IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76809 of 2017

(Arising out of Order-in-Original No. 02/PR. Commr/GST & CX/KOL-North/2017-18 dated 10.07.2017 passed by the Commissioner of CGST & Central Excise GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

M/s. Springfield Projects Pvt. Ltd. **: Appellant**
5, J.B.S. Halden Avenue,
Kolkata-700 105

VERSUS

The Principal Commissioner of CGST & Central Excise, **: Respondent**
Kolkata North Commissionerate,
GST Bhawan, 180, Shantipally, Rajdanga Main Road,
Kolkata-700107

AND

Service Tax Appeal No. 76891 of 2017

(Arising out of Order-in-Original No. 02/PR. Commr/GST & CX/KOL-North/2017-18 dated 10.07.2017 passed by the Commissioner of CGST & Central Excise GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

The Principal Commissioner of CGST & Central Excise, **: Appellant**
Kolkata North Commissionerate,
GST Bhawan, 180, Shantipally, Rajdanga Main Road,
Kolkata-700107

VERSUS

M/s. Springfield Projects Pvt. Ltd. **: Respondent**
5, J.B.S. Halden Avenue,
Kolkata-700 105

APPEARANCE:

Shri Navin Kumar Agarwal, C.A. for the Assessee
Shri P. Das, Authorized Representative for the Revenue

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.77076-77077/ 2025

DATE OF HEARING: 25.07.2025
DATE OF PRONOUNCEMENT: 29.07.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Service Tax Appeal No. 76809 of 2017 has been filed by M/s Springfield Projects Private Limited, (hereinafter referred to as the 'appellant-assessee or "SPPL") against the Order-in-Original No. 02/PR. Commr/GST & CX/KOL-North/2017-18 dated 10.07.2017 passed by the Commissioner of CGST & Central Excise GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.

1.1. Service Tax Appeal No. 76891 of 2017 has been filed by the Principal Commissioner of CGST & Central Excise (hereinafter referred to as the Department or Revenue) against the Order-in-Original No. 02/PR. Commr/GST & CX/KOL-North/2017-18 dated 10.07.2017 passed by the Commissioner of CGST & Central Excise GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.

1.2. As both appeals emanate from the same Order-in-Original, they are taken up together for decision by a common order.

2. The facts of the case are that M/s.SPPL having their registered premises at 5, J. B. S. Halden Avenue, Kolkata-700105 and having Service Tax Registration No. AAHCS4966MST001, are engaged in providing taxable services under the category of "Club or Association Service", "Renting of Immovable Property Service", Service", Service". "Mandap Keeper "Hotel or Short Term Accommodation Service" etc.

2.1. Acting on the intelligence that the said appellant-assessee was evading payment of service tax, an investigation was initiated by DGCEI, Kolkata Zonal Unit, Kolkata. The premise of the appellant-assessee was searched on 19.12.2013 by the DGCEI Officers and during the course of search some documents were resumed. Further, the said appellant-assessee was summoned to produce documents relevant for the investigation. Statements of Mr. Sailesh Mehta, Authorised Representative of the appellant-assessee was recorded on 19.12.2013, 25.03.2014.

2.2. On completion of the investigation, a Show cause Notice dated 22.04.2014 was issued to the appellant-assessee demanding Service tax, including Cess, of Rs. 4,18,09,768/-, covering the period 01.10.2008 to 31.03.2013. The said Notice was adjudicated by the Principal Commissioner of CGST & Central Excise, wherein he has confirmed a demand of service tax of Rs. 34,42,805/-along with interest and imposed equal amount of tax as penalty. The Ld. adjudicating Authority has dropped the remaining demand of Rs. 3,83,66,963/- raised in the Notice.

2.3. Aggrieved against the confirmation of the demand of service tax of Rs. 34,42,805/-along with interest and penalty, the appellant-assessee has filed appeal before this Tribunal. Revenue has filed appeal against the dropping of the demand of Rs. 3,83,66,963/- raised in the Notice.

3. The appellant-assessee has summarized the demand of service tax confirmed in the impugned order as under:

Demand Summary			
S.No	**Issue**	**Category**	**Tax Amount**
1	Service Tax liability imposed on Short Term Accommodation **Service provided to Non Members**	Room Rent under Club or Association Service	11,50,602
2	Abatement Benefit under NN 1/2006 not given	Restaurant,Mandapkeeper & Hotel Accommodation Service	22,85,180
3	Others		7,023
	Total Demand		**34,42,805**

3.1. The appellant-assessee submits that Short Term Accommodation Service has been introduced w.e.f 01.05.2011. Therefore, service tax can be levied only after 01.05.2011 and not prior to that date. When a new service is brought into service tax net without changing an existing entry, it is presumed that the earlier entry did not cover the said activity. The appellant submits that a new service in the name of 'Short Term Accommodation' was also brought to the service tax net with effect from 01.05.2011. Hence, the said activity was not chargeable to service tax under any of the pre-existing entry under section 65 of the Finance Act, 1994. The appellant-assessee submits that they have discharged service tax on the room rentals received from members as well as non-member under the head 'Short Term Accommodation Service', w.e.f 01.05.2011. Thus, demanding service tax on room rentals under the taxable head of "Club or Association Service" for the period prior to 1.5.2011, is without any legal basis. Accordingly, the appellant submits that the demand of service tax of Rs. 11,50,602/-on room rentals confirmed under the category of 'Club or Association Service' for the period prior to 1.5.2011 is not sustainable and hence the same is liable to be set aside.

3.2. In respect of the demand of service tax of Rs. 22,85,180 under the category of Restaurant, Mandap keeper & Hotel Accommodation Service, by denying the abatement benefit as provided under Notification 1/2006, the appellant-asseesee submits that Notification No. 1/2006-S.T. dated 1-3-2006 as amended provides that service provider will be entitled to claim the benefit of the said abatement subject to the condition that the CENVAT credit of duty on input or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules,2004. In the SCN, it has been alleged that the appellant-assessee had claimed abatement and simultaneously availed cenvat Credit on input services like cleaning service, credit on hire charges of DG sets, telephone and internet, security personnel, AMC of equipment's & fittings and other maintenance of entire premises, etc. Therefore, the impugned order held that the appellant-assessee do not satisfy the conditions laid down in Notification 1/2006-ST dated 01.03.2006, for availing the abatement. In this regard, the appellant-assessee submits that they are not only engaged in providing the services under the category of Restaurant, Mandap keeper & Hotel Accommodation services, but also engaged in providing other services like 'Club or Association Service', 'Health and Fitness service' and 'Renting of Immovable Property Service' etc. on which they are duly discharging their service tax liability on 100% of the taxable value at the full rate of Service Tax, prevalent during the said period. In terms of the said notification, no credit of tax paid on input, input services, capital goods used for providing such output service on which the benefit of abatement is taken, would not be available. However, the notification does not preclude the right of the appellant-assessee to avail the Cenvat credit in relation to input services used in providing other taxable output services on which service tax has been discharged on 100% of the taxable value. The appellant-assessee submits that they have not availed the credit on input services which are exclusively used in providing such taxable service on which abatement is claimed. Thus, the appellant-assessee submits that they have rightly availed the benefit of abatement and they have not violated any of the terms and conditions specified in the said notification to avail the abatement. Accordingly, the appellant-assessee submits that the demand of service tax confirmed in the impugned order by denying the abatement as provided under notification 01/2006-ST dated 01.03.2006, is not sustainable.

4. Regarding the demand of service tax which has been dropped in the impugned order amounting to Rs. 3,83,66,963/-, the appellant-assessee has summarized the issues where the adjudicating authority has dropped the demand, as under:

S.No	**Issue**	**Category**	**Tax Amount**
1	Security/Membership Deposit- Deposit which has been refundable in nature without any consideration – Dropped	Club or Association Service	24,516,129.00

2	Advance from Customers- Consider Closing Balance instead of Advance received during the year in SCN- dropped	Club or Association Service	2,850,520.00
3	Pre-Receipt shown as liability under B/S-Service tax charged on closing balance of Pre-Receipt Amount- Wrong calculation -dropped	Club or Association Service	450,354.00
4	Sports Charges-shown in P/L account -Service Tax paid and Sport Activity fees i.e., under pre reciept income. - Double calcuated in SCN - Dropped due to double considered in SCN	Club or Association Service	1,438,817.00
5	Miscellaneous Income-Service tax charged on Misc income but it is actually sale of liquor bottles, newspper,cartons etc.	Club or Association Service	89,466.00
6	Service in respect of club restaurant service-Dropped in terms of CBEC instruction letter F.No.B1/6/2005-TRU dtd 27.07.2005 – Not taxable	Club or Association Service	3,460,988.00
7	Sundry Debtor(Op-Cl Balance)-Service Tax charged on opening bal of Sundry Debtor instead of amount recd during the year - calculation error – dropped	Club or Association Service	1,553,330.33
8	Restaurant Service - abatement @60% after 01.07.2012 is allowed in O-I-O.	Restaurant Service	1,923,068.05
9	Short term accommodation service - abatement @40% after 01.07.2012 is allowed in O-I-O	Hotel inn or Short term accommodation service	352,305.24
10	Mandap Keeper Service- abatement @30% after 01.07.2012 is allowed in O-I-O	Mandap Keeper Service	6,00,069.10
11	Dispensing charges & Enlistment charge are outside the ambit of Business AuxillaryService .Hence, dropped	Business Auxiliary Sevice	289,415.00
12	Sale of Property is not service. Hence dropped	Real Estate Agency Service	842,498.80
	Total Dropped		**38,366,960.52**

4.1. The appellant-assessee submits the ld. adjudicating authority has given categorical findings in the impugned order for dropping of the above demands under various heads. The Department has not given any valid grounds against the dropping of the demands in the Grounds of appeal. In the impugned notice, the department has raised the demand by taking into account the closing balance without ascertaining the actual receipts for the respective years.

4.2. In view of the above submissions, the appellant-assessee submitted that the Ld. adjudicating authority has rightly dropped the demands raised in the Notice on the issues as mentioned in para 4 supra. Accordingly, he prayed for rejecting the appeal filed by the Revenue against dropping of the demands.

5. Regarding the demand of Rs. 11,50,602/- confirmed under 'Short Term Accommodation Service' and Rs. 22,85,180/- confirmed on account of denial of abatement as claimed by the appellant-assessee, the Ld. Authorized Representative (A.R.) of the Revenue. reiterated the findings of the adjudicating authority in the impugned order.

5.1. Regarding dropping of the demands of demand of Rs. 3,83,66,963/- in the impugned order, the Ld. A.R. of the Revenue reiterated the Grounds of Appeal filed by Revenue. Thus, the Ld. A.R. of the Revenue prayed for setting aside the order, qua dropping of the demands by the adjudicating authority.

6. Heard both sides and perused the appeal documents.

7. Regarding the demand of service tax of Rs. 11,50,602/- confirmed under 'Short Term Accommodation Service', we observe that levy of service tax on Short Term Accommodation Service has been introduced only w.e.f. 01.05.2011. When a new service is brought into service tax net without changing an existing entry, it is presumed that the earlier entry did not cover the said activity. Therefore, we observe that service tax can be levied on Short Term Accommodation Service only after 01.05.2011. We observe that the appellant has discharged the service tax liability on the rentals received from members as well as non-member under the head Short Term Accommodation w.e.f 01.05.2011. Thus, we hold that demanding service tax on room rentals under the taxable head of "Club or Association Service" for the period prior to 1.5.2011, is not sustainable and accordingly, we set aside the same.

7.1. Regarding the demand of service tax of Rs. 22,85,180/- confirmed on account of denial of abatement as claimed by the appellant-assessee, we observe that Notification No. 1/2006-ST dated 1-3-2006 as amended provides that service provider will be entitled to claim the benefit of the said abatement subject to the condition that the CENVAT credit of duty on input or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules,2004. In the SCN, it has been alleged that the appellant-assessee had claimed abatement and simultaneously availed CENVAT Credit on input services like cleaning service, credit on hire charges of DG sets, telephone and internet, security personnel, AMC of equipment's & fittings and other maintenance of entire premises, etc. Therefore, the impugned order held that the appellant do not satisfy the conditions laid down in Notification No. 1/2006-ST dated 01.03.2006, for availing the abatement. In this regard, we observe that the appellant-assessee are not only engaged in providing the services under the category of Restaurant, Mandap keeper & Hotel Accommodation services, but also engaged in providing other services like 'Club or Association Service', 'Health and Fitness service' and 'Renting of Immovable Property Service' etc. on which they have been discharging their service tax liability on 100% of the taxable value at the full rate of Service Tax, prevalent during the said period. In terms of the said notification, no credit of tax paid on input, input services, capital goods used for providing such output service on which the benefit of abatement is taken, would not be available. However, the notification does not preclude the right of the appellant-assessee to avail the Cenvat credit in relation to input services used in providing other taxable output services on which service tax has been discharged on 100% of the taxable value. In this regard, the appellant-assessee submitted that they have not availed the credit on input services which are exclusively used in providing such taxable service on which abatement is claimed. We observe that the department has not disputed this claim of the appellant-assesse. Thus, we observe that the appellant-assessee has rightly availed the benefit of abatement as provided under Notification 01/2006-ST dated 01.03.2006 and they have not violated any of the terms and conditions specified in the said notification to avail the abatement. Accordingly, we hold that the demand of service tax confirmed in the impugned order on this count is not sustainable and hence we set aside the same.

8. Regarding dropping of the demand of Rs. 3,83,66,963/- in the impugned order, we observe that the Ld. adjudicating authority has given categorical findings in respect of each demands and given valid reasons for dropping the demands. We have examined the various issues where the demands have been dropped. The findings in respect of each demand dropped is as under:

8.1. On Refundable Security Deposit

The deposits collected by the club or association from its members at the time of admission are in the nature of interest-free refundable security deposits, which are intended as a safeguard for the use of various facilities and amenities provided by the club. These deposits are refundable upon the expiry or termination of the membership agreement and are not linked to the provision of any specific service. As per Section 67 of the Finance Act, 1994, service tax is levied on the gross amount charged as consideration for a service provided or to be provided. Since these deposits are refundable and do not constitute consideration for any service, they fall outside the scope of service tax. This position is further clarified by the CBEC in its Education Guide (Para 2.3.2, Sl. No. 5), which states that refundable deposits are in the nature of security and do not represent service consideration for service. This view is supported by various judicial pronouncements, including the rulings in *Emerald Leisures Ltd. v. CCE* and *Murli Realtors Pvt. Ltd. v. CCE*, which held that refundable security deposits are not subject to service tax. Accordingly, we find that the Ld. adjudicating authority has rightly dropped the demand raised in the notice on this count.

8.2. On Advance from Customers –closing balance has been considered instead of amount received during the year

The appellant-assessee submits that the SCN has erroneously proposed service tax on the closing balance of advances from members as reflected in the balance sheet, instead of taxing the actual amount received during the respective years. In this regard, we agree with the submission of the appellant-assessee that during the relevant period, service tax is payable on receipt basis, and hence only the advance received during the year is taxable, not the cumulative closing balance. Furthermore, for the years 2010–11 to 2012–13, the SCN has clubbed figures for advance from members and pre-receipt income without proper bifurcation. As such, the demand raised by considering the entire closing balance is incorrect and not legally sustainable. Accordingly, we find that the Ld. adjudicating authority has rightly dropped this demand.

8.3. Service tax charged on closing balance of Pre-Receipt Amount and Sports Activity Fees under Pre-receipt Income

The SCN has erroneously computed the taxable value by including both the amounts disclosed as ***Pre-receipt Income*** **in the balance sheet** and the amounts already transferred to the profit and loss account under *Membership Income, Entrance corporate Fees, Annual absentee Fees* and *Sports Charges*, leading to double taxation. *Pre-receipt*

Income, shown as a liability under "Sundry Creditors", comprises advance billing towards services such as Membership Subscription Fees, Entrance Corporate Fees, Sports Activity Fees, and Annual Absentee Fees. The appellant-assessee follows the accrual system and raises invoices in advance of the service period. Accordingly, the amount billed in advance is shown under liabilities in the balance sheet, and transferred to income only in the year of service, on which service tax is duly paid either upon billing or receipt—whichever is earlier. The SCN, however, inconsistently includes closing balances in some years and billed amounts in others, ignoring the correct accounting treatment. This leads to duplicative inclusion of amounts under multiple heads, despite such amounts already being taxed once. Accordingly, we find that the Ld. adjudicating authority has rightly dropped this demand.

8.4. Misc. Income – Sale of Liquor Bottle, Cartoon

The miscellaneous income disclosed by the appellant-assessee includes proceeds from the sale of scrap, primarily consisting of used liquor bottles. Since the sale of scrap bottles constitutes a transaction in goods, it does not fall within the ambit of service as defined under the Finance Act, 1994. Thus, no service tax liability arises on such sales. Accordingly, we find that the Ld. adjudicating authority has rightly dropped this demand.

8.5. Service Tax charged on opening balance of Sundry Debtor instead of amount received during the year

The Show Cause Notice (SCN) proposes service tax on the differential amount between the opening and closing balance of sundry debtors as per the balance sheet. The appellant-assessee submitted that for the financial year 2011-12, only the *opening balance* of sundry debtors has been considered, not the differential. It is important to note that with the introduction of the Point of Taxation Rules, 2011 effective from 01.04.2011, tax liability arises at the time of *billing* or *receipt*, whichever is earlier. Therefore, considering sundry debtor balances for taxation purposes is no longer valid. In light of this, the demand raised in the SCN is incorrect and unsustainable in law. Accordingly, we find that the Ld. adjudicating authority has rightly dropped this demand.

8.6. Dispensing charges & Enlistment charge

The demand raised under the category of "Business Auxiliary Service" (BAS) in the Show Cause Notice (SCN) included income from enlistment charges and dispensing charges. The appellant-assessee contended that these charges were not received for acting as an agent, and thus, do not fall under the ambit of BAS. Accordingly, we find that the Ld. adjudicating authority has rightly dropped this demand.

8.7. Sale of Property

The Show Cause Notice (SCN) proposed service tax demand of ₹8,42,499/- for the financial year 2010-11 under the category of 'Real Estate Agent Services' on a taxable value of ₹81,79,600/-. The appellant-assessee submitted that the transaction in question pertained to the purchase of certain flats, car parking and servant quarter from M/s Forum Riviera Construction Pvt. Ltd. These assets were subsequently sold to M/s R.S. Ispat Ltd., and the amount of ₹81,79,600/- represented the profit earned from the sale of property and no service has been rendered. The appellant-assessee supported their claim by submitting relevant purchase and sale agreements. Therefore, we observe that the transaction did not fall under the scope of taxable service, and the demand does not sustain. Accordingly, we find that the Ld. adjudicating authority has rightly dropped this demand.

8.8. In view of the above submissions, we hold that the Ld. adjudicating authority has rightly dropped the demands of Rs. 3,83,66,963/- raised in the Notice, in the impugned order. Thus, we reject the appeal filed by the Revenue against dropping of the above demands.

9. In the result, the appeal filed by the appellant-assessee is allowed and the appeal filed by the Revenue is rejected.

(Order Pronounced in Open court on 29.07.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP