CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21741 of 2015

(Arising out of Order-in-Appeal No.COC-EXCUS-000-APP-005-15-16 dated 28.04.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Cochin.)

M/s. MFAR Enterprises Private Ltd.
NH 17, Bypass,
Kundanoor Junction,
Kochi – 682 305.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Customs and Service Tax
C.R. Building,
I.S. Press Road,
Cochin – 682 018.

Respondent(s)

APPEARANCE:

Shri Syed Peeran, Advocate for the Appellant.

Shri Vinod Kumar Garhwal, Superintendent (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 22075 / 2025

DATE OF HEARING: 02.12.2025

DATE OF DECISION: 02.12.2025

PER: R. BHAGYA DEVI

This appeal is filed by the appellant against Order-in-Appeal No.COC-EXCUS-000-APP-005-15-16 dated 28.04.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Cochin.

2. Briefly the facts are that M/s. MFAR Enterprises Pvt. Ltd. Maradu P.O, Kochi, is a commercial concern owning land and buildings in Maradu, which have been leased to M/s. MFAR Hotels Ltd., Maradu. The Revenue alleging that the appellant was into renting of immovable property and had failed to discharge service tax, issued a show-cause notice demanding service tax on the amount received from their client for providing the service of renting of immovable properties. The original authority confirmed the demand of service tax which was upheld by the Commissioner (Appeals) in the impugned order rejecting the appellant's plea that they fall under the excluded category since they are into in the business of hotels. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned counsel submits that the appellant is a leading infrastructure company owning land and buildings in Maradu, Kerala and entered into two leasing agreements with M/s. MFAR Hotels Ltd. Maradu. Further, he submitted that the agreement dated 08.09.2005 clearly provides for the lease of land and hotel building complex with other facilities with the objective of running and operating it as a luxury hotel. The impugned order also admits the fact that the hotel provides various facilities such as conference rooms, restaurants, business center and boat jetty with relaxing area. Since the basic purpose of the luxury hotel is used for accommodation purpose, it cannot be considered as renting of movable property as defined under Section 605 (105)(zzzz) of the Finance Act, 1994.

3.1 Referring to the definition, it is submitted that the definition specifically excludes buildings used solely for residential purposes and buildings used for the purpose of accommodation, including hotels, hostels, boarding, holiday

accommodation tents, camping facilities etc. Therefore, the activity of leasing of renting of buildings used for accommodation such as hotels fall outside purview of service tax net and it was also clarified by the Board vide letter dated 28.02.2007. Reliance is also placed on **Jai Mahal Hotels Pvt. Ltd vs. CCE: 2014 (36) STR 669 (Tri.-Del)** and **Leisure Hotels Ltd. vs. CCE & CGST: 2019 (9) TMI 667, CESTAT New Delhi**.

4. The Learned Authorized Representative (AR) for the Revenue reiterated the findings of the Commissioner (A) in the impugned order suggesting that the leasing of the property clearly falls under the category of 'renting of immovable property' and is not excluded as claimed by the appellant.

5. Heard both sides. The period of dispute is from June 2007 to March 2008. As per Section 65(105)(zzzz) during the disputed period, the definition of *"Taxable Service" which means any service provided or to be provided to any person, by any other person, by renting of immovable property or any other service in relation to such renting for use in the course of or, for furtherance of, business or commerce.*

> ***Explanation 1* -** For the purposes of this sub-clause, "immovable property" includes -
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> (i) Building and part of a building, and the land appurtenant thereto;
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> (ii) Land incidental to the use of such building or part of a building;
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> (iii) The common or shared areas and facilities relating thereto; and
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> (iv) In case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,
>
> (v) Vacant land, given on lease or license for construction of building or temporary structure at a later but, does not stage to be used for furtherance of business or commerce but, does not include -
>
> (a) Vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) Vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

(c) Land used for educational, sports, circus, entertainment and parking purposes; and

(d) Building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

"9(iil) As per the lease agreement furnished by the appellant, they had leased out the land and building for operating the luxury hotel and to run a convention centre. From the above definition and explanation, it is evident that the service provided by the appellant under the category "Renting of immovable property service". Appellant contends that based on the Delhi High Court's Order, renting of immovable property is not taxable. However by virtue of clause 76 of the Finance Act, 2010, Section 65(105) (zzzz) has been retrospectively amended and hence renting activity is taxable with effect from 1.6.2007.

Explanation 2 – For the purpose of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce.

6. The Commissioner (Appeals) referring to the above definition observes as follows in the impugned order:

"9(iv) Another argument is that as per Sub- clause (d) building used for residential purpose, accommodation including hotels etc. are excluded from the purview of service tax. However, on going through the provisions carefully, it is evident that the exclusionary clause is applicable for the buildings including hotels used only for accommodation purpose and not used for other purposes. As per Explanation 2, if an immovable property partly for use in the course or furtherance business or commerce and partly for residential or any other purposes shall be urgence of deemed to be immovable property for use in the course or

> furtherance of business or commerce. Hence , land/buildings etc. leased out by the appellant for running convention Centre and Hotels can be considered as immovable property meant for furtherance of business or commerce and would come within the purview of taxable service. There is no merit in the appellants contention that the property leased out is used for accommodation and hence exclusion from the definition of immovable property as provided in Section 65(105)(zzzz)is available to them."

Based on the above observation of the Commissioner (A) and the relevant agreement dated 08.09.2005 which was renewed during the disputed period, we find that the lease is for operating a luxury hotel. *Explanation* clearly excludes renting of immovable property used for the purposes of accommodation, including hotels, hostels etc. and therefore, the question of paying service tax on the income received by the appellant is not justified. The Commissioner (A) has confirmed the demand based on *Explanation 2* in the definition ignoring the fact that it is excluded vide *Explanation 1* of the definition. This fact is also discussed and deliberated by the Tribunal in the case of **Jai Mahal Hotels Pvt. Limited Versus Commissioner of C.EX., Jaipur 2014 (36) S.T.R. 669 (Tri. - Del.) dated 8-5-2014,** wherein the Tribunal has observed as follows:

> **"5.** That the appellant had leased its buildings to M/s. Indian Hotels Company Limited is not in dispute not is it in dispute that the purpose of the transfer of the property in favour of the other party is for establishment of a hotel. The issue is whether in such circumstances the transaction falls outside the purview of the taxable service. Clause (zzzz) of Section 65(105) enumerates the taxable service as any service provided or to be provided to any other person, by any person in relation to renting of immovable property for use in the course of or furtherance of business or commerce. Explanation 1 thereto enacts that for the purposes of this clause "immovable property" includes the categories of properties enumerates in sub-clauses (i) to (iv) thereto. Thereafter an

exclusionary clause is enacted comprising sub-clauses (a) to (d). For the purposes of this *lis* we are concerned with exclusionary sub clause (d).

6. Relevant to our context, sub-clause (d) under Explanation 1 to clause 65(105)(zzzz) would read: "immovable property" does not include buildings used for the purpose of accommodation, including hotels.

7. On a true and fair construction of the relevant provisions of the exclusionary clause adverted to above, the interpretation is compelling that buildings used for or as hotels do not amount to immovable property. The legislative provision in question i.e. the exclusionary clause (d), to the extent relevant and material, excludes from the purview of immovable property, buildings used for the purposes of accommodation including for hotels.

8. The view that has found favour with the Authorities below for rejecting the appellant's claim that leases for accommodating hotels is outside the purview of the taxable service, is set out in paragraph 6.5 of the order of the learned Appellate Commissioner dated 21-10-2011 (the subject matter of Service Tax Appeal No. 16 of 2012). The reasoning runs thus :

> The legislative intent [sub-clause (d)] is explicit and clear, not to tax immovable property used (not meant) for accommodation which includes hotels; only the service of accommodation provided by a hotel is outside the purview of the taxable service, while other services provided by a hotel such as services like mandap keeping, gym, spa, health club etc, are all taxable services.

9. In our considered view the above interpretation adopted by the Authorities below is fundamentally flawed. The taxable service falling within the scope of Section 65(90a) and enumerated to be a taxable service under Section 65(105)(zzzz) is the renting of immovable property. A reading of clause (90a) and clause (zzzz) would indicate that a complex drafting methodology is adopted. Even in clause (90a) there are inclusionary and exclusionary clauses. Under this provision renting of immovable property or similar arrangement for use in course of or

furtherance of business or commerce but excluding renting of immovable property by a religious body or to a religions body; renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, are excluded. The Explanation under clause (90a) further defines the expression for use in the course or business or commerce and also incorporate a clarificatory clause for removal of doubts, not necessary for the purposes of these appeals. Similarly, in clause (zzzz) there are inclusionary or exclusionary clauses embedded.

10. On a true and fair construction of provisions of the exclusionary clause under Explanation 1 to Section 65(105)(zzzz); and in particular sub-clause (d) thereof, we are compelled to the conclusion that renting of buildings used for the purpose of accommodation including hotels, meaning thereby renting of a building for a hotel, is covered by the exclusionary clause and does not amount to an "immovable property", falling within the ambit of the taxable service in issue.

11. This Tribunal in *Ambience Construction India Ltd.* v. *Commr. of S.T., Hyderabad* - 2013 (31) S.T.R. 343 (Tri.-Bang.), having considered the identical provision categorically ruled that renting of immovable proper for a hotel is expressly excluded from the ambit of the taxable service in Section 65(105)(zzzz). We are in respectful agreement with the said judgment passed by a learned single Member of this Tribunal".

7. In view of the above, the impugned order is set aside and appeal is allowed.

(Operative portion of the order was pronounced
in Open Court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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