

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 40776 & 40777 of 2016

(Arising out of Order in Appeal No. 27 & 28/2016 (STA – II) dated 23.2.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

R. Rajinikanth

Raghavendra Mandapam
No. 40, Viswanathapuram Main Road
Kodambakkam, Chennai – 600 024.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

Respondent

APPEARANCE:

Shri T.T. Ravichandran, Advocate for the Appellant
Smt. O.M. Reena, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40317 & 40318/2026

Date of Hearing: 14.10.2025
Date of Decision: 04.03.2026

Per M. Ajit Kumar,

These appeals are filed by the appellant against Order in Appeal No.27&28/2016 (STA-II) dt. 23.2.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai (impugned order).

2. Brief facts of the case are that the appellant owns a multistorey building and has leased out the same to M/s. Vasantha Bhavan Hotels India Pvt. Ltd. for rent as a hotel and was also used in the course of or for the furtherance of business or commerce, but allegedly had not paid service tax for commercial use, even though the same attracted

service tax under 'Renting of Immovable Property Service for furtherance of business or commerce' under section 65(105)(zzzz) of the Finance Act, 1994. Hence Show Cause Notice and Statement of Demand were issued for the period June 2007 to December 2011 and from January 2012 to June 2012 demanding an amount of Rs.46,81,870/- and Rs.10,02,705/- respectively along with interest and for imposing penalties. After due process of law, the impugned order confirmed the service tax along with appropriate interest and imposed penalty under sections 77 and 78 of the Finance Act, 1994. The appeals preferred by the appellant was dismissed by the Ld. Commissioner (Appeals) except for setting aside penalty imposed under section 77 of the Act. Hence the present appeals.

3. The learned Advocate Shri T.T. Ravichandran appeared for the appellant and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent.

3.1 Shri T.T. Ravichandran the Ld. Counsel for the appellant submitted that the dispute arises from a lease deed executed in favour of M/s. Vasantha Bhavan Hotels India Pvt. Ltd. for running a hotel. The transaction constitutes renting of immovable property for use as a hotel, which is specifically excluded from service tax under Section 65(105)(zzzz) of the Finance Act, 1994. The Ld. Counsel submitted that the authorities below erred in invoking Explanation II to Section 65(105)(zzzz), as the said Explanation is not applicable to the facts of the present case. The appellant stated that the statutory exemption was available to buildings used by hotels and submits that the revenue's interpretation unduly narrows the scope of the exemption,

contrary to settled principles requiring a liberal construction of exemption provisions. In support, he placed reliance on decisions of the Hon'ble CESTAT, including **JAI MAHAL HOTELS PVT. LIMITED Vs COMMISSIONER OF C. EX., JAIPUR** [2014 (36) STR 669 (Tri. – Del.)], the order of the Delhi Bench in **Orient Express Co**, Final Order No. 54918/2016, dated 20.10.2016. the Chennai Bench decision in **GRAND ROYALE ENTERPRISES LTD. Vs COMMISSIONER OF S.T., CHENNAI-I** [2019 (31) G.S.T.L. 453 (Tri. - Chennai)], which according to him have settled the interpretation of Section 65(105)(zzzz) in favour of the assessee. He hence prayed that the order of the revenue is liable to be set aside along with refund of the predeposit made by the appellant while filing the above appeal.

3.2 The Ld. A.R. Smt. O.M. Reena, stated that the contention of the assessee that the impugned service is excluded from taxability under clause (d) of the exclusion clauses to Section 65(105)(zzzz) of the Act is not acceptable. The said contention is based on an isolated reading of clause (d) and ignores the statutory mandate of Explanation 2 to Section 65(105)(zzzz) of the Act. Explanation 2 clearly provides that where an immovable property is used partly in the course of or for the furtherance of business or commerce and partly for residential or any other purpose, such property shall be deemed to be used in the course of or for the furtherance of business or commerce. In the present case, it is an admitted fact that the leased premises were not used solely for providing accommodation as a hotel. The premises were also used for various commercial activities such as running a restaurant, banquet hall, conference hall, bar and health club. Accordingly, by operation of

Explanation 2, the property in question is rightly classifiable as an immovable property used in the course of or for the furtherance of business or commerce. Consequently, the activity of renting of the said property by the assessee is correctly held to be a taxable service under clause (90a) of Section 65 read with Section 65(105)(zzzz) of the Act. She hence prayed that the appeal may be rejected.

4. We have perused the appeals and heard the parties. The main issue involved is whether the building leased out for use as a hotel with other facilities like a restaurant, banquet hall, conference hall, bar and health club, qualifies for the specific exclusion/exemption provided under Section 65(105)(zzzz) in respect of buildings used as hotels.

5. The relevant provisions of law as stated at paras 6.04 and 6.05 of the impugned order are reproduced below:

"6.04 During the material time i.e. from 01.06.2007 to June 2012, clause (90a) of Section 65 of the Act **defined the words** 'renting of immovable property and same read as under.

"renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include-

(i) renting of immovable property by religious body or to a religious body, or

(ii) renting of immovable property to an educational body, imparting skill knowledge or lessons on any subject or field other than a commercial training or coaching centre;

Explanation 1 - For the purpose of this clause, **"for use in the course of furtherance of business or commerce includes use of immovable property as factories, office buildings, ware houses, theatres, exhibition halls and multiple use buildings;**

Explanation 2 - For the removal of doubts, it is hereby declared that for the purposes of this clause 'renting of immovable property includes allowing or permitting the use

of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.

6.05 Further, the **taxable service was defined** under Section 65(105)(zzzz) of the Act, during the material time, as

"any service provided are to be provided to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or for furtherance of, business or commerce.

Explanation 1.-

For the purposes of this sub-clause, **"immovable property" includes (i) building and part of a building, and the land appurtenant thereto;**

(ii) land incidental to the use of such building or part of a building,

(iii) the common or shared areas and facilities relating thereto; and

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

(v) Vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce.

but does not include

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether not having facilities clearly incidental to the use of such vacant land

(c) land used for educational, sports, circus, entertainment and parking purposes,

(d) building used solely for residential purposes and buildings used for the purposes of accommodation, **including hotels**, hostels, boarding houses, holiday accommodation, tents, camping facilities

Explanation 2

For the purposes of this sub-clause, **an immovable property partly for use in the course or furtherance of**

business or commerce and partly for residential or other purposes shall be deemed to be immovable property for use in the course of furtherance of business or commerce."

(emphasis added)

6. We find that the term 'hotel' has not been defined in the Finance Act 1994. In the trade parlance, hotels providing additional facilities such as restaurants, banquet hall, conference hall, bar and health club are recognized as 'Full-Service Hotel' - which is the opposite of a 'Limited-Service Hotel' or a 'Budget-Friendly Hotel', with bare or limited facilities. Hence the degree of services offered by a hotel varies depending upon its category or class. These facilities like, restaurant, banquet hall, conference hall, bar and health club etc., are not stand alone but are integral and incidental to the activity of running a hotel and are intended to cater to the needs of hotel guests. Their presence enhances the commercial viability of the hotel, commensurate with its category or class. While such facilities may, in certain cases, be operated by entities other than the principal lessee, they continue to function predominantly for the benefit and use of hotel guests. Importantly, the existence of the impugned facilities has not been shown to result in a bifurcation of the use of the premises nor supports the inference that the property is partly deployed for independent or distinct commercial activities. They are hence a part of the hotel.

7. Accordingly, Explanation 2 to Section 65(105)(zzzz) is not attracted. The premises continue to qualify as a building used by a hotel, squarely falling within the specific exclusion provided under Section 65(105)(zzzz) of the Finance Act, 1994.

8. We find that a Coordinate Bench of this Tribunal at Chennai, in **GRAND ROYALE ENTERPRISES** (supra), had examined a similar issue. The relevant portion of the order is reproduced below:

5.4 In **Jai Mahal Hotels Pvt. Ltd.** (supra), in a Bench presided over by the then President of CESTAT, in a case where the appellant had similarly leased its hotel to IHCL, the Tribunal held as under:

“9. In our considered view the above interpretation adopted by the Authorities below is fundamentally flawed. The taxable service falling within the scope of Section 65(90a) and enumerated to be a taxable service under Section 65(105)(zzzz) is the renting of immovable property. A reading of clause (90a) and clause (zzzz) would indicate that a complex drafting methodology is adopted. Even in clause (90a) there are inclusionary and exclusionary clauses. Under this provision renting of immovable property or similar arrangement for use in course of or furtherance of business or commerce but excluding renting of immovable property by a religious body or to a religious body; renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, are excluded. The Explanation under clause (90a) further defines the expression for use in the course or business or commerce and also incorporate a clarificatory clause for removal of doubts, not necessary for the purposes of these appeals. Similarly, in clause (zzzz) there are inclusionary or exclusionary clauses embedded.

10. On a true and fair construction of provisions of the exclusionary clause under Explanation 1 to Section 65(105)(zzzz); and in particular sub-clause (d) thereof, we are compelled to the conclusion that renting of buildings used for the purpose of accommodation including hotels, meaning thereby renting of a building for a hotel, is covered by the exclusionary clause and does not amount to an “immovable property”, falling within the ambit of the taxable service in issue.

11. This Tribunal in *Ambience Construction India Ltd. v. Commr. of S.T., Hyderabad* - 2013 (31) S.T.R. 343 (Tri.-Bang.), having considered the identical provision categorically ruled that renting of immovable property for a hotel is expressly excluded from the ambit of the taxable service in Section 65(105)(zzzz). We are in respectful agreement with the said judgment passed by a Learned Single Member of this Tribunal.

12. It also requires to be noticed that in respect of the same appellant as herein, the appellate Authority, namely the Commissioner (Appeals), Central Excise and Customs, Jaipur-I vide the order dated 19-12-2013 in Order-in-Appeal No. 222/BC/ST/JPR-I/2013 has recorded a diametrically contrary conclusion, that the legislative intent of sub-clause (d) of Explanation 1 under Section 65(105)(zzzz) is not to tax immovable property used for accommodation which includes hotels; **the legislative intent is clear, namely not to tax immovable property used for hotels; and that the definition of renting of immovable property excludes buildings used for the purpose of hotels.**

13. Since we have concluded that the transaction in issue falls wholly outside the ambit of the taxable service, is not necessary to deal with the other contention urged on behalf of the appellant to impeach the impugned order namely, that since the appellant had entered into a joint venture with M/s. Indian Hotels Company Limited there is no relationship of a service provider and a service recipient, that is susceptible to the levy of service tax, *qua* the agreements between the parties.”

(emphasis added)

The above order has been affirmed by the Hon'ble Supreme Court [2022 (63) G.S.T.L. 412 (S.C.)]. Apart from our views stated above we are also bound by the decision of the Coordinate Bench, especially when it has not been distinguished on facts.

9. The impugned orders are therefore unsustainable and merit being set aside. We order accordingly. The appellant is eligible for consequential relief, as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 04.03.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

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