

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH, COURT NO. 4**

**SERVICE TAX APPEAL NO. 55716 OF 2023**

[Arising out of Order-in-Appeal No.28/2023-24 dated 28.06.2023 passed by the Commissioner (Appeals-II), Central Tax, GST, Delhi]

**M/s. DLF Builders and Developers Pvt. Ltd.**

**Appellant**

(The owner of Hotel Hilton Grand Inn, Saket)  
A-4, DLF Place, Saket District Center,  
New Delhi-110017

Vs.

**Commissioner, GST Commissionerate- South  
Delhi- 110019**

**Respondent**

**Appearance:**

Present for the Appellant : Shri Harish Bindumadhvan, Advocate

Present for the Respondent: Shri Aejaz Ahmad, Authorised Representative

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**Date of Hearing :30.09.2025**

**Date of Decision:16.03.2026**

**Final Order No.50358/2026**

**HEMAMBIKA R. PRIYA**

The present appeal has been filed by M/s. DLF Builders and Developers Pvt. Ltd.<sup>1</sup>, against the Order-in-Appeal No.28/2023-24 dated 28.06.2023 passed by the Commissioner (Appeal-II), Central Tax, GST, Delhi, which confirmed the demand of service tax

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**1. the Appellant**

amounting to Rs.39,64,369/-, along with equal penalty and penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994.

2. The brief facts are that during the investigation of a case against M/s. Hilton Hotel Management Services Pvt. Ltd., Gurgaon, the Department noticed that the Appellant is the owner of Hotel Hilton Garden Inn Saket, New Delhi, and was holding service tax registration. The appellant had entered into a specific Hotel operating Agreement with Hilton International Manage LLC USA (Hilton US) for the management and operation of their hotel. The Appellant was paying management/operator fees to Hilton US and its other foreign affiliates and discharging service tax under reverse charge mechanism. The management and operation of the hotel was carried out by the General Manager of the Hotel and by key department heads such as Finance, Human resources, sales and marketing etc., which was supervised by Hilton Hotel Management Services Pvt. Ltd. (Hilton India), an Indian affiliate company of Hilton Group which also provided managerial services to the Hotel without any supporting agreement. The Executive Committee also included the General Manager of the Hotel, who was a key person who managed all functions such as supervision of all hotel employees including their recruitment, selection and termination, purchases, budgeting and accounting, supervision of legal actions and matters related to operations of the Hotel. It appeared that instead of recovering the salary of these officials as part of the management fees, Hilton US, its affiliates and Hilton India had made an arrangement for direct payment of salary and the benefits of these persons by inserting a clause in the agreement that these persons are

employees of the Hotel Owners and their salaries were paid by the hotel owner directly to them, thereby service tax was getting short paid by the Appellant. The Department also opined that though the General Managers of Hilton properties were shown on the rolls of the Hotel Owners, but were actually managing and operating the hotel, as per the Management Agreement, wherein the Hilton foreign company was the Manager and thus these General Managers were part of the Hilton Group. Consequent to completion of the investigations, Show Cause Notice dated 23.10.2018 was issued to the Appellant for demand of Service tax of Rs.39,64,369/- along with applicable interest and alleging penalty under section 77 & 78 of the Finance Act, 1994. The Show Cause Notice was adjudicated by the Assistant Commissioner vide Order-in-Original No. 05/BLM/AC/2022-23 dated 11.01.2023, wherein adjudicating authority confirmed the demand of Rs.39,64,369/-; imposed penalty of Rs.10,000/-under Section 77 & Rs.39,64,369/- under Section 78 of the Finance Act, 1994. Aggrieved by the said Order-in-Original, the Appellant filed an appeal before the Commissioner (Appeals-II), Delhi. The Appellate Authority vide Order-in-Appeal No. 28/2023-24 dated 28.06.2023, upheld the Order-in-Original and rejected the Appeal filed by the appellant. Aggrieved by the said order-in-appeal, the Appellant has filed the present Appeal before this Tribunal.

3. Learned Counsel submitted that the burden of proof is on the taxing authorities to show that the particular case in question, is taxable in the manner claimed by them. He contended that the Department, both in the Show Cause Notice and the orders, had failed

to produce any valid evidence to prove the short payment of tax or to disapprove the submissions and documents placed on record by appellant. He further stated that the department had failed to discharge their burden, and placed reliance on **Union of India v. Garware Nylons Ltd.**<sup>2</sup>, and **Commissioner of Custom (Import), Mumbai v. Dilip Kumar & Company**<sup>3</sup>.

3.1 Learned counsel contended that there was no offer by appellant and acceptance by Hilton US to consider salary as consideration for any service. He submitted that an offer when accepted by both the parties becomes an agreement when supported by consideration and if agreement is enforceable by law, it automatically became a contract. In terms of Agreement dated 25.02.2009, the appellant did not offer and Hilton overseas did not accept to construe the salary as consideration for any services. Thus, said salary cannot be included in 'gross amount charged' by Hilton overseas. Learned counsel further submitted that salary paid by the appellant to its employees bore no nexus to services rendered by Hilton US. Consequently, such salaries were not includible as 'gross amount charged' for 'such service provided by Hilton US. In terms of the Specific Hotel Operating Agreement dated 25.02.2009, Hilton US was merely engaged in providing 'management and operation services' to the Appellant in exchange for 'Operator fee'.

3.2 Learned counsel further submitted that the Appellant employed the General Manager and other department heads as its own

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2. 1996(87) E.L.T 12 (S.C)

3. 2018 (361) E.L.T. 577 (S.C)

employees, under a separate Employment Agreement, which demonstrates an employer employee relationship. Thus, the entire demand is baseless and unsustainable in as much as it is solely based on the premise that General Manager and other department heads are employees of Hilton US, and that the Appellant is paying salary to these employees instead of paying the same to Hilton US as part of 'Operator fee'.

3.3 Learned counsel also submitted that there is no nexus between salary paid by the Appellant to employees and taxable service rendered by Hilton US, and therefore, such amount is not includible as gross amount charged by Hilton US for the purposes of Section 67 of Finance Act, 1994. In this regard, learned counsel placed reliance on **Commissioner v. Bhayana Builders (P) Ltd<sup>4</sup>**, wherein it was held as follows:

“(12) On a reading of the above definition, it is clear that both prior and after amendment, the value on which service tax is payable has to satisfy the following ingredients:...

a. ....Further, by the use of the word "charged", it is clear that the same refers to the amount billed by the service provider to the service receiver. Therefore, in terms of Section 67, unless an amount is charged by the service provider to the service recipient, it does not enter into the equation for determining the value on which service tax is payable.

b. .... By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67..."

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**4. 2018 (2) TME 1325- Supreme Court**

3.4 Learned counsel also contended that the extended period of limitation could be invoked. He stated that the present proceeding had been initiated by invoking extended period of limitation by alleging that "Management agreement which did not disclose the correct facts, which was submitted to the statutory authorities. Further, learned counsel stated that the department had conducted Service Tax Audit for the period from 2011-12 to 2013-14, and the fact that neither the issue of employer-employee relationship nor the valuation of the operator fee was disputed by the Department at the time of audit. The bonafide belief coupled with audit undertaken by the department establishes the lack of suppression with intent to evade payment of tax and extended period cannot be invoked.

4. Learned authorized representative reiterated the findings given in the Order-in-Original and Order-in-Appeal. He further submitted that the employment letters given to various General Managers of the Hotels were termed as "Nationally Mobile General Manager Employment agreement", which provided that the General Managers could be transferred to any place in India by Hilton India. The general Manager and his team were performing the functions of Hilton US and its affiliates envisaged under the Hotel Operations/Management Agreement and therefore de facto were employees or representatives of Hilton US. The Appellant could not write their annual performance appraisals. Learned authorized representative submitted that in order to claim the substantive right/benefit of CENVAT Credit, a person had to comply with the conditions prescribed in the Rules. He contended

that the argument of revenue neutrality was accepted, the entire scheme of payment of taxes on reverse charge basis to become otiose.

4.1 Learned authorized representative further submitted that the Appellant had never disclosed the facts to the Department which came to the notice of the Department only at the time of Audit/investigation. The appellant had not assessed the correct amount of service tax and had also not shown the actual amount in the relevant ST-3 returns. They had willfully suppressed the facts from the department with intention to evade the payment of service tax. Therefore, extended period and penalty under section 78 is invokable. In view of the above, he is prayed that the present appeal may be dismissed.

5. We have heard the learned counsel for the appellant and the learned authorized representative for the Department.

6. We take note of the submission of the learned counsel that the issue with respect to taxability of salaries paid to the GM and other department heads of the Appellant as a part of the operator fee paid to Hilton has been settled in favor of other similarly placed hotel owners operating under the brand of Hilton in several orders passed by the Department. We find that similar to the Appellant, various hotels across India had entered into similar operating agreements with Hilton overseas entities to operate under the brand name "Hilton", and in case of such similar hotel owners, adjudicating authority and Appellate Authorities have held that the GM and other department heads of the hotel are not employees of Hilton overseas entities and the salary paid to the GM and other department heads is not exigible to be taxed as a

part of the management fee/operating fee paid to Hilton Overseas entities. These orders have clearly held that the responsibility of Hilton overseas entity to manage the hotel is derived from the agreement to ensure smooth operation of the hotel and thus, any activity being done by Hilton overseas entity is being done on behalf of the hotel as the 'Manager' only. It has further been noted that when the power to appoint, transfer, etc. was with the appellant and the hotel is only liable in case of termination and transfer, it cannot be said that the GM and other department heads are employees of Hilton overseas entity. The details of the Orders are as follows:

S. No	Name of the assessee	Order No. and date	Order passing Authority	Jurisdiction where favourable Orders has been passed
1	M/s. Riviera de Goa & Hotels Pvt Ltd.	24/ADC/ADJ/GOA/CGST/19-20 dated September 19, 2019	Additional Commissioner, CGST, Goa Commissionerate	Goa
2	M/s. Empee Hotels Ltd.	103/2019 CH.N (ADC) dated December 05, 2019	Additional Commissioner of CGST & Central Excise, Chennai North Commissionerate	Chennai, North Commissionerate
3	M/s. MPG Hotels and Infrastructure Ventures Pvt. Ltd.	14/2021-ST (DC) dated February 12, 2021	Deputy Commissioner, Central Tax & Central Excise	Thiruvananthapuram
4	M/s. Archer Hospitality Pvt. Ltd.	79-ST/APPL/LKO/2021 dated February 16, 2021	Commissioner (Appeals) Customs, GST & Central Excise	Lucknow
5	M/s. Umbel Properties Pvt. Ltd.	30/2021-22-CT dated September 28, 2021	Commissioner C.T. (Appeals-II)	Bangalore
6	M/s. Suraj Inn Pvt. Ltd.	02/2022-23 dated April 07, 2022	Commissioner C.T. (Appeals-II)	Bangalore
7	M/s. Writer Lifestyle Pvt Ltd.	SM/05/APPEALS-II/ME/2023-24 dated April 28, 2023	Commissioner (Appeals-II), CGST & Central Excise	Mumbai
8	M/s. BD & P Hotels (India) Pvt. Ltd.	22/ME/DN-III/R-I/BD&P/SCN/DGC EI/Pune/260/18-19 dated July 28, 2023	Assistant Commissioner, Div-III, CGST & CX	Mumbai

From the above table, it is clear that in case of similarly placed hotel owners, the Department has held by the officers of other jurisdictions that the GM and other department heads are not employees of Hilton overseas entities and thus, the salaries paid is not liable to tax as a part of the operator fee paid to Hilton overseas entity. Consequently, the same view would have to be taken in the instant case.

6.1 We also take note of the Operating Agreement which clearly states that the GM and other department heads are employees of the Appellant. A perusal of the Operating Agreement, specifically provides that the GM and other department heads are employees of the Appellant, and the relevant extract of the clause 3.5 (b) is reproduced herein below:

"Clause 3.5 (b)...

(B) the employees of the property shall be the employees of the Owner;"

Further, we take cognizance that the power of hiring/transfer and termination of the employees lay with the Appellant only as is evident from the following clauses of the Operating Agreement Relevant clauses of the Operating Agreement, as extracted below:

"3.11 Notwithstanding anything to the contrary contained herein, the Owner shall have the right to approve the hiring of any general manager and director of finance for the Property (singularly or collectively, as appropriate) (the Key Personnel) on the basis set out in this sub-clause 3.11. The Operator shall present (1) candidate for the position of general manager and one (1) candidate for the position of director of finance for discussion with the Owner...

3.12 The Operator shall consult with the Owner in relation to the termination and relocation of any of the Key Personnel and shall not, unless a new candidate for the Key Personnel role has been appointed in accordance with sub clause 3.11, relocate such Key Personnel without the prior approval of the Owner."

3.13... The owner may terminate the employment of any key personnel for cause (including if key personnel is convicted of a felony (or such equivalent offence in the territory))...

.....

3.15 The operator may sign all contracts of employment, lease, licenses and concessions, purchase orders, and agreements approved by the Owner or as otherwise specifically authorized by this agreement, in name and on behalf of the owner"

6.2 The above clauses of the Operating Agreement clearly proves that the relationship between the GM and other department heads and the Appellant is that of employer-employee. Given this, it is a settled position of law that terms of the agreement are to be given supremacy while determining the nature of the relationship between the parties.

6.3. Our view is further strengthened by fact that the Appellant had fulfilled all the statutory obligations of an employer, viz., PF contribution, Form-16 of the employees. Compliance of such statutory requirements by the Appellant, all of which clearly establishes the relationship of employer-employee between the Appellant and the GM and other department heads. We draw support from the decision of the Tribunal in the case of **M/s Allied Blenders and Distillers Pvt. Ltd. v. Commissioner of Central Excise & Service Tax<sup>5</sup>**, wherein, the Tribunal relied on the fact that statutory obligations of an employer were fulfilled by the appellant and thus the directors were to be

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**5. 2019(1) TMI 433 - CESTAT Mumbai**

considered as employees of the appellant company. The relevant paras are reproduced below:

"15. We do not find merit in the argument of the Revenue inasmuch as during the course of investigation, the statement of Shri Atit Dalai, Vice President (Finance & Accounts) of the appellant company was recorded by the investigating officers on 4-6-2015. Answering the question No. 3. Mr. Dalal informed that there were four directors in the company and they were appointed in accordance with the provisions of Companies Act and Regulation of Article of Association of Company for managing day-to-day affairs of the company. Further answering to question No. 4, he has stated that the company are paying them remuneration which is nothing but salary. All the necessary deductions on account of Provident Fund, Professional Tax and TDS under Section 192 of the Income Tax Act are made as applicable; also they were issuing Form-16 like it is issued to all other employees. Even in the salary return filed by the appellant company before the Income Tax authorities, the director's names have been included. The company does not pay the director's sitting fee to any of the directors. To discredit the said statement, no contrary evidence was produced by the Revenue to establish that the directors are not involved in the day-to-day function of the Company but participates only in Board Meetings and consequently paid remuneration.

16. Also, from the documents produced by the appellant it is crystal clear that the Directors who are concerned with the management of the company, were declared to all statutory authorities as employees of the company and complied with the provisions of the respective Acts, Rules and Regulations indicating the Director as an employee of the company. No contrary evidence has been brought on record by the Revenue to show that the Directors, who were employee of the appellant received amount which cannot be said as 'salary' but fees paid for being Director of the company."

6.4 We find that the impugned order has held that the salary paid by the Appellant to the GM and other department heads is liable to be

included in the operator fees paid by the Appellant to Hilton overseas entity and hence service tax is payable on the same. However, as per Section 67 of the Finance Act, 1994, the value of taxable service is the gross amount charged by the service provider for such service. The relevant extract of the provision is reproduced as follows:

"Section 67. Valuation of taxable services for charging service tax:

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall:

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

.....

Explanation. - For the purposes of this section:

(a) "consideration" includes:

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."

6.5 On bare perusal of the above provision, it is evident that service tax is leviable on gross amount charged by the service provider and not on any other value. We find that the Apex Court in the case of

**Union of India vs. Intercontinental Consultant and Technocrats Pvt. Ltd.**<sup>6</sup>, held that the value of taxable service shall be the gross amount charged by the service provider 'for such service; and the valuation of such service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service. The relevant para of the decision is as follow:

"24. ... We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service."

7. Consequently, in view of the above settled legal position, we hold that no service tax is liable to be paid by the appellant. Hence, we set aside the impugned order and allow the appeal.

(Order pronounced on 16.03.2026)

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**

Archana