

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60371 of 2023

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-LDH/APP-36-2022-23 dated 24.02.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

Brothers Dhaba

LIC Building, Chheharta,
Amritsar, Punjab 143105

.....Appellant

VERSUS

**Commissioner of Central Excise, Goods &
Service Tax, Chandigarh**

Plot No. 19, Central Revenue Building, Sector 17-C,
Chandigarh 160017

.....Respondent

APPEARANCE:

Mr. Manish Midha, C.A. for the Appellant

Ms. Amita Gupta, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60992/2025

DATE OF HEARING: 11.08.2025

DATE OF DECISION: 11.08.2025

The present appeal is directed against the impugned order dated 24.02.2023 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant and confirmed the order of adjudicating authority.

2. Briefly stated facts of the case are that the appellant is registered with the service tax department under the category of

'Restaurant Services'. On the basis of scrutiny of service tax returns of the appellant for the year 2014-15, it was observed by the department that the appellant has availed SSI exemption amounting to Rs.24,75,391/- instead of mandatory limit of Rs. 10 lakhs; accordingly, a show cause notice dated 12.04.2017 was issued to the appellant proposing demand of service tax of Rs.72,944/- for providing taxable services along with interest and penalties. After following due process, the adjudicating authority confirmed the demand of service tax of Rs.72,944/- under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act and also imposed a penalty of Rs.7,294 under Section 76 of the Act. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who rejected the same by upholding the order of adjudicating authority. Hence, the present appeal.

3. Heard both the sides and perused the material on records.

4. The learned Consultant for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the relevant Notification No. 33/2012 dated 20.06.2012.

4.1 He further submits that the appellant is eligible for the benefit of SSI exemption notification and is liable to pay the service tax after availing abatement of 60% as applicable to 'Restaurant Services'. He further submits that both the lower authorities have wrongly calculated the exemption by considering the entire amount of Rs.24,75,391/-.

4.2 He further submits that this issue is entirely covered by the decision of the Tribunal in the case of **Shri Ashok Kumar Mishra vs. CCE & ST, Allahabad**, wherein the Tribunal vide its **Final Order No. 71841/2017 dated 01.12.2017** has allowed the appeal of the assessee on the identical issue.

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, I find that the only issue involved in the present case is whether the appellant is eligible to small scale exemption and if so, how the same is to be calculated on 'Restaurant Services'. I find that on the Restaurant Services, there is an abatement of 60% as per the notification and only on 40% of the abated value, tax is to be calculated. Further, I find that if service tax to be paid on abated value of 40% then in that case, the appellant falls within the SSI exemption limit of Rs. 10 lakhs.

7. Further, I find that this case is squarely covered by the decision of the Tribunal in the case of **Shri Ashok Kumar Mishra vs. CCE & ST, Allahabad** (supra), wherein the Tribunal has held under:

"4. Having consider the rival contention and on perusal of Explanation "B" to the said Notification No.6/2005-ST dated 01.03.2005, we find that the said explanation authorizes exclusion of consideration received towards providing services which are exempt from whole of service tax leviable thereon. On perusal of the said Notifications No.9/2004 and No.1/2006-ST, we find that 60% of the consideration received is exempted from the whole of the service tax leviable thereon. Therefore, we find that for the purpose of calculation of

aggregate value as per said explanation "B" 60% of the consideration received by the appellant for which exemption was admissible does not need to be taken into consideration. We also find from the record that after excluding 60% consideration the aggregate value of clearance for the years 2007-08, 2008-09 and 2009-10 in the present case is within the permissible limit for the exemption under the said Notification No.6/2005-ST dated 01.03.2005 which exempts taxable service from whole of service tax leviable under Section 66 of the Finance Act, 1994. We, therefore, hold that the impugned Order-in-Appeal is not sustainable.

5. Therefore, we set aside the impugned Order-in-Appeal and allow the appeal filed by the appellant."

8. By following the ratio of the above cited decision, I am of the considered view that the impugned order is not sustainable in law, accordingly, I set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)