CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

SERVICE TAX Appeal No. 12939 of 2014-SM

[Arising out of Order-in-Original No AHM-SVTAX-000-COM-008-14-15 dated 31.05.2014 passed by Commissioner of Service Tax - AHMEDABAD]

VIHAR AAHAR PVT LIMITED **Appellant**
400/32, Girdhar Master Compound,
Nr, Gurudwara, Saraspur,
Ahmedabad, Gujarat

VERSUS

COMMISSIONER OF SERVICE TAX, AHMEDABAD **Respondent**
7th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad, Gujarat -380015

APPEARANCE :
Shri Sudhanshu Bissa, Advocate for the Appellant
Smt. Sunita Menon, Superintendent (AR) for the Revenue.

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 11440/2025

DATE OF HEARING : 28.07.2025
DATE OF DECISION: 28.11.2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the impugned order passed by Commissioner Service Tax, Ahmedabad dated 31.05.2014 through which the learned Commissioner confirmed the demand of service tax of Rs. 12,43,904/- under the category of Outdoor Catering Service under Section 73 (2) of Finance Act, 1994. He has also ordered to consider the amount of 1,03,64,165/- out of gross income of Rs. 2,07,28,330/- received by the said service provider during the period from 01.03.2006 to 31.03.2009 as detailed in 'A', 'B' and 'C' of annexure 'A' to the Show Cause Notice, after

giving abatement of 50% of gross amount charged, provided under Notification No. 1/2006-ST dated 01.03.2006.

2. The facts of the case in brief are that the appellant M/s. Vihar Aahar Pvt. Limited having their registered office at 400/32, Girdhar Master Compound, Near Gurudwara, Saraspur, Ahmedabad, are engaged in the business of providing Outdoor Catering Services in the premises of Educational Institutions, Industries and other organizations. The services provided by the said service provider under the category of "Outdoor Caterer's Services", as defined under Section 65 (76a) of the Finance Act 1994, as amended, are liable to service tax. However, for the said activities of Outdoor Catering services, the said service providers were not registered with Service Tax Commissionerate at Ahmedabad. Intelligence received by the department indicated that the appellant was providing outdoor catering services to Indian Institute of Technology, Kanpur without payment of Service tax. Acting on the said intelligence, an inquiry into the matter was initiated and the said Service Provider was asked to produce the copies of agreements / contracts with Academic Institutions or Medical Establishments, Balance sheets, Income Tax returns, Bank Statements, invoices issued for the financial years 2004-05 to 2007-08. Statement of Shri Shivbhadursingh Bhagwandinsingh Thakur, Managing Director of M/s. Vihar Aahar Pvt Limited was recorded by the department officers on 08.07.2008 under Section 14 of Central Excise Act, 1944. Shri Thakur furnished the details of the amount received from the above institutions and industry for the catering services provided by their Company during the period from 2004-05 to 2007-08. Further, he promised to furnish the invoice details of the services provided and the amount collected in respect of the services provided by their Company in the above mentioned institutes and industries from 10.09.2004 onwards till 30.06.2008, within three

days. However, he failed to submit the invoice details of the services provided and the amount collected by them from IIT Kanpur, National Institute of Cooperative Management, Gandhinagar, JSW Steel Limited, Billari and other places from 10.09.2004 onwards till 30.06.2008.

2.1 The appellant informed vide his letter dated 28.01.2009 that they had started paying Service tax from April 2008 and enclosed the copies of challans. However, from the accounting code mentioned on these challans, it was revealed that the same pertained to the category of "Cleaning Services" and not 'Outdoor Catering Services'. The appellant also submitted the copies of TDS Certificates and bank statement. They also submitted copies of balance sheet for the year 2007-08 and 2008-09 alongwith Profit and Loss account and also the copies of Service Tax Registration certificate.

2.2 In these circumstances, the appellant was called upon to show cause vide F. No. STC/4-3/O&A/11-12 to the Commissioner, Service Tax, Ahmedabad as to why:-

(i) The catering services provided by them as above should not be considered as taxable service under the category of "Outdoor Caterer's Service" as defined under Section 65 (76a) of the Finance Act 1994, as amended, and the amount of taxable value of Rs. 3,08,75,342/- received as payment/recovered by them from their customers should not be considered as taxable value and Service Tax amounting to Rs. 35,32,949/- (Including Education Cess of Rs. 68,978/- and H & Secondary Education Cess of Rs. 15,071/-) for the period from 01.03.2006 to 2009-10 as shown in Annexure-"A" should not be demanded from them under proviso to section 73(1) of the Finance Act, 1994, invoking the larger period of five years.

(ii) The total Income shown under the head "Other Income" at schedule 8 of Balance Sheets for the year 2006-07 to 2009-10 should not be treated as taxable value for the purpose of calculating the taxable liability under the category of their main activity i.e. "Out Door Catering Service" and accordingly Service Tax amounting to Rs. 16,60.942/- (Including Edu. Cess of Rs. 32,382/- and H & S. Edu. Cess of Rs. 9,447/-) for the period from 2006-07 to 2009-10 as shown as Annexure-"C" should not be demanded from them under proviso to section 73(1) of the Finance Act, 1994, invoking the larger period of five years.

(iii) Interest as applicable on the amount of service tax liability of Rs. 35,32,949/- and Rs. 16,60,942/- as mentioned in (i) & (ii) above should not be paid by them for the delay in making the payment, under section 75 of the Finance Act, 1994 as amended;

(iv) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 as amended for the failure to make the payment of service tax payable by them;

(v) Penalty should not be imposed upon them, under Section 77 (1) (a) of the Finance Act, 1994 as amended for the failure to take Service Tax Registration at the relevant time within stipulated period;

(vi) Penalty should not be imposed upon them, under Section 77(1)(c) of the Finance Act, 1994 as amended for the failure to furnish information and documents and also failure to appear in response to several summons issued to them;

(vii) Penalty should not be imposed upon them, under Section 78 of the Finance Act, 1994 as amended for suppressing the value of taxable

services provided by them before the Department with intent to evade payment of service tax amounting to Rs. 35,32,949/- and Rs.16,60,942/- as mentioned in (i) & (ii) above.

2.3 The appellant vide their letter dated 19.05.2011 filed reply to the Show Cause Notice. The above Show Cause Notice was adjudicated by the Commissioner, Service Tax Ahmedabad vide order dated 30.04.2012 and in the order, the learned Commissioner mentioned the following four issues which are to be decided in this case:-

(i) Whether the demand of Rs. 10,45,142/- on income of Rs.1,01,47,012/- under the category of outdoor catering service is wrongly raised in the present show cause notice as contended by the said service provider being beyond jurisdiction because the demand has already been raised by the Central Excise Commissionerate, Kanpur.

(ii) Whether the demand on income of Rs.13,63,901/-, Rs.7,87,720/- and 7,54,295/- under the category of 'outdoor catering service is wrongly raised in the present show cause notice being beyond jurisdiction.

(iii) Whether the amounts as listed at Sr. No 1 to 10 of Annexure-A to the show cause notice are related to provision of outdoor catering service' or are outside the purview of service tax on the basis of payment of VAT on these amounts.

(iv) Whether the amount of Rs.1,40,14,857/- as detailed in Annexure-B and Annexure-C to the show cause notice are related to provision of 'Outdoor Catering service’ or are outside the purview of service tax on the basis of payment of VAT on these amounts.

2.4 Taking into consideration the defense reply submitted by the appellant, the learned Commissioner held that the demand raised in the annexure 'A' is required to be re-quantified and he re-quantified the demand which is as under:-

Year	**2005-06 (March-2006)**	**2006-07**	**2007-08**	**2008-09**	**Total**
Total income from states (A+B+C)	**26,60,048/-**	**1,39,65,098/-**	**40,78,630/-**	**24,554/-**	**2,07,28,330/-**
Abated value i.e. 50 % of the gross value	**13,30,024/-**	**69,82,549/-**	**20,39,315/-**	**12,277/-**	**1,03,64,165/-**
Rate of Service Tax (including Edu. Cess) (%)	**10.2%**	**12.24%**	**12.36%**	**12.36%**	**------**
Service Tax (including Edu. Cess) payable (%)	**1,35,662/-**	**8,54,664/-**	**2,52,060/-**	**1,518/-**	**12,43,904/-**

2.5 The learned Commissioner held that in view of the re-quantification, the total demand of Rs. 24,87,807/- on 'Outdoor Catering Service' is reduced to Rs. 12,43,904/- and the demand of Rs. 12,43,903/- is unsustainable on account of re-quantification. He further held that appellant has provided Outdoor Catering services as defined under Section 65 (76a) of the Finance Act, 1994 which is taxable under Section 65(105)(zzt) of the Finance Act, 1994 to the service recipients mentioned in 'A' 'B' and 'C' of Annexure-A to the show cause notice and Rs. 1,03,64,165/- is the taxable value of the said service under Section 67 of the Act on the gross income of Rs. 2,07,28,330/- received by them during the period from 01.03.2006 to 31.03.2009. Therefore, Service tax, inclusive of Education Cess & Higher Education Cess of Rs. 12,43,904/- on the said taxable value is recoverable from the said service provider under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 ibid.

2.6 The learned Commissioner also considered the demand of service tax of Rs. 16,60,942/- as detailed in Annexure 'B' and 'C' of the Show Cause Notice under the category of 'Outdoor Catering Service'. The learned Commissioner found that income from column 1,2,4,6,7,8,9,14,16 and 19 received by the appellant is chargeable to service tax under the category of Outdoor Catering Service. The appellant was held to be eligible for abatement as per Notification No. 1/2006-ST dated 01.03.2006. He re-quantified the demand as under:-

Year	Total value of income column under 1,2,4,6,7,8,9, 14,16 & 19	Abated value i.e. 50 % of the gross value	Rate of Service Tax (including Edu.cess) (%)	Service Tax (including Edu.cess) payable (%)	Value not liable to tax under outdoor catering service'	Demand not sustainable
2006-07	45,13,937/-	22,56,969/-	12.24%	2,76,253/-	33,63,194/- (11,06,226/- +22,56,968/-)	4,11,655/-
2007-08	24,85,153/-	12,42,577/-	12.36%	1,53,583/-	27,85,961/- (15,43,385/- +12,42,576/-)	3,44,345/-
2008-09	7,17,328/-	3,58,664/-	12.36%	44,331/-	8,73,974/- (5,15,310/-+ 3,58,664/-)	1,08,023/-
2009-10	30,21,028/-	15,10,514/-	10.3%	1,55,583/-	16,23,004 (1,12,490/- +15,10,514/-)	1,67,169/-
Total	1,07,37,446/-	53,68,724/-		6,29,750/-	86,46,133/-	10,31,192/-

2.7 Therefore, the learned Commissioner held that Service tax inclusive of Education cess & Higher Education cess of Rs. 6,29,750/- on the taxable value of Rs. 53,68,724/-, after giving abatement of 50% of the gross amount charged provided under Notification No. 1/2006-ST dated 01.03.2006 on the amount of Rs. 1,07,37,446/- received by the said service provider, during the years 2006-07 to 2009-10, is recoverable under the category of 'Outdoor Catering service' from the said service provider under proviso to Section 73(1)

of the Finance Act, 1994 along with interest under Section 75. Remaining income of Rs.86,46,133/- on account of 50% abatement & Rs.32,77,411/- the total value pertaining to income under Column No. 3, 5, 10, 11, 12, 13, 15, 17, 18, 20 and 21 is not taxable under the category of 'Outdoor Catering service'. Accordingly, the demand of Rs. 10,31,192/- is not sustainable. Learned Commissioner also came to the conclusion that the claim made by the appellant for benefit of cum-tax value is not allowable to them.

2.8 Learned Commissioner also came to the conclusion that this is a case of improper assessment amounting to deliberate non-declaration and suppression of vital facts with a willful intention to evade payment of service tax. Accordingly, invoking of extended period under proviso to Section 73(1) of the Act is fully justified.

2.9 Feeling aggrieved from the impugned Order-in-Original, the present appeal has been filed before this Tribunal.

3. Learned Counsel for the appellant submitted that learned Commissioner has confirmed the demand for activities that have admittedly taken place outside the area of Ahmedabad Commissionerate i.e. IIT Bombay/Povai, JSW Steels Karnataka and also at various places in the state of Gujarat which were beyond the jurisdiction of Ahmedabad Commissionerate. The learned Commissioner has no jurisdiction to have conducted an enquiry for the services rendered at such areas and demand of service tax confirmed by the Commissioner Ahmedabad for the services provided in other states and at places beyond the territorial jurisdiction of Ahmedabad Commissionerate is *ex facie* illegal and without jurisdiction. Only because receipt for payment for the bills for such services have been issued by the appellant from Ahmedabad office and accounting of the bills raised to the client like JSW Steels may have

been done at Ahmedabad, Commissioner Ahmedabad cannot assume jurisdiction on the services that have admittedly been provided in other states.

3.1 The learned Counsel for the appellant also submitted that the learned Commissioner has demanded service tax for the appellant's business activities involving sale of eatable like biscuits, packed namkeens, tea, coffee etc. because sale of these eatables from canteens was not in the nature of providing outdoor catering service, more so when VAT was also levied and collected by the concerned authorities on sales of these eatables. The Commercial Tax department has confirmed collection / recovery of VAT on sale of these eatables and the agreements / contracts between the appellant and Indian Railways, Airport Authority etc. also established that the appellant was allowed only to sell such eatables from the canteens / restaurants but no cooking for providing any catering service was permitted to the appellant. The learned Counsel for the appellant cited the order passed by CESTAT Bangalore in **LSG Sky Chefs (I) Pvt Ltd** vs **Commissioner of ST Bangalore** reported in 2010 (18) STR 37 (Tri. Bangalore) in which it was held that service tax was not leviable when VAT was paid on supply of goods deemed as sale and when the agreements between the parties made it clear that the appellant was allowed only to sell readymade eatables, the order confirming service tax demand on all earnings / collection of the appellant which was for sale of the eatable items also is liable to be set aside, being *ex-facie* illegal and without jurisdiction.

3.2 The learned Counsel for the appellant also submitted that the learned Commissioner has erred in confirming the demand of service tax as regards the sale of goods made at JSW Steel and also as regards other income shown in the appellant's balance sheet because service tax was not leviable on other income nor on the value of the eatables sold at JSW Steel and other places.

Demand for service tax was initially made in the Show Cause Notice on "Other income" shown in the balance sheets without clarifying how 21 different heads lumped under the broad description of "other income" was value of Outdoor Catering Service, and when the appellant explained that there was no jurisdiction in treating this "other income" as value of catering service, the Commissioner reduced the amount to Rs. 1,07,37,446/- by arbitrarily holding that 10 out of 21 heads shown under broad description of "other income" were for different outdoor catering service. There was no justification for the learned Commissioner in holding that 10 heads aggregating to Rs. 1,07,37,446/- were for the income / value of different outdoor catering services provided by the appellant and therefore, the demand of RS. 6,29,750/- on "other income" is without any jurisdiction and justification. The learned Counsel for the appellant also submitted that reduced amount of Rs. 1,07,37,446/- by discarding 11 out of 21 heads also includes the income from places other than those which fall under the jurisdiction of the Ahmedabad Commissioner and therefore also the demand of Rs. 6,29,750/- is incorrect and illegal. He also submitted that the canteen maintained at places like factory of JSW Steel also involved sale of prepared / packed eatables like biscuits, namkeem, tea, coffee etc. and therefore the commissioner had no jurisdiction to straightaway confirm demand of service tax on the entire amount charged and collected by the appellant from JSW Steel.

3.3 The learned Counsel for the appellant also submitted that the confirmation of demand under proviso to Section 73 (1) of the Act is also illegal because larger period of limitation has been wrongly invoked by the learned Commissioner. The appellant had initially obtained a service tax registration and paid service tax also. However, the registration was surrendered only because the Central Government exempted the service by

virtue of Notification No. 20/2004-ST dated 10th September, 2004 and the appellant was not aware that this notification was withdrawn from 1st March, 2006 while providing abatement of 50% in gross value of the service. The appellant was discharging liability of VAT and therefore also the appellant was under a bonafide impression that service tax was not leviable on the activities when VAT on sale of goods was paid for the same, and some of the clients like IIT, Kanpur also gave the same impression to the appellant. All the business activities of the appellant were conducted after entering into regular agreements and all the transactions including income and receipts have been duly shown in the audited books of accounts and balance sheets which have been filed before the Government agencies also. It is not the Revenue's case that any of the income or receipts were not shown in the appellant's balance sheets and therefore, the entire income and receipts out of the business activities were shown in the public documents like audited balance sheets and there was no deliberate suppression of facts on the appellant's part with intend to evade payment of service tax. Only because the appellants surrendered registration because of the exemption and then did not obtain registration again when amendment in the scheme of service tax took place, invocation of larger period of limitation could not be justified. Therefore, the demand of service tax for the period from 01.03.2006 to 31.03.2010 under Show Cause Notice dated 19.04.2011 is barred by limitation.

3.4 The learned Counsel for the appellant prayed that the appeal of the appellant be allowed and the impugned order passed by the learned Commissioner be set aside.

4. The learned Authorised Representative for the department reiterated the impugned order passed by the learned Commissioner and prayed that the

impugned order has been passed in accordance with law and therefore, it should be upheld and the appeal may be dismissed.

5. I have heard the learned Counsel for the appellant and learned Authorised Representative for the department and perused the records.

5.1 I agree with the learned Counsel for the appellant that jurisdictional error has been committed by the learned Commissioner in passing the impugned order because the activities for which demand has been made by the learned Commissioner taken place outside the area of Ahmedabad Commissionerate i.e. IIT Bombay / Povai, JSW Steel Karnataka and also various places in the state of Gujarat which were beyond the Jurisdiction of Ahmedabad Commissionerate. It is the admitted position that location of an assessee decides the jurisdiction in respect of the place where the service has been provided. In the present case, though the receipts for payment received for the outdoor catering services have been issued from the appellant's Ahmedabad office and the accounting of the bills raised to the clients like JSW Steel may have been done at Ahmedabad, yet the Commissioner Ahmedabad cannot assume jurisdiction to demand service tax on the services that have admittedly provided in other states. The cause of action will arise at a place where the service was rendered. Therefore, I am of the view that the learned Commissioner erred in demanding service tax from the appellant outside the area of his jurisdiction pertaining to services provided at IIT Bombay / Povai, JSW Steel Karnataka and other places in the state of Gujarat which were beyond his jurisdiction.

5.2 In this context, the argument of the learned AR for the department cannot be accepted that as the bills were issued from Ahmedabad office and all receipts evidencing payments from Mumbai have also been issued from Ahmedabad office and they have not registered themselves at Mumbai or

Ahmedabad therefore the Commissioner Ahmedabad has jurisdiction to adjudicate the case. In this connection, the learned AR has cited **Indian Coffee workers Co-operative Society Limited** vs. **CCE Allahabad** reported in 2014 (33) STR. 266 (Tri.Delhi) in which it has been held that when challenge to territorial jurisdiction of Allahabad Commissionerate was not addressed before the Adjudicating Authority, Appellate Authority or the Tribunal and outdoor catering service was provided and cause of action occurred within territorial limits of the concerned commissionerate, then jurisdiction being a mix question of fact and law, no failure of justice occurred in exercising jurisdiction by Allahabad Commissionerate. The order mentioned above is not applicable in the present case because services were provided at Mumbai, Bellari in Karnataka and other places in Gujarat and no jurisdiction can be assumed by the learned Commissioner Ahmedabad regarding Outdoor Catering Services provided at Mumbai, Bellari in Karnataka and places at Gujarat other than Ahmedabad

5.3 I also agree with the learned Counsel for the appellant that the Commissioner erred in demanding service tax for the appellant's business activities involving sale of eatables like biscuits, packed namkeen, tea, coffee etc. because sale of these eatables from canteens was not in the nature of providing outdoor catering service. I am also of the view that when VAT was levied and collected by the concerned authorities on sale of these eatables, demand of service tax on these activities was not justified. In this context, the order passed by CESTAT in **LSG Sky Chefs (I) Pvt Ltd** (supra) is relevant that service tax was not leviable when VAT was paid on supply of goods deemed as sale and the agreement between parties made it clear that the appellant was allowed only to sell readymade eatables. In this case, the Commercial Tax department has confirmed collection of VAT on sale of these

eatables. It is also clear from the perusal of agreements / contracts between the appellant and his clients that appellant was allowed only to sell such eatables from the canteens / restaurants but no cooking for providing any catering service was permitted to the appellant. Therefore, I am of the view that the demand of Rs. 12,43,904/- is without jurisdiction and is liable to be set aside.

5.4 I also agree with the learned Counsel for the appellant that the learned Commissioner erred in demanding service tax as regards the sale of goods made at JSW Steel and as regards "other income" shown in the appellant's balance sheets because service tax was not leviable on other income nor on the value of the eatables sold at JSW Steel or other places. There seems to be no justification in holding that 10 heads aggregating to Rs. 1,07,37,446/- were for the income / value of different outdoor catering services provided by the appellant and therefore demand of Rs. 6,29,750/- on "other income" cannot be sustained.

5.5 I do not agree with the learned Counsel for the appellant that learned Commissioner erred in invoking larger period of limitation. I am of the view that the learned Commissioner has rightly invoked larger period of limitation because the appellant failed to obtain service tax registration w.e.f. from 01.03.2006 when the Notification No. 20/2004-ST dated 10th September, 2004 was withdrawn while providing abatement of 50 % in gross value of the service. This action cannot be held bonafide and it appears that the appellant failed to get service tax registration with intention to evade service tax. Therefore, larger period of limitation was rightly invoked by the learned Commissioner.

5.6 I agree with the learned Counsel for the appellant that the learned Commissioner failed to consider the value on which service tax was demanded

which required backward working because the figure taken by the Commissioner were not that of value but they were cum tax amount from which the element of service tax payable had to be abated. By virtue of the Section 67 of the said Act which is akin to erstwhile Section 4 (4) (d) (ii) of the Central Excise Act, 1944, it is clear that service tax payable had to be abated from the total amount recovered by a person from the client, but this claim of the appellant has been rejected without any proper justification.

5.7 In view of the above discussion I have come to the conclusion that the learned Commissioner erred in passing the impugned order and the impugned order is not sustainable. It is liable to be set aside whereas the appeal is liable to be allowed by way of remand to the learned Commissioner with the direction that he will pass a *de-novo* order in the light of the discussion made in this order expeditiously without delay.

6. Consequently, the appeal is allowed in above terms.

(Order pronounced in the open court 28.11.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Dharmi