

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Service Tax Appeal No. 22099 of 2015

(Arising out of Order-in-Original No. HYD-EXCUS-004-COM-020-15-16 dt.10.07.2015
passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV)

M/s Lemon Tree Hotel

(A Unit of Fleur Hotels Pvt Ltd)
Plot No.2, Sy. No.65, Madhapur (V),
Hitech City, Hyderabad – 500 018

.....Appellant

VERSUS

**Commissioner of Central Tax
Rangareddy - GST**

1-98-7-43, VIP Hills, Jaihind Enclave,
Madhapur, Hyderabad – 500 081

.....Respondent

Appearance

Shri Sameer Sood, Advocate for the Appellant.
Shri V.R. Pavan Kumar, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30280/2026

Date of Hearing: 22.01.2026
Date of Decision: 15.05.2026

[Order per: A.K. JYOTISHI]

M/s Lemon Tree Hotel (hereinafter referred to as appellants) are in appeal against OIO dt.10.07.2015, whereby, the Adjudicating Authority has decided the SCN dt.24.04.2014 issued by the department. The Commissioner has given certain relief in respect of demand made under 'Restaurant Services' (RS) for the period July, 2012 to March, 2013, as also in respect of 'Accommodation Services' (AS), the demand has been dropped for the period July, 2012 to March, 2013. Therefore, out of total demand of Rs.1,27,37,190/-, the adjudicating authority has only confirmed demand of Rs.33,54,487/- and has also imposed penalty under section 76 & 77(2) of the Finance Act, 1994 (Impugned Order).

2. The issue, in brief, is that the appellants are engaged in providing various services including RS and AS and were availing certain benefit of abatement in terms of Notification No.01/2006-ST dt.01.03.2006, as amended vide Notification No.34/2011-ST dt.01.05.2011. The Department noticed that while availing these notifications, they were also availing and utilizing Cenvat credit for discharging service tax liability. Whereas, the condition of the said notification clearly prohibits that no Cenvat credit can be taken on inputs or capital goods or on input services used for providing such taxable services. Therefore, on this ground that they were not fulfilling the conditions of the notification after availing certain abatement, the department raised demand.

3. On adjudication, the adjudicating authority examined the provisions of Notification No.01/2006-ST, as amended, vide Notification No.34/2011-ST. It was, inter alia, noted that while prior to amendment, the said notification covered inputs, capital goods as well as input services, whereas, w.e.f. 01.07.2012, after amendment, the said notifications were rescinded and abatements were regulated by Notification No.26/2012-ST dt.20.06.2012, which only covered inputs or capital goods. Similarly, in terms of Notification No.24/2012-ST dt.06.06.2012, the abatements were available in respect of RS by virtue of insertion of Rule 2C in the Service Tax (Determination of Value) Rules, 2012, however, this was also subject to the condition that provider of taxable service shall not take Cenvat credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of Central Excise Tariff Act, 1985. Therefore, in terms of these notifications, pre and post amendment, he examined the factual matrix and, inter alia, held that appellant has availed credit on input services in respect of RS and hence, not eligible for benefit of notification. Whereas, for the period post July, 2012, they have fulfilled the condition of non-availment of Cenvat credit of duties or cess paid on any goods classifiable under Chapters 1 to 22. Similarly, in respect of AS also, in terms of Notification No.26/2012-ST dt.20.06.2012, it was held that they have fulfilled the condition of non-availment of Cenvat credit of duties or cess paid on inputs and capital goods and therefore, demand is not sustainable.

4. Learned Advocate for the appellant has mainly contested that the impugned order suffers from certain infirmity, inasmuch as the adjudicating

authority has made certain presumptions that the input services, in respect of which they had submitted invoices to the adjudicating authority, would have been used by them for providing taxable output services up to 30.06.2012. His ground is that the invoices pertain to services like Maintenance and Repair Services, Internet Services, Courier Services. The notification provides that these services were exclusively required to be used for providing services viz., RS and AS, whereas, these services were not exclusively procured for providing such services and therefore, confirmation of demand by assuming that these services were used for providing RS and AS is not correct. He has also relied on various judgments in their own case passed by Coordinate Benches.

5. On the other hand, learned AR has submitted that it is an admitted position that services like Maintenance and Repair Service, Internet Service, Courier Service were not exclusively used for providing RS and Short-term Accommodation Service, however, they were otherwise used for providing said services. In other words, the term 'exclusive' being interpreted by the appellant is not correct and the fact remains that these services have nexus with the services in question and the fact that is relevant to decide is whether they are eligible for benefit of Notification No.01/2006-ST and 34/2011-ST when they have availed Cenvat credit during the period 2011-12 or otherwise. Insofar as the argument that the adjudicating authority has gone beyond the scope of SCN as the SCN has alleged that they had taken credit in respect of inputs, whereas, the fact is that they had taken credit in respect of input service, he has submitted that this aspect has already been dealt with by the adjudicating authority, wherein, it was considered as input service and not as input, which was inadvertently mentioned by the appellant in their ST3 return. Learned AR has also submitted that this ground of going beyond the scope of SCN has been taken by the appellant by way of additional submission post hearing before this Bench when the order was already reserved and therefore, this could not be taken as additional ground.

6. In respect of reliance placed on various case laws, learned AR has submitted that all the judgments passed by the Coordinate Benches at Chennai and Mumbai have followed the judgment of this Bench in Appeal No. ST/28597/2013, where the facts were clearly distinguishable with the

facts and issues involved in the present appeal. Therefore, reliance cannot be placed on the case laws cited by the appellant.

7. Heard both sides and perused the records.

8. We find that the short question for determination is whether the appellants were eligible for taking abatement in terms of Notification No.01/2006-ST, as amended vide Notification No.34/2011-ST or otherwise. We find that both the notifications are conditional notifications, where the condition clearly prescribes that Cenvat credit on inputs or capital goods or input services for providing such taxable services should not be taken. In this case, as is evident from the record that in the ST3 return for the period prior to 30.06.2012, the appellants had clearly mentioned that they have taken credit in respect of input. However, on their claim that it was mentioned inadvertently, the issue was examined and after factual clarification, it was established by the adjudicating authority that the said entry was clerical mistake and it was, in fact, input services and not input. It was also obvious that invoices pertain to the period prior to 30.06.2012 and therefore, these services were used for the period prior to 30.06.2012.

9. Further, we find from the findings of the adjudicating authority that credit in respect of such services was availed and therefore, clearly the appellants were not fulfilling the condition of the notifications. We find that the notifications in question are exemption notifications issued under section 93(1) and therefore, it has to be construed strictly. It is for the appellant to justify that those services were not at all used by the appellant. We have not found any evidence to suggest that the services like Maintenance and Repair services or Internet services or Courier services were not used for providing any of these services viz., RS or AS. It is inconceivable that any hotel, where maintenance is directly relatable to provision of accommodation or maintenance of restaurant, etc., can be said that these services have no nexus with the services provided by them. In fact, these services are otherwise considered as eligible input services for providing aforesaid services viz., RS and AS. Therefore, in the absence of any cogent and substantive evidence that these services were not used, whether partly or exclusively for providing the impugned services, we find that the benefit of notifications cannot be extended. To that extent, the findings of the adjudicating authority are correct.

10. Insofar as reliance placed on the earlier judgment in their own case, we find that there is force in the submission of the learned AR that the facts being considered by this Bench were on a difference footing and therefore, the said judgment cannot have any relevance for deciding the present issue, where the short issue is eligibility of a conditional notification. The reliance placed by learned AR on the judgment of Hon'ble Supreme Court in the case of CC (Import), Mumbai Vs Dilip Kumar & Company [2018 (361) ELT 577 (SC)] is also relevant.

11. In view of the above discussion and findings, we do not find any infirmity in the impugned order and therefore, we uphold the same.

12. Appeal dismissed.

(Pronounced in the Open Court on 15.05.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)