CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 54762 OF 2023

[Arising out of Order-in-Original No. 40/AK/COMMR/CGST/DSC/2022-23 dated 20.12.2022 passed by the Commissioner of Central Goods & Service Tax, New Delhi]

BHARAT HOTELS LIMITED ……APPELLANT
Kumara Krupa Road, High Ground
Bangaluru, Karnataka-560001

Vs.

COMMISSIONER OF CGST-NEW DELHI …..RESPONDENT
2nd and 3rd Floor, EIL Annexe Building
Plot No. 2B, Bikaji Cama Place,
New Delhi-110066

Appearance:

Shri Kunal Agarwal, Advocate for the Appellant

Shri Mehboor Ur Rehman, Authorised Representative for the Respondent

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50728 /2026

DATE OF HEARING/ DECISION: 15/04/2026

BINU TAMTA

1. The issue in the present case is as to whether the demand of service tax under section 66E(e) of the Finance Act, 1944 on the advance amounts which were forfeited on account of cancellation of booking by customers can be sustained.

2. The appellant is engaged in hotel and hospitality business and during the course of providing short term accommodation

services, the appellant received advances from its customers for booking of rooms. As and when the advances are received, the appellant discharges service tax liability in terms of Rule 3 Point of Taxation Rules, 2011. As per the conditions of booking, the room is kept reserved for a customer, however, if the customer does not show up, the advance amount deposited by the customer is forfeited by the appellant as penal charges so as to make good for the losses incurred on account of such breach by the customer in the form of 'room retention charges'.

3. Both sides agreed that the issue is no longer *res integra* and has been decided in favour of the appellant in series of decision as under:-

(i) Principal Commissioner, CGST, Delhi South Commissionerate vs. The Indian Hotels Company Ltd.[1]

(ii) The Lalit vs. Commissioner of Cgst & Central Excise-Delhi East[2]

(iii) Shiv Vilas Resorts (P) Ltd. vs. The Commissioner of Central GST and Central Excise, Jaipur[3]

(iv) Lemon Tree Hotel vs. Commissioner, CGST, CE & CU[4]

(v) Narayan Builders and Developers vs. Commissioner of Central Excise and Customs, CGST[5]

4. In the case of **Indian Hotels Company Limited,** the Principal Bench was considering the appeal by the Revenue where the Commissioner (Appeals) had set aside the demand of service tax with penalty on the cancellation charges. The

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1 FINAL ORDER NO. 50373 OF 2025 dated 14.02.2025
2 FINAL ORDER NO. 50360-50362/2025 dated 12.02.2025
3 FINAL ORDER NO. 51677 OF 2023 dated 21.12.2023
4 2020-TIOL-1114-CESTAT-DEL
5 2026-TIOL-323-CESTAT-DEL

submission of the department that the respondent had provided declared service as per section 66E(e) of the Act as they were collecting room tariff in advance from its clients at the time of booking and thereafter if they cancelled the reservation for stay certain amount is retained by the respondent and the rest is refunded was rejected, observing that:

> "13. For something to fall within the mischief of Section 66E (e) of the Finance Act, one has to agree to tolerate an act and in lieu of such tolerance, an amount must be paid.
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> 14. However, the agreement here was different. The agreement was for giving the hotel room for accommodation by the client. In such a case, respondent could be the service provider and its client who is the service recipient. The enjoyment of the room/suite for the period would be the consideration which the client would receive and the amount paid as tariff would be consideration received by the respondent. Sometimes, the client, after booking the room, cancels it or stays for a shorter period. Having already reserved and blocked that room for the client, the respondent would lose on account of lack of business. Thus, the agreement was for letting the guest enjoy the room in lieu of the tariff. If the guest reneges from the reservation, the respondent loses some potential business in the process.
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> 15. In case of any breach of contract, the loss can be compensated in two ways :- (a) by suing the other party in a court of law for damages and such damages are called unliquidated damages or; (b) through liquidated damages which are built into the contract. The recovery if the guest does not turn up or stays for a shorter period is the compensation under the contract.
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> 16. What is covered under Section 66E (e) of the Finance Act is only a situation where there is a contract itself to tolerate an act. In such a case tolerating the act becomes a consideration from one side and the consideration paid for tolerating so becomes the consideration from other side. However, we are dealing with a situation where there is no agreement to renege from a contract between the respondent and its guests. Therefore, there was no consideration. The amounts which were paid to the respondent were in the form of damages/compensation.
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> 17. In view of the above, we find that no service tax can be charged on the retention charges received by the respondent.

5. The facts and issue involved in the present appeal are identical to the aforesaid decisions and hence the same needs to be decided in favour of the appellant that the amount collected as retention/cancellation charges by way of forfeiture of advance amount by the customers is not towards providing any service and hence not leviable to service tax.

6. Learned counsel for the appellant has also placed reliance on the decision in the case of **South Eastern Coalfields Ltd.** vs. **Commissioner of Central Excise and Service Tax,**[6] which has been affirmed by the Apex Court as **Commissioner of Central Excise and Service Tax** Vs. **South Eastern Coalfields Ltd.**[7] holding that penal charges, damages recovered on account of breach or non performance of a contract are non-consideration in lieu of any service and hence are not taxable. These are basically in the nature of deterrent imposed so that such a breach or non-performance is not repeated.

7. Following the aforesaid dictum, the impugned order is set aside. The appeal is, accordingly, allowed.

[Order pronounced in open court]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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6 2020 (12) TMI 912-CESAT New Delhi
7 2023(8) TMI 606-SC Order