CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

SERVICE TAX APPEAL No. 51253 of 2022

(Arising out of Order-in-Original No. 28/2021-ST dated 24.12.2021 passed by the Additional Director General (Adjudication), Directorate General of GST Intelligence, New Delhi)

Niraj Kumar Singh **....Appellant**
Managing Director
M/s Ambuj Hotels & Real Estates Pvt. Ltd.
D-58/9-A, Hotel Siddharth, Sigra, Mahmoorganj
Veranasi - 221010

Versus

Directorate General of GST Intelligence **....Respondent**
West Block-VIII, Wing-6
2nd Floor, R.K. Puram
New Delhi – 110 066

APPEARANCE:

NONE for the appellant
Shri Rajeev Kapoor, authorised representative of the department

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION :11.02. 2026

FINAL ORDER NO. 50268/2026

JUSTICE DILIP GUPTA :

Niraj Kumar Singh[1], Managing Director of M/s Ambuj Hotels & Real Estates Pvt. Ltd.[2] has filed this appeal to assail that portion of the order dated December 24, 2021 passed by the Additional Director General (Adjudication) that imposes a penalty of Rs. 1,00,000/- upon him under section 78A of the Finance Act, 1994[3].

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1 **the appellant**

2. **Ambuj Hotels**

3 **the Finance Act**

2. It transpires from the record that a show cause notice dated October 15, 2018 was issued to Ambuj Hotels and to the appellant and this show cause notice was adjudicated by a common order dated December 24, 2021. Demands proposed in the show cause notice against Ambuj Hotels that were confirmed in the order are as follows:

> "a) Service tax on the license fee paid by the appellant to the Railways amounting to Rs. 11,15,69,363/- under section 73(2) of the Finance Act, 19943 along with consequential interest under section 75 of the Finance Act and 100% penalty under section 78 of the Finance Act;
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> b) Differential service tax due on the difference in value of catering service as declared in balance sheet and ST-3 returns, amounting to Rs. 10,26,416/- under section 73(2) of the Finance Act, along with consequential interest under section 75 of the Finance Act and 100% penalty under section 78 of the Finance Act; and
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> c) Service tax collected in excess, but not deposited, amounting to Rs. 1,32,66,338/- under section 73A along with applicable interest under section 73B and a penalty of Rs. 1,00,000/- under section 78A of the Finance Act."

3. The penalty proposed upon the appellant has been confirmed under section 78A for the reason that by incorrectly filing the ST-3 returns and not paying the correct service tax, the appellant has knowingly evaded payment of service tax. Thus, as there is a short payment of service tax and non-payment of service tax, the appellant would be liable to penalty under section 78A of the Finance Act.

4. It is seen that Ambuj Hotels had filed Service Tax Appeal No. 51712 of 2022 to assail order dated December 24, 2021 so far as it concernedAmbuj Hotels. This Service Tax Appeal was allowed by order dated April 03, 2023 and the impugned order dated December 24, 2021 insofar as it confirmedthe demand of service tax on Ambuj Hotels with interest and penalty was set aside. It is, therefore, clear that there was no short payment of service tax. The relevant portion of the Final Order passed in the Appeal filed by Ambuj Hotels is reproduced as:

> "29. The limited question that arises for consideration is whether the activity identified in the show cause notice qualifies to be a taxable service for which the license fee is said to be the consideration. The demand of tax in the show cause notice is on support services. However, the consideration paid as license fee is not linked with such support. When the activity identified to be taxed in the show cause notice is found to be non-tayable, the demand proposed in the show cause notice cannot sustain as was held by the Madras High Court in R. Ramadas VS. Joint Commissioner of Central Excise, Puducherry" In Commissioner of Central Excise, Nagpur vs. M/s. Ballarpur Industries Ltd., the Supreme Court held that what is not invoked in the show cause notice cannot be examined in proceedings arising from the said notice. As noticed above, the demand on "grant of license" was not invoked in the show cause notice.
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> 30. The license fee is the consideration paid for the 'grant of license'. It is

pertinent to note that the words "license fee" is defined the Oxford Dictionary to mean a fee paid to an organization for . permission to own, use or do something." The Supreme Court in State of Orissa vs. Narain Prasad explained the meaning of expression "Privilege" and held that "Privilege really means the license or permit granted by the State". In the instant case, the license fee paid by the appellant to Railways is the consideration for the privilege to be the sole catering agent on board the trains for which a license was issued. This "grant of license/privilege" is the service which was taxable and the value of this service is equal to the license fee which is the consideration paid for this service. The show cause notice has not identified this service. To tax this service would, therefore, result in going beyond the scope to the show cause notice.

31. There is, therefore, merit in the contention advanced by the learned counsel for the appellant that the consideration paid by the appellant as license fee cannot be subjected to levy of service tax. The other two demands proposed in the show cause notice and confirmed by the adjudicating authority have not been contested by the appellant.

32. Thus, the impugned order dated 15.10.2018 in so far as it confirms the demand of service tax on the license fee paid by the appellant to the Railways with interest and penalty is set aside and the appeal is allowed to this extent."

5. Such being the position, the penalty could not have been imposed upon the appellant under section 78A of the Finance Act as there is no short payment of service tax.

6. The imposition of penalty upon the appellant is, therefore, set aside and the appeal is allowed.

(Dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Apoorva