

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH  
BANGALORE**

Appeal(s) Involved:

**ST/117/2009-DB**

[Arising out of Order-in-Original No. 60/2008 dated  
19/12/2008 passed by the Commissioner of Service Tax,  
Bangalore.]

**M/s. EAGLETON THE GOLF  
RESORT**

(UNIT OF CHAMUNDESHWARI BUILDTECH  
LTD) 30TH KM, BANGALORE-MYSORE  
HIGHWAY, SHYANAMANGALA CROSS,  
BIDADI, BANGALORE

Appellant(s)

**Versus**

**C.C.E & C.S.T.-BANGALORE  
SERVICE TAX- I**

1ST TO 5TH FLOOR,  
TTMC BUILDING, above BMTC BUS  
STAND,DOMLUR  
BANGALORE - 560071  
KARNATAKA

Respondent(s)

**Appearance:**

**Mr. K.S. RAVI SHANKAR,  
Advocate**

# 152, RACE COURSE ROAD,  
BANGALORE - 560001  
KARNATAKA

For the Appellant

**Dr. K. Ezhilmathi,  
Joint Commissioner (AR)**

For the Respondent

Date of Hearing: 07/09/2018

Date of Decision: 02/01/2019

**CORAM:**

**HON'BLE SHRI S.S GARG, JUDICIAL MEMBER  
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 20003 /2019**

**Per : S.S GARG**

The present appeal is directed against the impugned order dated 19.12.2008 passed by the Commissioner of Service Tax whereby the Commissioner has confirmed the demand of Rs.1,07,57,831/- under Section 73(2) of the Finance Act, under the category of 'Convention Services' for the period from 1.4.2002 to 31.8.2006 and also confirmed the demand of interest under Section 75 of the Finance Act and also imposed penalties under Section 76, 77 and 78.

2. Briefly the facts of the present case are that the appellant is a unit of Chamundeswari Build Tech Pvt. Ltd. and is registered under service tax under the category of 'Club and Association Service'. The appellant is running a conventional golf resort and have star hotel facilities including business centre, swimming pool, gold resort, banquette facilities bakers shop, golf training academy, driving range, badminton court, tennis court, squash court, billiards facility, card game facility, horse and camel riding, health club, spa, indoor games, library, movie theatre, child games facilities and several other opportunities for general public. The resort is open to all. Appellant is also secured an exemption (for tax holiday for sales tax and luxury tax leviable

under the State laws of Karnataka for seven years). After the exemption period, the appellants are paying the taxes. The Service Tax department wanted to tax them under 'Hotel and Fitness Services' from 16.8.2002, which was contested by the appellant. Thereafter, it was not pursued by the Revenue. Further, the Revenue entertained a view that the appellants are engaged in providing the services under the category of 'Convention Services' and are evading the payment of service tax. Thereafter, the case was investigated by the office of DGCEI, Bangalore in September 2006 and during the investigation, statements of the General Manager Shri G. P. Mathew of the appellant was recorded on 27.9.2006 and the information from the clients of the appellant was also obtained and thereafter, after completion of the investigation, show-cause notice dated 1.8.2007 was issued to the appellants alleging that the appellant was rendering convention service to various corporates by letting their 108 rooms and other facilities at the Golf Resorts to the employees of the corporates, for which they are liable to pay service tax, interest and penalty. The appellants refuted to the allegation in the show-cause notice and after following the due process, the Commissioner of Service Tax confirmed all the proposals in the show-cause notice.

3. Heard both the parties and perused the records.
4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the facts, laws and evidence. He further submitted that the Commissioner has failed to appreciate that during the relevant period, there was no levy whatsoever on room tariff collected for food/beverages sold as a result of letting short term accommodation by hotels, inns, guest houses, clubs and camp sites by whatever name called. He also submitted that such activity came under the service tax net only after 1.5.2011 by virtue of Section 65(105)(zzzzw) inserted by the Finance Act, 2011. It is his further submission that the said amendment was challenged before the Delhi High Court in the case of Federation of Hotels and Restaurant Association vs. UOI: 2016 (44) STR 3 (Del.) and the Hon'ble High Court in para 77 struck down Section 65(105)(zzzzw) of the Finance Act, 1994 levying service tax on short term accommodation renting and also quashed the Government circulars thereon as unconstitutional and invalid. The High Court held that the said levy was covered by the Entry 62 of List II of VII Schedule of the constitution relating to luxury tax. The appellant also relied upon the decision of the Kerala High Court in the case of ***Kerala Classified Hotels and Resorts***

**Association vs. UOI: 2013 (31) STR 257 (Ker.)** which was affirmed in **UOI vs. Kerala Bar Hotels Association: 2014 (36) STR 1205 (Ker.)**. Therefore, the learned counsel submitted that taxing the same activity either before or after amendment does not arise in law. He further submitted that after the Finance Act, 2011 related to amendment, three clarifications were issued by the Board after the amendment in 2011 dated 28.2.2011, 25.4.2011, and 10.5.2011 and all of which deal with new entries inserted by the amendment in Section 65(105) of the Finance Act relating to short term accommodation in hotel/club and restaurant services and the impugned order is totally opposed to the scheme of law and the explanations of the Government of India in the above circulars, which are binding on the departmental authorities as per the Supreme Court decision in the case of **CCE vs. Dhiren Chemicals: 2002 (139) ELT 3 (SC)**. He further submitted that during the relevant period hotels were totally kept out of renting of immovable property service by Section 65(105)(zzzz) vide Explanation 1(d) thereto which excluded building used for the purposes of accommodation including hotels, hostels, boarding houses, holiday accommodation, tents and camping facilities. He further submitted that the activities of the appellant fall within the scope

of State Legislation and were assessed as such as the state taxes and that being so there was no question of levy of service tax on any of the activity of the appellant and the impugned order is contrary to the constitutional mandate and the scheme of union taxation. Further, he submits that as per the impugned order, service tax has been demanded on room tariff charged to dwellers in the hotel/resort, wrongly adding the value of sales made on food, alcohol, beverages and various other facilities availed by residents in the resort, which is contrary to the provisions of service tax. He further submitted that wherever the appellants are providing the convention service exclusively, they are paying service tax and they are also paying regularly service tax on 'Club Association' category. In support of these submissions, he relied upon the following decisions:

- *Dukes Retreat Ltd. vs. CCE, Pune: 2017 (30 GSTL 229 (T)*
- *Merwara Estates vs. CCE: 2009 (16) STR 268 (T)*
- *Rambagh Palace Hotels Pvt. Ltd. vs. CCE: 2013 (31) STR 480 (T)*
- *CCE vs. Chokhi-Dhani Resorts Pvt. Ltd.: 2017 (50) STR 168 (T)*

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that appellant is

running an international golf resort and star hotel with various facilities and these rooms are let-out to employees of corporates who pay room tariff and use facilities for outing and formal meetings. These corporates are also allowed to use the mandap and conference facilities free of charges on complementary in order to attract customers as was stated by the General Manager Shri Mathew during the course of investigation. Further, we find that appellants have produced the bills which have been issued to various customers during the impugned period and we find that appellants have not charged any tariff for conference halls and they have only charged for renting of the rooms. Further, we find that the hotels are totally kept out of renting of immovable property service by Section 65(105)(zzzzw) vide Explanation 1(d) which excluded building used for the purpose of accommodation including hotels/hostels, etc. Further, we also note that the Hon'ble High Court of Delhi and Kerala in various decisions cited supra have held that levy was covered by Entry 62 of List II of VII Schedule of the Statute relating to luxury tax which the appellants are paying in the present case. Revenue has not been able to bring on record any evidence to show that the appellants are charging service tax on convention service. Further, this issue has been considered in various cases cited supra. Further, in the

case of Duke Retreat Ltd. cited supra, it was stated that rooms provided by the appellant to corporate clients for which room rent was charged, could not fall within the mandap keeper service when no amount was recovered towards mandap keeper charges and further, as the party had paid VAT and luxury tax on their activity. Similarly in Merwara Estate cited supra, the Tribunal has held that renting of hotel rooms/garden rooms would not be subjected to tax as letting of mandap. Further, in the case of Rambagh Palace Hotel Pvt. Ltd., cited supra, it was held that room charges could not be taxed as mandap keeper service though a function was organized by the customers when the rooms were temporary occupied for boarding and residence for staying in the same. Further, the Division Bench of this Tribunal in identical facts and situation in the case of Chokhi-Dhani Resorts Pvt. Ltd. cited supra, has considered the legal position in relation to convention services and has held as under:

**“3.....**We also note that the respondent is paying luxury tax on the rent charged from the client and showing the same separately in the bills. This further justifies the view that providing the rooms on rent is an independent activity, which is not part of convention service. We have no hesitation in approving the view taken by the Commissioner (Appeals).

**4.** Next we turn to the question whether the value of meals and beverages supplied to the participants of the conference is to be included in the value of the conventional services. It is on record that such charges along with the room rent have been indicated separately in the bills. It is also on record that the respondent has been paying VAT to the State Government on sale of food and beverages to the customers as indicated in the bills raised by them. It is a settled position of law that two taxes, i.e., VAT and Service

Tax cannot be levied on the same value. In the impugned order, the Commissioner (Appeals) has recorded the findings that the supply of food and beverages is not an activity ancillary to the primary activity of convention service. We uphold the view of the Commissioner (Appeals) in this regard. The payment of VAT indicates that supply of food is an independent activity, whose value cannot be included in the value for convention service. This view also finds support in the decision of the Tribunal in the case of *Daspalla Hotels Ltd.* - 2010 (18) S.T.R. 75 (T-B), wherein it is held by the Tribunal that the cost of food and beverages is excludible from the value for the purpose of charging service tax under convention service in terms of Notification No. 12/2003-S.T. Para 4 of the said decision is reproduced below :-

“4. In the instant case, the appellants have produced evidence to substantiate their claim that they have paid value added tax on the value of food and beverages sought to be taxed under ‘convention service, vide the impugned order. In the light of the constitutional provisions relied on by the Tribunal in *Sky Gourmet Pvt. Ltd.* case (supra) and the ratio thereof to the effect that once the sale tax had already been discharged on food, beverages, etc. the appellants could not be required to pay service tax on the same value, the impugned demand of service tax is not sustainable in law. We find that the appellants have rightly relied on the judgment of the Hon’ble Apex Court in *BSNL v. Union of India* [2006 (2) S.T.R. 161 (S.C.)] wherein the Court had held as follows :-

“82. For the same reason the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. As was held by us in *Gujarat Ambuja Cements Ltd. v. Union of India* - (2005) 4 SCC 214, 228.”

“This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking, liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on subject matter which a fair reading of the entry does not cover. If in substance, the statute is not referable to a field given to the State, the Court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field.”

We are fortified in our above finding by the following observations of the Hon’ble Apex Court in the case of *Imagic Creative Pvt. Ltd. v. Commissioner of Comml. Taxes* [2008 (9) S.T.R. 337 (S.C.)] :-

“Payments of service tax as also the VAT are mutually exclusive. Therefore, they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contra distinguished from an indivisible contract. It may

*consist of different elements providing for attracting different nature of levy. It is, therefore, difficult to hold that in a case of this nature, sales tax would be payable on the value of the entire contract; irrespective of the element of service provided.”*

*These observations apply equally to exigibility of goods, supplied in the course of provision of service under a contract to provide service, as service. In the circumstances, we vacate the impugned demand and concomitant penalties. The appeal is allowed.”*

*This view further finds support in the decision of the Tribunal in the case of Rambagh Palace Hotels Private Limited v. Commissioner - 2013 (31) S.T.R. 480 (Tri.-Delhi).*

**5.** In line with the above discussions, we find no merit in the appeal filed by the Revenue. Hence, the Revenue’s appeal is dismissed.

**6.1** We also note that ratios of the above decisions are squarely applicable in the facts and circumstances of the present case and by following the ratio of the above said decisions, we are of the considered view that the impugned order is not sustainable in law and therefore, we set aside the same by allowing the appeals of the appellant with consequential relief, if any.

(Order was pronounced in Open Court on **02.01.2019.**)

**P. ANJANI KUMAR**  
**TECHNICAL MEMBER**

**S.S GARG**  
**JUDICIAL MEMBER**

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