

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

REGIONAL BENCH - COURT No. I

**Service Tax Appeal No.41662 of 2017**

(Arising out of Order-in-Appeal No.290/2017 (STA-I) dated 01.06.2017 passed by Commissioner of Service Tax (Appeals-I), Chennai)

**Tvl. Mayajaal Entertainment Ltd.,**

34/1, ECR, Kanathur Reddy,  
Kuppam Village,  
Chennai-600 112.

**... Appellant**

*VERSUS*

**Commissioner of GST & Central Excise ... Respondent**

Chennai Outer Commissionerate,  
Newry Towers, No.2054-I, II Avenue,  
Anna Nagar. Chennai-600 040.

**APPEARANCE :**

Shri G. Baskar, Advocate for the Appellant

Shri N. Satyanarayana, Authorized Representative for the Respondent

**CORAM :**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)**

**FINAL ORDER No.40831/2026**

**DATE OF HEARING : 27.03.2026**

**DATE OF DECISION : 29.06.2026**

**Per: Shri Ajayan T.V.**

Mayajaal Entertainment Limited, the appellant herein, has challenged the Order-in-Appeal No. 290/2017 (STA-I) dated 01.06.2017 (the impugned order), whereby, the appeal preferred by the appellant against the

Order-in-Original No. 63/2016 dated 09.03.2016 of the Adjudicating Authority, was rejected.

2. Brief facts are that the appellant is a registered Service Provider engaged in rendering various taxable services such as, Business Support Service, Renting of Immovable Property Service, Sale of Space or Time for Advertisement, Membership of Club or Association Service. Pursuant to an investigation, the department formed a view that, the appellant has engaged in providing various taxable services without payment of appropriate service tax, on the income earned by them, from their clients. The investigation culminated in the issuance of a show cause notice No.686/2010 dated 20.10.2010 for the period April 2005 to September 2009, which came to be adjudicated vide OIO No.11/2012, dated 27.03.2012. Subsequent Show Cause Notices No.171/2011 dated 08.04.2011, and No.87/2012 dated 04.04.2012, were pending adjudication, while the Statement of Demand No.368/2013 dated 26.11.2013, came to be issued to the appellant. The SOD has been issued for the short payment of service tax, for the period, October 2011 to March 2012, and states that, the facts and circumstances, leading to the issue of the present Statement of Demand, are identical to the earlier Show Cause Notices, and hence are not repeated. The SOD proposes demand of service tax payable of Rs.10,26,195/-, along with appropriate interest, and proposes imposition of penalty under Section 76 of the Finance Act. After due process of law, the Adjudicating Authority passed the Order in Original No.63/2016, dated 09.03.2016, wherein, it was also noticed that, the earlier SCNs, dated 08.04.2011 and 04.04.2012, stood adjudicated, vide OIO No. 39 & 40/2014 dated 16.06.2014. The Adjudicating Authority, in the said OIO dated 09.03.2016, rendered a finding that the amount demanded in the notice,

pertains to "Revenue Share" under Business Support Services as per Annexure A and B to the Statement of Demand, and hence, the findings are confined to the services provided under, 'Business Support Services'. The Adjudicating Authority held that in the instant case the appellant, has provided Business Support Services to various restaurants and retailers and received payment which is conveniently being passed as revenue sharing arrangement, and therefore, the amounts are taxable, and went on to confirm the demand, along with appropriate interest, and imposed penalty, under Section 76, as specified therein. Aggrieved, the appellant had preferred an appeal before the Commission of Service Tax (Appeals-I). The Appellate Authority has, however, vide the impugned Order-in-Appeal No. 290/ 2017(STA-I) dated 01.06.2017, rejected the appeal. Hence this appeal.

3. Shri G. Baskar, Ld. Advocate appearing on behalf of the appellant submitted that the dispute involved in the present SOD stood covered by the **Final Order Nos.40698-40701/2024 dated 20.06.2024** in the appellant's own case in the appellant's favour. It is submitted that the present statement of the demand is primarily based on the facts and circumstances of the earlier Show Cause Notices, the proceedings in which has culminated in the aforesaid Final Order in their favour and hence the appeal may be allowed.
4. Shri N. Satyanarayana, Ld. AR reiterated the findings in the impugned order of the Appellate Authority.
5. Heard both sides and produced the material on record.
6. We find that this Tribunal in the **Final Order Nos.40698-40701/2024 dated 20.06.2024**, relied on by the appellant has in the case of **M/s. Mayajaal Entertainment Ltd v.**

**Commissioner of GST & Central Excise, Chennai, in the Service Tax Appeal No.466 and 631 of 2012**, given the details of the orders impugned therein in the following manner,

S.No.	Appeal Nos.	SCN/Data	Period	Amount of Service Tax	OIO/OIA No.
1. 2.	ST/466& 631/2012	686/2010 dated 20.10.2010	April 2005 to Sept. 2009	1,49,56,824/-	OIO No,11/2012 27.3.2012
3.	ST/42028/2016	171/2011 dated 8.4.2011	Oct. 2009 to Sept. 2010	39,77,353/-	OIO No 378 & 379/2016 30.06.2016
4.	ST/42029/2016	87/2012 dated 4.4.2012	Oct. 2010 to Sept. 2011	30,40,599/-	

7. The initial hearing had resulted in a difference of opinion as formulated in the Interim Order No.40009-40012/2023 dated 18.08.2023, which was thereafter, heard by the learned third member, who has held as under:-

"14. Heard both sides and perused the records. The Points of difference referred are as follows:-

**POINTS OF DIFFERENCE**

- (i) Whether the demand raised under 'Business Support Service' is to be sustained as held by Member(Technical)?

OR

Whether the demand raised under 'Business Support Service' is not sustainable and requires to be set aside as held by Member(Judicial)?

(ii) Whether the penalty Imposed under Section 76 of the Finance Act, 1994 requires to be affirmed as held by Member(Technical)?

OR

Whether the penalty imposed under Section 76 of the Finance Act, 1944 is to be set aside as held by Member(Judicial)?.

15. The facts in brief are that the appellant are owning premises at Survey Number 34, Kanathur Reddy Kuppam Village, Chengalpet Taluk, TN and carrying out the business of entertainment centre under the name and style of 'Mayajaal'. Through agreements with various business entities, they allowed to use space in the said premises to carry out the business of restaurant, food court etc.. The appellant through the respective agreements stipulated the period, area allowed to be used, the duties of the licensor and licensee, consideration, etc., which are more or less common in all these agreements.

16. For better appreciation, the relevant clauses of Agreement dated 29.07.2008 between the appellant and M/s. Amalgamated Beam Coffee Trading Co. Ltd. are reproduced below:-

*3. Duties of Licensor: The Licensor shall be responsible for the following apart from providing the area mentioned incl. (1) herein above.*

*a) Billing and collection: The licensor shall be responsible for the collection of cash and billings at the counter for sale of good and beverages. The licensor shall provide a person for these activities.*

*b) Power-Back Up: The licensor shall be responsible for providing necessary power backup facilities at the area and the cost for running of the said facilities shall be borne on proportionate basis by the licensee.*

*c) Support: The licensor shall promote this venture wherever possible and will also ensure freedom of operation for the licensee with regard to the business prospects agreed to herein.*

*4. Duties of Licensee: The licensee hereby agrees as follows:*

a) *Nature of Business: The licensee shall be responsible for Beverages Operations, eg: preparing and serving of Beverages to the customers, guests and visitors at the concession counter as per the menu card or the booklet prepared in this behalf.*

b) *Statutory Obligations: The licensee shall be responsible for the compliance of all statutory formalities with respect to the persons employed by them or hired by them and the licensor shall in no way responsible or liable for the said payment including any claims from such persons.*

c) *Indemnify the Licensor: The licensee agrees to emnify the licensor against all losses and damages, which the licensor may incur due to the act of the licensee or its employees, agents etc.*

d) *Equipments and Maintenance: All kitchen equipment and fixtures as may be required by the licensee shall be procured by the licensee at their cost and the insurance and maintenance of the said equipments shall be the responsibility of the licensee.*

e) *Taxation: It shall be the responsibility of the licensee to pay the requisite sales tax, service tax, and such other charges, taxes, rates and levies by the statutory authorities on the sale / performance of agreed services (eg: VAT in case of Food and Beverage sale or service tax for services offered) as per the provisions of this agreement. The statutory dues shall be paid by the licensee as and when they are due and the licensee agrees to indemnify the licensor from any claim arising there from.*

g) *Waste disposal: The licensee shall be responsible for the removal of garbage, waste materials and for maintenance of the premises in neat and good condition.*

h) *License for Operations: The licensee shall be responsible for obtaining necessary permission and sanctions from the authorities concerned for running the restaurant and the take away counters. Copies of the same shall be given to the Licensor.*

17. The consideration for providing the place in their premises are recorded at para 5(a) and 5(b) of the said Agreement, which are reproduced below:-

*5.Duties of Licensor and Licensee: It is hereby mutually agreed by both the parties as follows:-*

a) **Consideration by terms of Revenue Sharing:** *Out of the total net revenue arising from the sale of food to the public who visit the fast food restaurant and take away*

*counter of the licensee I.e. total (net revenue) the licensor shall retain a sum of (Percentage eg: 20% at food court and 20% at new theatre lobby area) for the duration of the contract out of which and shall pay the balance to the licensee. The payment shall be effected by the licensor on by-weekly basis. The sales tax collected from the customer will be collected under separate heads and shall form part of the billing and will be credited to the account of the licensee. The licensor shall furnish the licensee with a statement of accounts every week on the sale of food and beverages. The sales tax on sales not collected from the customer shall be borne by the licensee only.*

*b) Exemption: Sale of branded soft drinks shall be affected by the licensor exclusively. There will not be sharing of revenue for the sales thus affected.*

*c) Tax liability on Income: Neither party shall be liable for taxes on the income of the other party.*

*d) Mode of payment: All transactions between the parties hereto shall be through crossed cheques or demand drafts with official receipts.*

*e) Maintenance and Goodwill: Both parties agree to maintain the premises in good condition and shall not do any act, which shall cause damage to the area or reputation of the other party.*

*f) Special preference: The licensor shall give the first preference for rendering (above mentioned services) in the event of the licensor organizing any special events outside the Entertainment Centre and within the licensor's premises I.e. Mayajaal Entertainment Centre. The commercials for such services will be worked out mutually. (eg: Catering to special parties).*

*g) Promotion and Sponsorships: The licensee shall carry promotion boards and pamphlets of the licensor in all its outlets. The license shall provide sponsorship to events and other activities conducted by the licensor to improve sales or other marketing efforts.*

*h) Review: There will be a review meeting on every 5th of the following month on the operations, service and revenue generation.*

*i) Changes in Rates/Operations: The licensee agrees to give prior intimation in writing to the licensor about the changes in the operation and rates (eg: menu prices or change of staff etc.). All prices and products In the said business would be decided only on consent of Licensor.*

*J) Deposit: There shall be an interest free refundable security deposit of Rs.30,000/- during the signature, as a one time payment towards location allotted to licensee.*

18. The contention of the Revenue is that the appellant has provided Business Support Services ('BSS' for short) to the licensees; hence taxable.

19. The learned Member(Technical) referring to the agreement and the Circular of the Board dt. 23.02.2009 observed that the service rendered is in the nature of BSS and the mode of payment of consideration cannot be the criteria in interpreting the entry BSS in the context of the said agreement. In other words, he has concluded that the appellant provided infrastructure facilities to their licensees; hence taxable. On the other hand, learned Member(Judicial) referring to the same Circular dated 23.02.2009 and the agreements between the appellant and the restaurant owners including the clause dealing with revenue sharing held that the arrangement between the Appellant-Licensors and the Licensees being in the nature of Revenue sharing, hence in view of the Circular of the Board dated 23.2.2009, the demand of service tax cannot be sustained.

20. The circular dated 23.2.2009 is reproduced as below:

*Circular No. 109/3/2009-S.T., dated 23-2-2009*

*F.No. 137/186/2007-CX.4*

*Government of India*

*Ministry of Finance (Department of Revenue)*

*Central Board of Excise & Customs, New Delhi*

*Subject: Service tax on movie theatres - Regarding.*

*A query had been raised by the field formation as to whether the activity of screening of film supplied by a film distributor would fall under any of the taxable services and accordingly, whether the theatre owners are required to pay service tax on amount*

received by them from distributors. Divergent views have been expressed on this issue. One view is that the activity of screening of films supplied by a film distributor falls under the taxable service category of "renting of immovable property"; while an alternative view is that such activity falls under the category of 'Business Support Service'.

2. The matter has been examined. Normally a producer of a movie sells the rights of showing the movies in a region to a distributor. The distributor in turn enters into agreement with theatre owners. This agreement can be of different types. Thus it is necessary to examine different types of arrangements under which a movie is screened, in order to determine whether any tax liability arises on the activities undertaken by a theatre owner and a distributor, Typical types of arrangements normally entered into between a theatre owner and a distributor are as under :-

2.1 Under one type of arrangement, the distributor leases out the hall for screening of the movie. Here, the theatre owner gets a fixed rent from the distributor. The profit or loss from exhibiting the film is borne by the distributor. In such a case, the theatre owner provides the taxable service of 'Renting of immovable property for furtherance of business or commerce' and is accordingly liable to pay service tax.

2.2 Another type of arrangement is 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.

2.3 In yet another type of arrangement, the theatre owner buys the print/CD of the film on payment of a fixed price and thereafter screens it in his theatre. This transaction is also not subject to service tax being in the nature of sale of goods.

2.4 The arrangement most commonly entered into between a theatre owner and a distributor is that the theatre owner screens the movie for fixed number of days under a contract. The proceeds earned through sale of tickets go to the distributor but the theatre owner receives a fixed sum depending upon the number of days of screening. In this arrangement, the advertisement and display of posters etc. is done by the distributor. Under this arrangement, the fixed amount contracted is given to the theatre owner by the distributor irrespective of the fact whether the movie runs well or not. However, there is no rental arrangement between the theatre owner and the distributor as in the arrangement at paragraph 2.1 above. A view has been expressed that in this arrangement, the theatre owner provides 'Business Support Service' to the distributor and hence is liable to pay service tax on the fixed amount received by the theatre owner.

2.5 The matter has been examined. 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.*

*3. In the light of above, it is clarified that screening of a movie is not a taxable service except where the distributor leases out the theatre and the theatre owner get a fixed rent. In such case, the service provided by the theatre owner would be categorized as 'Renting of immovable property for furtherance of business or commerce' and the theatre owner would be liable to pay tax on the rent received from the distributor. The facts of each case and the terms of contract must be examined before a view is taken.*

*4. All pending cases may be disposed of accordingly. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.*

*5. Please acknowledge receipt.*

*6. Hindi version follows.*

*21. From the aforesaid agreement, it is clear that the licensee had been allotted space in the premises belonging to the appellant for a period of 12 months for carrying out the business of sale of food items, beverages etc. Besides allowing the space to carry out the business, the appellant also agreed to provide uninterrupted power supply, employ a person for billing purposes and to promote the business of the licensee and also ensure a hassle-free business in the allotted space. In normal circumstances, for providing the space, uninterrupted power supply and employing persons for billing purpose, the owner of the premises would have charged a component of fixed rent. Whereas, in the instant case it is agreed between the parties that the licensor would be paid 20% of the net revenue on sale of the food on a bi-weekly basis. This type of arrangement, similar to that of mentioned at para 2.2 of the aforementioned circular wherein it is clarified that no service tax is payable as it is in the nature of participation in the business and the income from the business is shared between the parties. This is evident from the fact that for some reason or otherwise if there is no income from the business of sale of food etc. on a particular day, for example due to strike, natural calamities, etc., the licensee would not be required to pay the appellant for occupying the space for carrying out the said business and using uninterrupted power supply and salary of employed persons for billing purposes. Therefore, the arrangement between the appellant and the occupier are purely on revenue sharing basis, hence, would not*

fall under the scope of Business Support Service. The aforesaid circular has been considered by the Tribunal in the case of **INOX Leisure Vs. CST, Hyderabad** [2022(60) GSTL 326 (Tri. Hyd.)] and it has been held that service tax under the category of Business Support Service, will not be attracted when the arrangement is that of revenue sharing accruing from the business. Later the said judgment has been upheld by the Hon'ble Supreme Court as reported in 2022(62) GSTL 342 (SC). Thus, it can safely be inferred that in the present case allowing the premises to sale food and beverages by the appellant to the licensee and also similar business to other licencees on more or less same terms and conditions, cannot be termed as a Business Support Service. Consequently, I agree with the finding of learned Member(judicial) that the demand raised under Business Support Service deserves to be set aside.

22. The next issue needs to be addressed is, whether penalty is Imposable under Section 76 of the Finance Act, 1994. Ongoing through the record, I find that demand notices have been issued to the appellant on the basis of scrutiny of the records alleging non-payment of service tax on various services viz. Business Support Service, Renting of Immovable property S'ervice, Sale of Space or Time for Advertisement service, Membership of Club and Association Service, Mandap Keeper Service, and Business Auxiliary Service. Few services are held to be taxable and accordingly demands issued on such services have been confirmed. The learned Member(Technical) in the order has dropped the penalty imposed under Section 77, 78 of the Finance Act, 1994 observing that the issues involved are interpretation of law, hence penalty under these provisions are not warranted. However, he has confirmed the penalty Imposed under Section 76 of the Finance Act. In the circumstances of the case, when there is uncertainty and ambiguity in the interpretation and implementation of law, Imposition of penalty, in my view, is not warranted under the said provision also. Hence, I agree with the opinion recorded by Learned Member (Judicial) that penalty imposed under Section 76 of the Finance Act be set aside Invoking Section 80 of the Finance Act, 1994.

23. In the result, I agree with the opinion of learned Member(Judicial) on both the points of reference and the matter be placed before the Bench for appropriate action/ Order."

8. Consequently, in the case **M/s. Mayajaal Entertainment Ltd. vs Commissioner of GST & CE, Chennai vide Final Order No.40698-40701/2024 dated 20.06.2024** the majority order was as under:

"

MAJORITY ORDER

*"The Third Member has agreed with the view of Member (Judicial) on the points of differences referred. In view thereof, the impugned orders are set aside. The appeals are allowed with consequential reliefs, if any."*

Revenue has not shown to us that the aforesaid Final Order has not attained finality.

9. In light of the aforesaid decision in the appellant's own case for the earlier period, adhering to judicial discipline in accordance with the binding precedents in ***CCE, Mumbai v Bigen Industries Ltd, 2006 (197) ELT 305 (SC)*** and ***Jayswals Neco Ltd v. CCE, Nagpur, 2006 (195) ELT 142 (SC)***, we follow the same and hold that the impugned order is liable to be set aside. Order accordingly.

The appeal is allowed with consequential reliefs in law, if any.

(Order pronounced in the open court on 29.06.2026)

sd/-

**(AJAYAN T.V.)**  
Member (Judicial)

sd/-

**(VASA SESHAGIRI RAO)**  
Member (Technical)