

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70589 of 2025**

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APPL-MRT-199-2024-25, dated-25.10.2024 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

**M/s Ajay Kumar Agarwal**

**.....Appellant**

(Ajanta Hotel, Khushal Nagar, Station Road  
Moradabad, Uttar Pradesh 201002)

*VERSUS*

**Commissioner, Central Excise, Meerut**

**....Respondent**

(Opposite C.C.S. University, Mangal Pandey Nagar  
Meerut, Uttar Pradesh 250002)

**APPEARANCE:**

Shri Madhukar Anand, Consultant for the Appellant

Mrs. Chitra Srivastava, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.-70810/2025**

DATE OF HEARING : 19.11.2025

DATE OF DECISION : 19.11.2025

**P. K. CHOUDHARY:**

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No. GZB-EXCUS-000-APPL-MRT-199-2024-25, dated 25.10.2024 passed by Commissioner (Appeals) CGST, Meerut.

2. Briefly stated, the facts of the case are that M/s Ajay Kumar Agrawal, Ajanta Hotel, Moradabad is engaged in Accommodation in Hotels, Service Tax Registration No.AELPA6192ASD001 and availing exemption as per Entry No.18 of Mega Exemption Notification No.25/2012 (S.T.) as amended by which "Services by a hotel, inn, guest house, club,

campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent" were exempted.

3. On the basis of Third Party/ITR Data, the Department observed that receipts in 2014-15 is Rs.35,28,443/- whereas taxable value shown in ST-3 is Rs.95,052/- and started enquiry on 04.12.2020 and issued Show Cause Notice<sup>1</sup> on 15.12.2020 for demand of Service Tax on differential Taxable value of Rs.34,33,391 [Rs.35,28,443 (ITR data) - Rs.95,052 (ST-3)] for Service Tax demand of Rs.4,24,367/-.

4. In reply to the SCN, it was submitted that Tariff rate/Room rent is less than Rs.1,000/- per day hence exempted and in case wherein Tariff rate/Room rent is more than Rs.1,000/- per day due to extraordinary conditions i.e. providing extra bed/extra heater/cooler/amenities then tax has been paid for such room rent. Data/documents for receipt of Rs.2,59,695/- during 09.01.2015 to 27.01.2015, are produced to prove that room rent/tariff value was less than Rs.1,000/- per day.

5. The Assistant Commissioner, Moradabad in its Order-In-Original dated 29.09.2022 held that amount of Rs.2,59,695/- received during the period from 09.01.2015 to 27.01.2015 is non-Taxable as Tariff Value/Room rent was less than Rs.1,000/- per day but for the balance amount of Rs.31,73,696 [Rs.34,33,391- Rs.2,59,695], data is not available, hence, taxable and therefore, demand of Rs.2,35,361/- is confirmed with interest and also imposed equal amount of Penalty under Section 78 and a penalty of Rs. 10,000/- under Section 77 (1) (c).

6. Being aggrieved, an Appeal filed before the First Appellate Authority and the Commissioner (Appeals) vide the Order-In-Appeal dated 26.12.2023 remanded the case holding that: -

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<sup>1</sup> SCN

- (i) The demand for the period from April 2014 to September 2014 is barred by limitation;
- (ii) The SCN for the period from October 2014 to March 2015 is not barred under limitation because Central Govt. vide Notification dated 30.09.2020 extended the period of 5 Yrs as mandated under Section 73 of the Finance Act up to 31<sup>st</sup> December 2020.
- (iii) Since the party failed to provide documents /evidence which can establish their claim that amount of Rs.34,33,391/- has been received against the services on which Service Tax is not leviable.
- (iv) The matter is remanded back for re-determination of Service Tax liability for the period from October 2014 to March 2015.

7. After remand of the case, the relevant documents namely chart of non-taxable and taxable receipts, Customers entry Register, photocopies of Invoices/ vouchers for the period 01.10.2014 to 31.03.2015 showing total receipts of Rs.20,96,580/- out of which Rs. 20,01,528/- was non-taxable being tariff rate/room rent less than Rs.1000/- per day and remaining Rs.95,052/- due to extraordinary/exceptional amenities provided to customers were provided to Assistant Commissioner/Deputy Commissioner Division Moradabad. The Deputy Commissioner Division Moradabad vide Order-In-Original No.4/DC/ST/MBD/2024 dated 28.06.2024 requantified the Taxable Value for the period from 01.10.2015 to 31.03.2015 as Rs.20,01,528/- [Rs.20,96,580 - Rs.95,052] and held it taxable and confirmed Service Tax demand of Rs.1,48,433/- with interest and he also imposed an equal amount of Penalty under Section 78 and a penalty of Rs.10,000/- under Section 77 (1) (c).

8. Being aggrieved, again an appeal was filed before Commissioner (Appeals). It was submitted that in the earlier proceeding, the receipts of Rs.2,59,695/- during 09.01.2015 to 27.01.2015, was already held to be non-taxable since room rent

collected being less than Rs.1000/- per day, then the same amount which is also a part of the amount of Rs.20,01,528/- received during the period 01.10.2014 to 31.03.2015 cannot be held as Taxable.

9. The Ld. Commissioner (Appeals) decided the Appeal vide the impugned Order-In-Appeal dated 25.10.2024 wherein he has observed that:-

*"7.5 I observe that the appellant has submitted charts of purportedly non-taxable receipts and taxable receipts, customer entry register and photocopies of voucher / invoices for the period 01.10.2024 to 31.03.2015 and photocopies of customer entry register for the period 01.10.2014 to 31.03.2015 and claimed that he is eligible for exemption provided under Sr. no. 18 of Notfn. No 25/2012 (St) dated 20.06.2012 as amended by Notfn. No 6/2014 -ST dated 11.07.2014*

*7.6 I find that the benefit of exemption provided under Sr. no. 18 of Notfn 25/2012 substituted by Notfn 6/2014-ST dated 11.07.2014, is not available to the Appellant because the appellant failed to submit any document / information that their declared tariff of a unit was below Rs. 1000/- per day during the period 01.10.2014 to 31.03.2015."*

10. It was also held that the amount of Rs.2,59,695/- received during 09.01.2015 to 27.01.2015 is an integral part of the receipts for the period from October 2014 to March 2015 and therefore, the said amount needs to be deducted and accordingly, redetermined the Taxable value as Rs.17,41,833 (Rs.20,01,528 – Rs.2,59,695) and reduced the Service Tax demand to Rs.1,29,174/- along with interest and also imposed a penalty of Rs.1,29,174/- under Section 78 and a penalty of Rs.10,000/- under Section 77 (1) (c) of the Finance Act, 1994.

Hence, the present appeal before the Tribunal.

11. The learned consultant appearing on behalf of the Appellant submitted that the declared tariff rate/room rent was less than Rs.1,000/- per day except in some circumstances wherein extra bed/extra facilities were provided and for that extra services consideration was received which resulted in the total billing of more than Rs.1,000/- per day and the Service Tax was paid on such transactions. I find that the Appellant has submitted a summary of room rent received from 01<sup>st</sup> October, 2014 to 31<sup>st</sup> March, 2015 showing the room number, customer's name, period of stay, rent per day, total amount received, date of receipt of payment and invoice number.

12. It is his submission that out of the total receipts of Rs.20,96,580/- during the period under dispute, an amount of Rs.20,01,528/- has been received against the room rent charged wherein the tariff rate was less than Rs.1,000/- per day and the amount of Rs.95,052/- against the room rent wherein the collection was more than Rs.1,000/- per day.

13. The learned Consultant further submitted that whenever the amount collected exceeded Rs.1,000/- per room per day, applicable Service Tax has been paid.

14. Learned Departmental Representative appearing on behalf of the Revenue justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

15. Heard both the sides and perused the appeal records.17.

16. I find that the SCN dated 15.12.2020 was received on the basis of third party data received from the Income Tax Department for the Financial Year 2014-15. It appeared to the Service Tax Department that there is short payment of Service Tax by the Assessee and accordingly, SCN was issued proposing to demand the Service Tax which was alleged to be short paid.

17. I find that in view of the submissions of the Appellant-Assessee before the Lower Authorities, the Service Tax demand

of Rs.4,24,367/- has been finally reduced to Rs.1,29,174/-. On perusal of records, I note that the Appellant is registered with the Service Tax Department and ST-3 returns were being regularly filed. Revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS statement. I note that without further examining the reasons for the difference in the two statements, Revenue has raised the demand. I note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for the said difference and without establishing that the entire amount received by the Appellant as reflected in the Form 26AS statement, being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since, it is not legal to presume that the entire differential amount was on account of consideration for providing services.

18. In view of the above discussion, the demand of Service Tax of Rs.1,29,174/- is set aside. The penalties imposed under Sections 78 & 77 (1)(c) are set aside. The appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

**Sd/-**  
**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

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