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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75570 of 2018

(Arising out of Order-in-Appeal No. 271-272/S. Tax-I/Kol/2017 dated 27.10.2017 passed by the Commissioner of CGST & CX (Appeal-I), Kolkata GST Bhawan (8th Floor), 180, Shantipally, Kolkata-700107)

M/s. Sagar Restaurant. **: Appellant**
1 Meredith Street, Kolkata-700072

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate **: Respondent**
GST Bhawan (2nd Floor),
180, Shantipally, Kolkata-700107

APPEARANCE:

Shri S. P. Siddhanta, Consultant for the Appellant
Shri A. Mukherjee, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76224/ 2026

DATE OF HEARING: 19.08.2026
DATE OF PRONOUNCEMENT: 25.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s Sagar Restaurant (herein after referred as the Appellant') has been registered with the Service Tax department for providing Restaurant Service under sub-clauses (zzzzv) of clause (105) of section 65 of the Finance Act, 1994.

2. A show cause Notice bearing DGCEI F. NO: 179/ KZU/ KOL/ST /Gr. A/12/21741, dated 16.04.2013 was issued to the Appellant proposing to demand Service tax amounting to Rs.13,20,044/-

including cesses for the period 01.10.2007 to 28.02.2013, in terms of the proviso to section 73(1) of the Finance Act. 1994, along with interest under section 75 of the Finance Act, 1994. Penalties have also been proposed under various sections of the Finance Act.

2.1. The said Notice was adjudicated and the Ld. Adjudicating authority has confirmed the demand of service tax along with interest and penalties. On appeal, the Ld. Commissioner (Appeals) upheld the demands confirmed in the Order-in-Original vide the impugned Order-in-Appeal No. 271-272/S. Tax-I/Kol/2017 dated 27.10.2017. The present appeal has been filed against this Order-in-Appeal dated 27.10.2017.

3. The Appellant submits that they have entered into an Agreement with the company named M/s West End Caterers Pvt. Ltd (WEC in short), for running the Kitchen. As per the Agreement, the foods have been prepared, served and sold by WEC along with non-alcoholic beverages whereas the alcoholic beverages have been served and sold by the Appellant themselves. The WEC have raised bills / invoices for the foods and non-alcoholic beverages served by them, while the bills / invoices for alcoholic beverages have been raised by the Appellant. Against providing the kitchen and other facilities for preparing, serving and selling foods to the customers visiting Sagar Bar & Restaurant, the Appellant have charged and realized License and Facility Charges at specific rate on the sales turnover of WEC in Sagar Bar & Restaurant.

3.1. The Department was of the view that the Appellant has rendered the Business Support Service (BSS) by providing the premises and infrastructure available in the Restaurant, for which the Appellant had realized License and Facility Charges from WEC. Hence, it appeared that the Appellant had rendered the Business Support Service to WEC, as defined under Section 65(104c) of the said Finance Act.

3.2. In this regard, the Appellant submits that WEC used to sell food and non-alcoholic beverages to the customers coming at the bar cum restaurant of the Appellant and raising bills and charged VAT on the full amount of bill. The WEC are using the said bar cum restaurant **jointly with the Appellant** and as per agreement entered into, **they are paying 23% of the sale amount to the Appellant. Thus, the Appellant submits that the arrangement between them is in the nature of 'Revenue sharing' and no service tax element involved in the said transaction.** Accordingly, the Appellant submits that the demand of service tax confirmed in the impugned order under the category of 'Business Support Service' is not sustainable. In support of their contention, the Appellant relied upon the decision of the CESTAT, Principal Bench, New Delhi in the case of AMBIENCE HOSPITALITY P. LTD Vs. *COMMISSIONER OF C. EX., DELHI-IV* reported in 2019(21)G.S.T.L. 400 (Tri. - Del).

4. Regarding the demand of service tax on the 'payouts' received by the Appellant on account of display of alcoholic beverages belong to UB Group, under the category of 'Advertisement Service', the Appellant submits that the amount has not been received towards advertisement/display in restaurant and sales promotion. The said amounts represent sales incentive in the form of stock received as well as in the form of cash from different distributors of UB Group based on the volume of sales in terms of

specific agreement. In fact, there is no advertisement of alcoholic beverages is legally permitted. Thus, the Appellant submits that the demand of service tax on the sales incentives received under the category of 'Advertisement Service' is not sustainable.

5. The Ld. A.R. reiterated the findings in the impugned order. It is his submission that the Appellant has provided Business Support Service to WEC by facilitating them to carry on their business activities by using the premises and infrastructure of Sagar Bar & Restaurant. Accordingly, the demand has been rightly confirmed under the category of 'Business Support Service'. Regarding the demand of service tax on the incentives received, the Ld. A.R. submits that the Appellant has displayed the alcoholic beverages in their restaurant and promoted the sale of such alcoholic beverages. This is akin to advertisement to promote the alcoholic beverages and hence the demand has been confirmed under the category of 'Advertisement Service'. Thus, he supported the demands confirmed in the impugned order.

6. Heard both sides and perused the appeal documents.

7. We observe that the Appellant has entered into an Agreement with WEC and as per the Agreement, WEC has been maintaining the kitchen and other facilities for preparing, serving and selling foods to the customers visiting Sagar Bar & Restaurant. As per the Agreement, the Appellant has received 23% of the sale amount. The Appellant have recorded the said amount received as License and Facility Charges and the department has considered the receipt of this amount as

consideration towards rendering of 'Business Support Service' (BSS) and demanded service tax. The Appellant considered the said arrangement between them as in the nature of 'Revenue sharing' and hence not paid any service tax on the said charges.

7.1. In this regard, it is relevant to examine the definition of BSS, defined under Section 65(104c) of the Finance Act, which is quoted as under:-

> " (104c) "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation. — For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;" (unquote).

7.2. A perusal of the above definition shows that the service rendered can be considered BSS, if the Appellant provides 'infrastructural support' to WEC. But, in the present case, we find that the Appellant and WEC were jointly running the eatery, on revenue sharing basis, as per the terms and conditions of the agreement between them. For ready reference, the relevant provision of the Agreement evidencing that the agreement entered is in the nature of Revenue Sharing is extracted below:

- Sagar shall be entitled to **23% of the net turnover of WEC** in Sagar Restaurant as license and facility charges for the rights and licenses conferred on WEC by them;

7.3. The above provision of the agreement makes it clear that the agreement between WEC and the Appellant is of Revenue sharing basis. Once the Agreement is considered as a 'Revenue Sharing' agreement, then there is no service element involved in it. We find that a similar issue has been clarified by Board in respect of movie distribution by theatres, vide **Circular No. 109/3/2009-S.T., dated 23-2-2009 issued by the CBE&C under F. No. 137/186/2007-CX.4,** wherein in para 2.2 it has been stated that that where the contract between the theatre owner and the distributor is on revenue sharing basis i.e. a fixed and pre-determined portion i.e. percentage of revenue earned from selling the tickets goes to the theatre owner and the balance goes to the distributor. In this case, the two contracting parties act on principal-to-principal basis and one does not provide service to another. Hence, in such an arrangement the activities are not covered under service tax. In para 2.5, it has been clarified that by definition 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver'. In other words, the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theatre owner screens/exhibits a movie that has been provided by the distributor. Such an exhibition is not a support or assistance activity but is an activity on its own accord. That being the case such an activity cannot fall under 'Business Support Service'. In the present case also, we find that WEC and the Appellant act on principal-to-principal basis and 23% of the Turnover is given to the Appellant. Thus, we find that the ratio of the clarification cited supra, is equally applicable to the facts and circumstances of the present case also. Thus, we hold that there is no service element involved in this agreement as it is a 'Revenue sharing' arrangement and hence the amount received is not liable to service tax under the category of BSS.

7.4. We find that the same view has been taken by CESTAT, Principal Bench, New Delhi in the case of *AMBIENCE HOSPITALITY P. LTD Vs. COMMISSIONER OF C. EX., DELHI-IV reported in 2019(21)G.S.T.L. 400 (Tri. - Del),* wherein the Hon'ble Tribunal in para 19 has held –

> ***19.*** *Having considered the rival contentions and on perusal of records, we are satisfied that the appellant has been running the club by way of Joint Venture with AMPL, on principle to principle basis. This is evident from first Joint Venture Agreement entered into between the parties dated 10-3-2004. In this agreement from the Revenue Sharing Formula and the mutual covenants as agreed between the parties, it is crystal clear that the appellant and AMPL intended to do the business of running of club on principle to principle basis. We further hold that the subsequent modification of the Revenue Sharing Clause between the parties does not change the colour and reduce the*

> *arrangement between the parties as that of landlord and tenant. In principle, the appellant has not delivered the possession of club to AMPL by way of tenancy but has only given the right to manage and operate the club for their mutual benefit, on principle to principle basis. Accordingly, we hold that the provisions of Service Tax are not attracted.*

7.5. On the basis of the Terms of the agreement and by relying on the decision cited supra, we hold that the arrangement between the Appellant and WEC is in the nature of "Revenue sharing" and it cannot be considered as rendering of BSS service. Thus, we hold that the demand of service tax confirmed under the category of BSS in the impugned order is not sustainable and hence the same are set aside.

8. Regarding the demand of service tax under the category of 'Advertisement Service', we find that the Appellant has received certain amounts as 'payouts' on account of display of alcoholic beverages belong to UB Group in the Restaurant. The department has considered that the Appellant has received this amount towards advertisement / display of alcoholic beverages belong to UB Group in the restaurant, as it amounts to sales promotion of the products belonged to UB Group. We find that the said amounts received by the Appellant represent sales incentive in the form of stock received as well as in the form of cash from different distributors of UB Group, based on the volume of sales in terms of specific agreement. We observe that the activity carried out by the Appellant is not providing sale of space or time for advertisement service, which they cannot undertake since the advertisement of

alcoholic beverages is banned in India from 2000. Further, it is evident from the agreement that the said amount represents only incentives and it is linked with the sale of goods. Thus, we observe that the said 'payouts' received by the Appellant cannot be considered as consideration received for rendering of 'Advertisement Service'. Thus, we hold that the demand of service tax on the sales incentives received under the category of 'Advertisement Service' is not sustainable and hence the same are set aside.

9. As the demand of service tax is not sustained, the question of demanding interest or imposing penalties does not arise and hence we set aside the same.

10. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 25.09.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP