

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

**PRINCIPAL BENCH - COURT NO.III**

**Service Tax Appeal No.51277 of 2018 (DB)**

[Arising out of Order-in-Appeal No.70(SM)ST/JPR/2018 dated 24.01.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Jaipur.]

**Commissioner of Central  
Goods & Service Tax, Customs and  
Central Excise, Alwar,  
A-Block Surya Nagar,  
Alwar,  
Rajasthan-301 001.**

**Appellant**

VERSUS

**M/s. Sesame Foods Pvt. Ltd.**  
SP-20, RIICO Industrial Area,  
Neemrana,  
Alwar, Rajasthan.

**Respondent**

**APPEARANCE:**

Shri Manoj Kumar, Authorised Representative for the appellant.  
Shri B.L. Narsimhan and Shri Shivam Bansal, Advocates for the respondent.

**CORAM:**

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

**FINAL ORDER NO.50694 /2025**

**DATE OF HEARING:05.05.2025  
DATE OF DECISION: 16.05.2025**

**BINU TAMTA:**

1. Revenue has filed the present appeal challenging the impugned order <sup>1</sup>, whereby the order-in-original has been set aside and refund application filed by the respondent has been allowed in view of the provisions of Section 104 of the Finance Act, 1994.

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<sup>1</sup> Order-in-Appeal No.70(SM)/ST/JPR/2018 dated 24.01.2018

2. The respondent is 100% EOU and is engaged in the manufacture of natural health, sesame seeds, extra virgin sesame oil, and sesame cake etc. The respondent was initially allotted Plot No.SP-20 ad-measuring 20,000 sq. mts. for undertaking industrial activity by Rajasthan State Industrial Development and Investment Corporation Ltd.<sup>2</sup> vide registered lease dated 21.05.1999 for a period of 99 years. The respondent applied for change of land use from industrial to commercial which was approved by RIICO on payment of conversion charges along with service tax amounting to Rs.1,50,44,629/- to RIICO, which the respondent paid to RIICO who deposited the same to the Government exchequer. As no service tax was leviable on conversion charges, the respondent filed a refund claim on 15.05.2015. The refund application was returned by the Assistant Commissioner vide letter dated 20.05.2014 due to absence of service tax payments as well as ST-3 returns and also that the amount needs to be claimed from RIICO. The respondent once again submitted the claim, however, the same was rejected on the ground that service tax amount of Rs.1,50,44,629/- of which refund is being claimed was deposited by RIICO on self-assessment basis which can be challenged by RIICO alone, for the purpose of reassessment. The respondent preferred an appeal before the Commissioner (Appeals), who was pleased to remand the case back to the Adjudicating Authority with the direction to pass a speaking order.

3. Show cause notice dated 15.07.2015 was issued proposing to reject the refund claim on the ground that the service tax was correctly paid by respondent to RIICO. The Assistant Commissioner, vide order-in-original dated 10.03.2016 rejected the refund claim, which was once again

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<sup>2</sup> RIICO

challenged before the Commissioner (Appeals) and has resulted in the impugned order, allowing the refund application in terms of Section 104 of the Act. On perusal of the balance sheet and financial records of the respondent, it was also noticed that the incidence of service tax has been borne by the respondent and has not been passed on to any other person. Reviewing the said order, the Revenue has filed the present appeal before this Tribunal.

4. Having heard both sides and perused the records of the case, we find that the refund claim has been allowed as it has been held that no service tax is leviable on conversion charges paid to RIICO for change of land use from industrial to commercial and hence the same was refundable in terms of Section 104(2) of the Act.

5. The provisions of Section 104 has been inserted in the Finance Act, 1994 w.e.f 31.03.2017 and the same reads as under :-

**“[Special provision for exemption in certain cases relating to long term lease for industrial plots.**

**104.(1)** Notwithstanding anything contained in Section 66, as it stood prior to the 1<sup>st</sup> day of July, 2012 or in Section 66B, no service tax, leviable on one time upfront amount (premium, salami, cost, price, development charge or by whatever name called) in respect of taxable service provided or agreed to be provided by a State Government industrial development corporation or undertaking to industrial units by way of grant of long term lease of thirty years or more of industrial plots, shall be levied or collected during the period commencing from the 1<sup>st</sup> day of June, 2007 and ending with the 21<sup>st</sup> day of September, 2016 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected, but which would not have been so collected, had sub-section(1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for claim of refund of service tax shall be

made within a period of six months from the date on which the Finance Bill, 2017 receives the assent of the President]”.

6. From the reading of Section 104(1), it is apparent that it starts with a non-obstante clause, “Notwithstanding anything contained in Section 66, as it stood prior to the 1<sup>st</sup> day of July, 2012 or in Section 66B” and then provides that no service tax is leviable on one time upfront amount in nature of premium, Salaami, cost, price, development charge, or any other amount by whatever name called for part of cost of industrial plot, in respect of taxable service provided or agreed to be provided by a state government, industrial development, corporation, or undertaking or industrial units by way of grant of long-term lease of 30 years or more of industrial plots during the period commencing from 1<sup>st</sup> day of June, 2007 and ending with the 21<sup>st</sup> day of September, 2016. Further, Clause (2) provides that refund shall be made of all such service tax which has been collected but would not have been so collected if sub-section (1) had been in force at all material times. In terms of the said provisions, there is no iota of doubt that the conversion charges were towards the change in the nature of the land use for which RIICO has merely granted an approval and it cannot be linked to providing any activity resulting in performing of service. Hence, no service tax can be levied on these conversion charges and since the respondent has already paid the service tax in respect thereof they are entitled to seek refund of it. As the respondent satisfies all the conditions under the section, the benefit of refund provided therein is admissible. The amended Lease Deed dated 21.04.2014 is for the period of more than 30 years and falls within the period commencing from 1<sup>st</sup> day of June, 2007 and ending with 21<sup>st</sup> day of September, 2016. Sub-clause (3) of Section 104 further provides for the limitation that the refund application should be filed within a

period of six months from the date on which the Finance Bill 2017 receives the assent of the President which was received on 31.03.2017. Therefore, the last date for filing the refund claim falls on 30.09.2017 whereas the respondent had already filed the refund claim on 15.05.2015 i.e. before the insertion of Section 104 and well before the cut-off date. In view of the statutory provisions of Section 104, the Commissioner (Appeals) has concluded that the respondent is eligible to claim refund both on the ground of merit as well as on limitation and we do not find any error in the same.

7. Reliance has been placed on the decision in **RIICO Ltd. versus CCE, Jaipur – I**<sup>3</sup>, where the Tribunal has held that lumpsum payments received from the allottees of plots in industrial area by RIICO for grant of long-term lease of 30 years or more is not liable to service tax in view of Section 104 of the Finance Act, 1994. The relevant para is set out below:-

“15. Admittedly, substantial part of the demand against the appellant in various proceedings, relate to their Service Tax liability on lump-sum premium amount, received by them from the allottees on allotment of land on long term basis. In view of the introduction of new Section 104 in the Finance Act, 1994 the appellant’s liability on such consideration no longer exists. The one-time payment received for grant of long term lease of 30 years or more of industrial plot, is not liable to Service Tax for all the periods covered in the present proceedings. “

8. On the issue of unjust enrichment, the Commissioner (Appeals) has also considered the aspect whether the respondent has passed on the incidence of service tax to the customers/clients or any other person. In this context, respondent has submitted the certificate dated 31.10.2017 issued by the Chartered Accountant certifying that the said amount of Rs.1,50,44,629/- paid to RIICO has not been passed on to any other person. Further, as per the books of accounts of the company, the said amount has

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<sup>3</sup> 2018(10) GSTL 92 (Tri. -Del.),

been shown as recoverable from the Government. In the balance sheet for the financial year 2013–14 and 2016–17, the said amount has been shown as 'Service Tax Refundable' in the Note No.1.09 as 'Loans and Advances'. On that basis, it was concluded that the incidence of service tax has not been passed on to any other person and consequently, the refund is admissible to the respondent.

9. The controversy of eligibility to claim refund stands allowed in terms of the statutory provisions and the Department has not been able to justify as to why the relief is not admissible under the provisions of Section 104 of the Act.

10. The respondent has raised several grounds in support of their claim for refund, however, since we agree with the impugned order based on the statutory provisions, it is not necessary to examine those grounds.

11. We do not find any reason to interfere with the impugned order and hence the same is affirmed. The appeal filed by the Revenue is, accordingly, dismissed.

[Order pronounced on 16<sup>th</sup> May, 2025.]

**(Binu Tamta)**  
**Member (Judicial)**

**(Hemambika R. Priya)**  
**Member (Technical)**

