, it is obvious that the Hon'ble High Courts have ruled generally that even if there is a mistake committed by the Assessee, whether on account of law or facts, the remedy has to be only under the statute and therefore, provision of limitation, as provided under the statute, will have to be applied. In the case of Uniroyal Marine Exports Pvt Ltd (supra), the Hon'ble High Court of Kerala in Para 5 and Para 6 (reproduced below for ease of reference) have clearly upheld the view that there would be applicability of time limit even for the cases where the refund is arising on account of mistake of law or mistake of fact.

"5. The Learned Standing Counsel, however, relied on the Constitution Bench decision of the Hon'ble Supreme Court reported in *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536 = 1997 (89) E.L.T. 247 (S.C.)] and a decision of this Court reported in *Southern Surface Finishers and Another v. Assistant Commissioner of Central Excise* [2019 KHC 47 = 2019 (28) G.S.T.L. 202 (Ker.)].

6. This Court in *Southern Surface Finishers* considered the Constitution Bench decision and found that the mistake if committed by the Assessee, whether it be on law or facts; the remedy would be only under the statute. If that be so, the questions of law have to be answered in favour of the Revenue and ST/30022/2024 & ST/30277/2023 against the Assessee. But, however, we notice that the amounts have been refunded to the Assessee as per the order of the original authority. In such circumstances, the Revenue would have to recover the amounts from the Assessee, in which event we would be directing recovery of an amount which cannot be treated as tax due under Article 265 of the Constitution of India."

20. Therefore, in a nutshell, relying on the ratio of the judgments cited by the Revenue, I find that in the facts of the case of both the Appeals, there would be applicability of time limit prescribed under the Service Tax and since, admittedly, both the claims have been filed beyond the expiry of time limit, the rejection of the refund claims on this ground does not suffer from any infirmity.

Therefore, there is no ground to interfere with the Orders passed by the Commissioner (Appeals) in both the Appeals and the Appeals filed by the Appellant are liable to be rejected.

Annexure 6
Letter for request of Opinion

RV CONTRACTOR

Civil & General Contractors

Karol Bagh, New Delhi – 110005

☎ +91-7896541230 | ✉ rvcontractor@gmail.com

GSTIN: 07ABCDE1234X1Z1

To,
Mr. ABC
Karol Bagh,
Delhi-110005

Date: 02.01.2022

Subject: Seeking your Opinion on GST taxability for Works Construction Services to be provided to the Government.

Sir,

We are writing to seek your valued opinion and professional advice regarding a matter of tax applicability under the Goods and Services Tax (GST) Act, 2017.

Our firm, RV Contractor, is engaged in executing various civil construction contracts, including projects undertaken for Government departments and public sector undertakings. A specific query has arisen as to the taxability of services rendered to the government, qua construction works & the applicability of GST in accordance with the relevant provisions of the CGST Act, 2017 and associated notifications.

Given the technical nature of the issue and the potential implications for compliance and billing, we would appreciate your expert clarification on the subject matter.

We look forward to your considered opinion on the matter at your earliest convenience.

Thanking you

For M/s RV Contractor

Annexure 7
Letter of Opinion

Mr. ABC

Tax Consultant & GST Advisor
Karol Bagh, New Delhi – 110005

☎ +91-9874563210 | ✉ abc.taxexpert@gmail.com

|
To,
M/s. RV Contractor
Karol Bagh
New Delhi-110005

Date: 20.01.2022

Subject: Advisory Opinion on GST Exemption Applicability for Works Contract Services Provided to Government.

Sir,

This letter is in reference to your query regarding the applicability of Goods and Services Tax (GST) on works contract services rendered by you to Government departments or authorities, and whether such services qualify for exemption under the prevailing GST laws.

After, a detailed examination of your case and relevant provisions under the CGST Act, 2017, along with Notifications issued by the Government from time to time, we would like to advise as follows:

Relevant Provision: -

The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as *"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.* Thus, from the above it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc. of any immovable property only.

As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.

Further, on Works contract services (where the material is supplied by the contractor) Total GST rate is 12% and Harmonized System of Nomenclature (HSN) code applicable to it is 9954.

Nature of Services Provided by RV Contractor: Based on your description and documentation, the services provided by your firm are in the nature of **works contract**, involving both supply of goods and services (e.g., materials and construction). Such services generally fall under the definition of **composite supply** and are **not covered** under the category of "pure services." Therefore, where the contract involves construction, fabrication, or any work involving transfer of property in goods, and it does not qualify under any other exemption, GST shall be applicable.

Conclusion and Recommendation

Based on the information reviewed, **the services provided by M/s RV Contractor do not qualify for any GST exemption** under current law, as the nature of the contract involves supply of goods (materials) in addition to services. Hence, GST shall be chargeable under the heading of works contract service.

Thanking you,

Mr. ABC
Tax Consultant

Annexure 8

Copy of internal Letter by Auditor to Government

To,
Managing Director
National Highway Authorities of India
Regional Office
Delhi - 110001

Date: 20.02.2022

Subject: Intimation regarding GST Exemption on Works Contract Services observed during the audit.
Sir,

During the course of our Statutory Audit of the books of accounts of National Highway Authority of India for the financial year 2021-22, we have come across a particular transaction which appears to fall under the category of Works Contract Service provided to Government or a Governmental Authority.

Upon examination of the nature of the contract and related supporting documents, we are of the view that the said transaction qualifies for exemption from GST under *Notification No. 12/2017–Central Tax (Rate), dated 28th June 2017, as amended from time to time. Specifically, Entry No. 3 of the notification exempts pure services* (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government, or Union territory or local authority or a governmental authority or a government entity by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution.

However, it is further noted that in the present case, the work executed appears to be of such nature and provided to a government entity, and therefore it will qualify under the extended exemptions provided to works contract services under Entry No. 3A of the same notification subject to satisfaction of all conditions therein.

In view of the facts and documentation reviewed, *we conclude that this transaction qualifies as a Works Contract Service provided to a Government entity and is therefore exempt from the purview of GST*, as per the applicable provisions of Notification No. 12/2017–Central Tax (Rate) dated 28th June 2017, read with its amendments.

So, hereby you are instructed to recover the amount of Rs. 13,10,000.00 from M/s RV Contractors.

Thanking you
----S/d----

For XYZ & Co.
Chartered Accountants
FRN: 012345C

Annexure 9
Copy of Contract Awarded

CONTRACT AGREEMENT

Between

Central Ministry of Finance acting through, Principal Secretary Finance

And

RV Contractors

This Agreement is made on this 01st day of January, 2021,

BY AND BETWEEN

The Central Ministry of Finance, acting through Principal Secretary Finance, Government of India, having its office at [Address] (hereinafter referred to as the "Employer" or "Government", which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors, administrators, and assigns)

AND

RV Contractors, a registered firm having its office at Delhi, PAN:XXX_, GSTIN:XXXX, represented by its authorized signatory Mr. Raj Veer Singh, (hereinafter referred to as the "Contractor", which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors, legal representatives and permitted assigns).

WHEREAS:

1. The Government intends to execute certain works as described in the tender no. _____ dated _____, titled "_____" (hereinafter referred to as the "Works").
2. The Contractor submitted its bid dated _____ in response to the said tender and was selected as the successful bidder.
3. The Government has accepted the Contractor's bid for the total consideration of ₹20,00,00,000/- (Rupees Twenty Crores Only) inclusive of all applicable taxes including GST.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS UNDER:

1. SCOPE OF WORK

The Contractor shall execute and complete the Works as per the specifications, drawings, design, bill of quantities (BOQ), and other terms and conditions contained in the tender documents, including any corrigenda or amendments issued, all of which form an integral part of this Agreement.

2. CONTRACT PRICE

The total contract value shall be ₹20,00,00,000/- (Rupees Twenty Crores only) inclusive of GST @18% or as applicable. The Contract Price is firm and not subject to escalation except as otherwise provided under the applicable law.

3. TIME FOR COMPLETION

The Contractor shall complete the entire work within a period of ____ (_____) calendar months from the date of issue of the Letter of Acceptance (LoA) or Work Order unless extended by mutual agreement.

4. PAYMENT TERMS

1. Mobilization Advance: [If applicable]
2. Interim Payments: Against verified progress of work and submission of Running Account (RA) bills.
3. Final Payment: Upon successful completion and handing over of the Works, subject to deduction of any recoveries and submission of performance security.

All payments shall be subject to statutory deductions such as TDS, TDS under GST (if applicable), labour cess, etc.

5. TAXES AND DUTIES

The Contractor shall be responsible for payment of all taxes, if applicable, including GST, duties, royalties, and other levies lawfully payable.

6. PERFORMANCE SECURITY

The Contractor shall furnish a Performance Bank Guarantee amounting to 5% of the Contract Value (i.e., ₹1,00,00,000/-) within 15 days of issue of LoA, valid till defect liability period plus 60 days.

7. DEFECT LIABILITY PERIOD

The defect liability period shall be ____ months from the date of certified completion of the Works. Any defects noticed during this period shall be rectified by the Contractor at no additional cost.

8. TERMINATION

The Government reserves the right to terminate this Agreement at any stage if the Contractor:

- Fails to commence or complete the works as per schedule.
 - Violates any conditions of the contract.
 - Engages in corrupt or fraudulent practices.
-

9. DISPUTE RESOLUTION

Any disputes arising under this Contract shall first be attempted to be resolved amicably. If unresolved, the matter shall be referred to arbitration in accordance with the Arbitration and Conciliation Act, 1996 (as amended).

10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of India. Jurisdiction shall lie exclusively with the courts of _____ [e.g., New Delhi].

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all previous communications, representations, or agreements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

For and on behalf of the President of India

Name: _____

Designation: _____

(Signature with Seal)

For and on behalf of RV Contractors

Authorized Signatory: _____

Name: _____

Designation: _____

(Signature with Seal)

Witnesses:

1. _____ (Name, Address, Signature)

2. _____ (Name, Address, Signature)

Annexure 10
Copy of Invoice Raised

TAX INVOICE																																																						
Invoice No.	RV/2025-26/001		Invoice Date	27/06/2025																																																		
Supplier	RV Contractors		GSTIN	23XXXXXXXXXXZ1																																																		
Address	[Supplier Full Address]		State Code	23																																																		
Recipient	The Miminstry Of Finance (Through [Department Name])		GSTIN	23AAAAA0000A1Z5																																																		
Billing Address	[Department Full Address]		State Code	23																																																		
Reverse Charge	No																																																					
<table border="1" style="width: 100%; border-collapse: collapse;"><thead><tr><th style="width: 10%;">S.No.</th><th style="width: 15%;">SN/SAC Code</th><th style="width: 20%;">Description of Service</th><th style="width: 10%;">Qty</th><th style="width: 10%;">Unit</th><th style="width: 15%;">Rate (₹)</th><th style="width: 10%;">Amount (₹)</th></tr></thead><tbody><tr><td>1</td><td>9954</td><td>Local Works</td><td>1</td><td>Job</td><td>8690000</td><td>86,90,000.00</td></tr><tr><td></td><td></td><td>Contract Services (Construction)</td><td></td><td></td><td>Tax Summary</td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td><td>CGST @ 9%</td><td>6,55,000.00</td></tr><tr><td></td><td></td><td></td><td></td><td></td><td>SGST @ 9%</td><td>6,55,000.00</td></tr><tr><td></td><td></td><td></td><td></td><td></td><td>Total GST (18%)</td><td>13,10,000.00</td></tr><tr><td colspan="6" style="text-align: right;">Total Invoice Value (Inclusive of Taxes)</td><td>1,00,00,000.00</td></tr></tbody></table>						S.No.	SN/SAC Code	Description of Service	Qty	Unit	Rate (₹)	Amount (₹)	1	9954	Local Works	1	Job	8690000	86,90,000.00			Contract Services (Construction)			Tax Summary							CGST @ 9%	6,55,000.00						SGST @ 9%	6,55,000.00						Total GST (18%)	13,10,000.00	Total Invoice Value (Inclusive of Taxes)						1,00,00,000.00
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<i>In Words: Rupees One Crore Only</i>																																																						
Bank Name	[Bank Name]																																																					
Account No.	[123456789]																																																					
IFSC Code	[ABCD0123456]																																																					
Branch	[Branch Name]																																																					
Declaration: We declare that this invoice shows the actual price of the services provided and that all particulars are true																																																						
Encl : Details for Executed work as per contract conditions																																																						
					For RV Contractors (Authorized Signatory)																																																	

Annexure 11

Affidavit of RV Contractors for Admission of Additional Evidence

BEFORE THE HON'BLE GST APPELLATE TRIBUNAL

[Bench , New Delhi]

IN THE MATTER OF:

RV Contractors

Delhi
...Appellant

VERSUS

The Joint Commissioner of Goods and Services Tax

[Delhi]

...Respondent

AFFIDAVIT FOR ADMISSION OF ADDITIONAL EVIDENCE

I, Mr Raj Veer Singh, aged about 45 years, Proprietor of RV Contractors, having its principal office at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the appellant and am fully conversant with the facts of the present case; hence competent to swear this affidavit.
2. That the present appeal has been filed before this Hon'ble Tribunal against the order dated 08/02/2025 passed by the Respondent bearing Order No XXXXXXXX under the Central Goods and Services Tax Act, 2017.
3. That during the adjudication/appellate proceedings before the lower authority, certain material documents and evidence could not be submitted, due to non-availability at that time.
4. That the Appellant now seeks to place on record the following additional documents in support of its contentions as stated in the application for production of additional evidence as submitted above in the appeal
5. That the said documents are relevant and necessary for a just and proper adjudication of the matter and will enable the Hon'ble Tribunal to arrive at a fair conclusion.
6. That the omission to submit the said documents earlier was neither intentional nor deliberate and the same has occurred due to genuine and bonafide reasons.
7. That no prejudice would be caused to the Respondent by permitting the filing of the said additional evidence, and the same is in the interest of justice.
8. That I hereby pray that this Hon'ble Tribunal may be pleased to:- Admit the aforesaid additional evidence/documents as part of the record in the present appeal; and

- Pass such other and further orders as may be deemed fit and proper in the interest of justice.

VERIFICATION

I, the deponent above named, do hereby verify that the contents of this affidavit from paras 1 to 8 are true and correct to my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Verified at Delhi on this 1st day of July, 2025.

DEPONENT

(Signature)

Name: Rajveer Singh

Designation: Prop

For RV Contractors

Annexure 12
Form GSTR 7 A
[See rule 66(3)]

Tax Deduction at Source Certificate

1. TDS Certificate No. - TD/042022/1859207
2. GSTIN of deductor - 27ABCD00000B1DC
3. Name of deductor - National Highway Authorities Of India, Delhi
4. GSTIN of deductee - 07ABCDE1234X1Z1
5. (a) Legal name of the deductee - RV Contractors
- (b) Trade name, if any - RV Contractors
6. Tax Period in which tax deducted and accounted for in GSTR-7 - March 2022
7. Details of supplies and amount of tax deducted

Value on which Tax Deducted (₹)	Amount of Tax Deducted at Source(₹)		
	Integrated Tax	Central Tax	State Tax
1,09,16,667.00	0.00	1,09,167.00	1,09,167.00