CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41368 of 2017

(Arising out of Order-in Original No. 1&2 /2017 – Commr. dated 28.02.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, 6/7 A.T.D.Street, Race Course, Coimbatore 641 018).

M/s. Sree Annapoorna Sree Gowrishankar Hotels (P) Ltd. **...Appellant**
No.418, Mettupalayam Road
Coimbatore 641 018

Versus

Commissioner of GST & Central Excise **...Respondent**
6/7 A.T.D. Street
Race Course, Coimbatore 641 018

AND

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Race Course, Coimbatore 641 018

APPEARANCE:

Shri M. N. Bharathi, Advocate for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos.40853-40854/2026

DATE OF HEARING:26.02.2026
DATE OF DECISION:06.07.2026

Per Mr. AJAYAN T.V.

These two appeals being interconnected and involving common issues were heard together and are being decided by this common order.

2. Sree Annapoorna Sree Gowrishankar Hotels Pvt. Ltd., Coimbatore, the appellant herein (also referred to as SASGH), are engaged in providing 'Restaurant Service' and are running restaurants at various places in Coimbatore. Of the 16 branches that they have, in six branches they have both air-conditioned hall and non-air-conditioned hall. The food is stated to be sourced from the same common kitchen for serving customers in both these halls. However, the appellant was found to be discharging service tax only in respect of the food and beverages served in the air-conditioned hall and not in respect of those served in the non-air-conditioned hall. The Department was of the view that by failing to pay the appropriate service tax on the taxable value in respect of the food and beverage served in the non-air conditioned portion of the restaurant the appellant had violated the provisions of the Notification No.03/2013-ST dated 01.03.2013 (w.e.f 01.04.2013).Consequent to details sought and statement recorded from the General Manager of the appellant, the Department issued a show cause notice dated 08.04.2015 demanding the service tax on the services rendered during the period 01.04.2013 to 30.09.2013 along with the appropriate interest and proposing to impose penalty under Section 76 of the Finance Act, 1994 (Act). For the subsequent period from 01.10.2013 to 31.03.2015, a statement of demand dated 09.10.2015 was issued proposing to demand service tax along with appropriate interest and proposing to impose penalty under Section 76 of the Act. After due process of law, the Adjudicating Authority vide Order in Original sl.no.1 & 2 / 2017 – Commr. dated 28.02.2017 confirmed the demand of Rs.2,32,03,466/- along with the appropriate interest in respect of both the SCN and SOD, for the period from 01.04.2013 to 31.03.2015 along with appropriate interest and imposed penalty of Rs.23,20,467/- under Section 76 of the Act. Aggrieved, the appellant has preferred this appeal.

3. Shri M. N. Bharathi, Ld. Advocate appearing for the appellant contented as under:

a) The Appellant is a leading Hotelier in the city of Coimbatore running a chain of hotels. The Restaurants serve Vegetarian Cuisine. The Appellant also undertakes in its Restaurants sales of sweets and savouries apart from parcel sales. The Appellant holds a Centralised Registration certificate bearing No. AAECS3128EST005 issued under Chapter V of the Finance Act, 1994. Besides, the Appellant is also duly registered under the Tamil Nadu Value Added Tax Act, 2006. The Appellant for service tax purposes falls under the jurisdictional control of Coimbatore Commissionerate.

b) The Restaurants of the Appellant cater to various market needs and all classes of customers. The present appeal relates to the question of liability or otherwise of the Appellant to pay service tax under the Act on the sales of food and non-alcoholic beverages made in the non-air-conditioned restaurants which are located in the same business complex as that of air-conditioned restaurants.

c) During the period 1.4.2013 to 31.3.2015 (demand period), the Appellant operated its restaurants as aforesaid. On the total value of food and beverages sold by the Appellant, applicable VAT was paid under the VAT Act. The Appellant also paid applicable service tax under the Act on the supply of food and beverages inside its Air-conditioned restaurants. The Appellant availed exemption from payment of service tax on the supply of food and beverages served in non-air-conditioned restaurants whether located separately or in the same business complex along with the air-conditioned restaurants. The Appellant availed the exemption available under Sl.No. 19 of Notification 25/12-ST dated 20.6.2012 as amended by Notification No. 3/2013-ST dated 1.3.2013. That stand of non-liability of the Appellant was also confirmed by a letter bearing C.No. IV/16/47/2013 STC dated 15.5.2013 addressed to the Appellant by the Deputy Commissioner (STC) working in the Office of the Commissioner of Central Excise, Customs and Service Tax, Race Course Road, Coimbatore.

d) While so, by a proceeding bearing No. dated 3.9.2013 issued by the Superintendent (PREV) attached to the Office of the Commissioner of Central Excise, Customs and Service Tax (HQ) Preventive Unit,

Coimbatore, the Appellant was required to provide details of branch-wise sales in air-conditioned and non-air-conditioned restaurants for the period 1.4.2013 to 31.7.2013. That proceeding assumed the stand that the sale of food and beverages in the non-air-conditioned halls also attracted service tax liability with effect from 1.3.2013. In response to the same, the Appellant submitted a letter dated 10.9.2013 making clear their stand of non-liability and some of the reasons for the same. On 11.9.2013, a sworn statement of G. Devarajan, General Manager (Finance) of the Group of the Appellant was taken.

e) By a show cause notice bearing No.5/2015 dated 8.4.2015, the Commissioner of Central Excise, Customs and Service tax proposed to demand service tax on the sales of food and beverages in the non-air-conditioned restaurants of the Appellant located in the same business complex as the air-conditioned restaurants. The show cause notice proposed to impose interest under Section 75 of the Act apart from penalty under Section 76 of the Act. The proposals in the Show cause notice covered the period 1.4.2013 to 30.9.2013. In response to the Show cause notice, the Appellant submitted its objections dated 27.4.2015. The Appellant placed reliance upon the notification and accordingly took the stand that the sales of food and non-alcoholic beverages served in the non-air-conditioned restaurants could not be taxed relying upon the Circulars No. 173/8/2013 ST dated 07.10.2013 and the TRU Circular on scope of levy.

f) While so, the Appellant was also served with a Statement of Demand (SOD) bearing No.21/2015 dated 9.10.2015 for the period 1.10.2013 to 31.3.2015. The SOD stated that the grounds and contraventions mentioned in the Show cause notice referred to above applied *mutatis mutandis.* As a response to the Statement of Demand and as a further reply to the Show cause notice issued previously, the Appellant submitted their objections dated 14.6.2016. Apart from relying upon the Notification referred to above, the Appellant also importantly submitted that their activity in the non-air-conditioned restaurants only constituted outright and ordinary sale of food and beverages for price in terms of the principles laid down by the Hon’ble Supreme Court in the judgements reported in 42 STC 386 (Northern India

Caterers (India) Limited Vs Lt. Governor of Delhi) and 45 STC 212 (Northern India Caterers (India) Limited Vs Lt. Governor of Delhi . The Appellant submitted that in each of their restaurants whether non-air-conditioned or air-conditioned, the Customers had a right to take away the unconsumed food from the Restaurants. The Appellant also submitted confirmatory Affidavit / Certificate of various customers in support of that stand. Accordingly, the Appellant submitted that even the payment of service tax by them in the air-conditioned restaurants was not required. The Appellant submitted that in substance they had only effected outright and ordinary sales of food and beverages for a price in their restaurants. Without prejudice to the stand of total non-liability as aforesaid, the Appellant once again placed reliance upon the Notification referred to above. The Appellant emphasized that the air-conditioned and non-air-conditioned restaurants were physically demarcated, that there were clear price differences, separate sale invoices had been raised with separate serial numbers, the words 'Non A/C" had been employed in the bills raised in the non-air-conditioned restaurants and accordingly no part of the food and beverages sold in the non-air-conditioned restaurants could be brought to tax under the Notification as proposed by the show cause notice as well as the Statement Of Demand. The Appellant also resisted the proposal to impose penalty and pleaded bonafides.

g) However, by the impugned Order -in-Original Nos. 1 and 2/17-COMMR dated 28.2.2017, the adjudicating authority has confirmed the proposals in the show cause notice as well as the statement of demand.

4. Ld. Counsel contended that the impugned order has been passed on a mis-interpretation of the exemption notification. The adjudicating authority had failed to appreciate the fact that the wording of the notification had been clear to the effect exemption is for the serving of food of that restaurant which is not air-conditioned.

5. Ld. Counsel argued that the Order suffers from a clear jurisdictional error in as much as ordinary and outright sales of food and non-alcoholic beverages effected by the Appellant for a price in their non-air-conditioned restaurants located in the same premises as the air-

conditioned restaurants have been brought to tax under the Act and is therefore a nullity.

6. Ld. Counsel also argued that the Adjudicating authority has failed to see that the Appellant had only effected outright and ordinary sales of food and drinks in their non-air-conditioned restaurants for a price. The transactions were pure and simple sale transactions attracting only VAT. The Appellant had also paid application VAT on the total value of food and drinks sold by them in their non-air-conditioned restaurants under the VAT Act. Further, in each case of sales of food and drinks by the Appellant to its customers, the customers had the right of consuming the food and drinks ordered for by them either inside the Restaurants or take away the entirety of the unconsumed part. Consequently, no service tax under the Act could have been imposed.

7. It was contended that the fundamental test applied by the Hon'ble Supreme Court in the judgements reported in 42 STC 386 (Northern India Caterers (India) Limited Vs Lt. Governor of Delhi) and 45 STC 212 (Northern India Caterers (India) Limited Vs Lt. Governor of Delhi, was whether the customers had the right to take away the unconsumed food portion supplied to them in the restaurants. By that test, the only inference that could have been drawn by the Adjudicating authority was an inference of outright sales. This was supported by the Affidavit/Certificates of various customers. That evidence being un-rebutted, the stand of non-liability of the Appellant ought to have been accepted.

8. Ld. Counsel further argued that Section 65 B(44) of the Act which defined "service", excluded outright sales of food and drinks effected for a price, as was done by the Appellant and even Section 66 E (i) of the Act only applied to cases were supply of food and drinks was carried out as part of an activity which was essentially a service.

9. It was contended that the learned Adjudicating authority has erred in finding that the right of the Customer of either consuming the food and drinks inside the restaurants or to take away the unconsumed part in its entirety was not germane to the issue adjudicated as it is opposed to the binding principles laid down by the Hon'ble Supreme Court in the judgement reported in 45 STC 212 (Northern India Caterers (India)

Limited Vs Lt. Governor of Delhi, and thus suffers from jurisdictional error.

10. Ld. Counsel further contends that indisputably, the air conditioned and non-air-conditioned restaurants, although found in the same premises or complex, were physically demarcated and were in separate areas, the price at which the Appellant sold the food and drinks in the air-conditioned restaurants were higher by at least 10% on an average when compared to the identical food and drinks sold by the Appellant in the non-air-conditioned restaurants, the Appellant had raised separate sale invoices with separate serial numbers for their sales of food and drinks in the air-conditioned and non-air-conditioned restaurants. Separate set of workers and service area and price list for non-air-conditioned restaurants were also involved and present. The ambience was different between the air conditioned and non-air-conditioned restaurants, while the air-conditioned restaurants had separate names, the non-air-conditioned restaurants although did not have separate names, the Appellant had employed the word, "Non-A/C" in the bills raised in the non airconditioned restaurants, the food and drinks sold in the non-air-conditioned restaurants were not sourced from the air-conditioned restaurants. They were prepared in a centralized kitchen located in a separate area, the price at which the food and drinks sold by the Appellant in the non-air-conditioned restaurants were identical to the price of food and drinks sold on parcel or take away basis. The component of self-service was higher in non-air-conditioned compared to air-conditioned restaurants. For example, at the end of the meal, bowl with hot water and lemon slices was given in air-conditioned restaurants for washing hand. No such service was given in the non-air-conditioned restaurants. Further, air-conditioned restaurants have higher menu choices including made to order food and invariably mint and mouth fresheners were supplied at the end of the meal whereas no such services were provided in non-air-conditioned restaurants. Consequently, the benefit of the Notification ought to have been extended to the Appellant.

11. It was further contended that the adjudicating authority ought to have dropped the SCN and the SOD proposals in light of the binding Circular

bearing No. 173/8/2013- ST DATED 07.10.2013 and also that the Order under challenge is also clearly contrary to the letter C.No.IV/16/344/2015. S.Tax(CCO) dated 08.12.2015 received by the Tamil Nadu Hotel Association from the Office of the Chief Commissioner of Central Excise Coimbatore.

12. Ld. Counsel also argued that the object of the Notification was to grant a benefit to the class of consumers who consumed food and drinks in a non-air-conditioned restaurants and the construction placed by the Adjudicating authority on the Notification has clearly defeated that object.

13. It was also argued that service tax was not a tax which operates as a cost to a service provider. It is a cost that falls upon the service recipient. The intention of the Notification was not to burden the consumers of non-air-conditioned restaurants and that intention has been defeated by the construction placed by the Adjudicating authority on the Notification.

14. That the learned Adjudicating authority has engaged in unjustified guess work in rendering findings in paragraph 41 of the Order under challenge. None of the purported findings in that paragraph are supported by any evidence.

15. The learned Adjudicating authority has in violation of the principles of natural justice found in paragraph 42 of the Order under challenge that the Appellant had named the Air-conditioned halls after the investigation to hoodwink the department. This finding is clearly without any evidence and contrary to the evidence of record in the form of letter address to the department during investigation and also during the hearing which clearly established that that Air-conditioned restaurants always bore separate names. This finding is also beyond the Show cause notice and Statement of Demand as aforesaid. Besides, had the Appellant been put on Notice, they would have been able to place before the Adjudicating authority their letter dated 17.7.2014 addressed to Assistant Commissioner of Service tax, which clearly showed that each one of the air-conditioned halls functioning in the same complex along with the non-air-conditioned halls had separate names.

16. LD. Counsel further contended that on similar facts the Dy. Commissioner of CGST & Central Excise, Coimbatore III Division has in the case of Haribhavanam Hotels, Coimbatore vide OIO No.29/2018 dated 13.06.2018 dropped the proceedings initiated on the allegation that they had failed to pay the appropriate service tax on supply of food in their restaurant having air-condition facility in a part of their establishment. The Revenue's appeal was also negated by the Appellate Authority vide Order in Appeal CMB-CEX-000-APP-044-19 dated 01.02.2019, inter-alia citing the earlier OIAs No.108/2017 dated 09.05.2017 and 97/2018 dated 19.04.2018. It is also submitted that the Appeals against the appellate authority's order has since been dismissed as withdrawn on monetary limits vide this Tribunal Final Order No.41201-41232/2019 dated 29.10.2019.

17. Without prejudice to the various grounds raised above, it was also contended that the Adjudicating authority ought to have granted to the Appellant cum Tax benefit. If that had been done, the extent of service tax liability imposed on the Appellant would have been only Rs.2,22,38,322 and not Rs.2,32,03,466/- for the period in dispute. The Appellant wishes to make it clear that this ground is being raised although the price charged by the Appellant for the supply of food and drinks was not inclusive of any service tax. Nor did the Appellant charge any service tax separately.

18. Without prejudice to the various grounds of non-liability as aforesaid, it was submitted the benefit of available CENVAT credit on Input services of Rs.47,52,345/- ought to have been examined and extended to the Appellant that benefit.

19. It was also argued that the omission to consider the bonafides of the Appellant also vitiates the imposition of penalty without finding contumacious conduct. That in any event the issues adjudicated involved interpretational disputes and hence no penalties could have been imposed.

20. Shri Anoop Singh, Ld. Authorised Representative reiterated the findings in the impugned order. Ld. A.R. placed reliance on the Circular No.173/8/2013-S.T., dated 7.10.2013 issued in F.No334/3/2013-TRU. He argued that on a plain reading of Sl.No.1 of the clarification, it is

evident that to avail the exemption there should be a separate restaurant which is clearly demarcated and separately named. The appellant has not provided any evidence that the air-conditioned restaurants are separate entities in themselves. The clarification was provided to cover a situation where a complex has different restaurants under different names, with some being air-conditioned and the others not and sourcing food from a same common kitchen. It would not be applicable when the very same restaurant had both air-conditioned and non-air-conditioned halls. The operative part of the definition is 'having facility of air conditioning in any part of the establishment at any time during the financial year' and remains unamended. Therefore, even if one part of the establishment is air-conditioned and another part of the very same establishment is not, service tax is applicable. Moreover, even if the air conditioning is operative only for a part of the year due to weather conditions, service tax is applicable. It is argued that the exemption notification has to be interpreted strictly and the scope cannot be enlarged. It is contended that the Adjudicating Authority has correctly held the appellant to be liable to pay service tax for providing services relating to supply of food and beverage in the non-air-conditioned portion of the restaurant which is located in the same establishment. Ld. A.R. prays that the appeal be dismissed.

21. We have heard the rival submissions at length and carefully perused the material available on record.

ISSUE FOR DETERMINATION

22. The sole issue that arises for determination is whether the appellant is liable to pay service tax for providing services relating to supply of food and beverage in the non-air-conditioned portion of the restaurant which is located in the same establishment during the period from April 2013 to March 2015.

GENISIS OF THE LEVY AND CBEC CIRCULAR CLARIFYING THE SCOPE OF THE NEW SERVICE

23. It would be apposite to trace the genesis of the levy of service tax on restaurant services to decide the dispute. We notice that the Hon'ble

Finance Minister, in his speech on February 28, 2011 while presenting the Union Budget 2011-12 has stated as under:

"**185.** I propose to levy service tax on the following new services:

• Hotel accommodation, in excess of declared tariff of 1,000 per day with an abatement of 50 per cent so that the effective burden is only 5 per cent of the amount charged;

• **Service provided by air-conditioned restaurants that have license to serve liquor, by giving an abatement of 70 per cent. Thus, the effective burden will be 3 per cent of the bill**."

24. The Budget Memorandum, also under the heading "service tax" stated as under:

"**I. SERVICE TAX IS BEING IMPOSED ON THE FOLLOWING SPECIFIED SERVICES:**

1) **Services provided by air-conditioned restaurants having a license to serve alcoholic beverages in relation to serving of food and/or beverages**
2) Short-term accommodation provided by a hotel inn, guesthouse, club or campsite or any other similar establishment for a continuous period of less than three months.

The above services will come into effect from a date to be notified, after enactment of the Finance Bill, 2011.

25. The CBEC, vide Circular F.No. 334/3/2011-TRU, dated 28-2-2011, in Annexure A thereof clarified the scope of the new services as under:

"Annexure A

Scope of New Services

1. Services provided by a restaurant

1.1 Restaurants provide a number of services normally in combination with the meal and/or beverage for a consolidated charge. These services relate to the use of restaurant space and furniture, air-conditioning, well-trained waiters, linen, cutlery and crockery, music, live or otherwise, or a dance floor. The customer also has the benefit of personalized service by indicating his preference for certain ingredients e.g. salt, chilies, onion, garlic or oil. The extent and quality of services available in a restaurant is

directly reflected in the margin charged over the direct costs. It is thus not uncommon to notice even packaged products being sold at prices far in excess of the MRP.

1.2 In certain restaurants the owners get into revenue-sharing arrangements with another person, who takes the responsibility of preparation of food, with his own materials and ingredients, while the owner takes responsibility for making the space available, its decoration, furniture, cutlery, crockery and music etc. The total bill, which is composite, is shared between the two parties in terms of the contract. Here the consideration for services provided by the restaurants is more clearly demarcated.

1.3 Another arrangement is whereby the restaurant separates a certain portion of the bill as service charge. This amount is meant to be shared amongst the staff who attend the customers. Though this amount is exclusively for the services it does not represent the full of value of all services rendered by the restaurants.

1.4 The new levy is directed at services provided by high-end restaurants that are air-conditioned and have license to serve liquor. Such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations. It should not be confused with mere sale of food at any eating house, where such services are materially absent or so minimal that it will be difficult to establish that any service in any meaningful way is being provided.

1.5 It is not necessary that the facility of air-conditioning is available round the year. If the facility is available at any time during the financial year the conditions for the levy shall be met.

1.6 The levy is intended to be confined to the value of services contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick-up or home delivery, as also goods sold at MRP. Finance Minister has announced in his budget speech 70% abatement on this service, which is, inter-alia, meant to separate such portion of the bill as relates to the deemed sale of meals and beverages. The relevant notification will be issued when the levy is operationalized after the enactment of the Finance Bill. **(emphasis supplied)**

STATUTORY PROVISIONS ENACTED AND CIRCULAR ISSUED THEREAFTER.

26. The Finance Act, 2011 received the assent of the President on 8th April 2011 and by Section 74 (A) (5)(f), in Section 65(105) of the Finance Act, 1994, it was provided that after sub-clause (zzzzu) the following-sub-clauses shall be inserted, namely:-

"(zzzzv) to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;

(zzzzw) to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months;"

27. By Notification No.29/2011-ST dated 25-04-2011 read with corrigendum dated 2th April 2011, the aforesaid provisions were brought into force with effect from 01-05-2011.

28. The Central Board of Excise and Customs vide Circular No.139/8/2011-TRU dated 10-5-2011, with respect to services provided by Restaurants, inter-alia, clarified as under:

1	If there are more than one restaurants belonging to the same entity in a complex, out of which only one or more satisfy both the criteria relating to air-conditioning and licence to serve liquor, will the other restaurant(s) be also liable to pay Service Tax?	Service Tax is leviable on the service provide by a restaurant which satisfies two conditions: (i) it should have the facility of air conditioning in any part of the establishment and (ii) it should have license to serve alcoholic beverages. Within the same entity, if there are more than one restaurant, which are clearly demarcated and separately named, the ones which satisfy both the criteria is only liable to

		service tax.
2	Will the services provided by taxable restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to a restaurant be also liable to Service Tax?	The taxable services provided by a restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to the restaurant are also liable to Service Tax as these areas become extensions of the restaurant.
3	Is the serving of food and/or beverages by way of room service liable to service tax?	When the food is served in the room, service tax cannot be charged under the restaurant service as the service is not provided in the premises of the airconditioned restaurant with a licence to serve liquor. Also, the same cannot be charged under the Short Term Accommodation head if the bill for the food will be raised separately and it does not form part of the declared tariff.
4	Is the value added tax imposed by States required to be included for the purpose of service tax?	For the purpose of service tax, State Value Added Tax (VAT) has to be excluded from the taxable value.

ABATEMENT PROVIDED

29. It is seen that vide Notification No.34/2011-ST dated 25-04-2011, the Central Government amended No. 1/2006- Service Tax, dated the 1st March, 2006, and in the said notification, in the Table, after S. No. 12 and the entries relating thereto, the following S. No. and the entries were inserted, namely:-

(1)	(2)	(3)	(4)	(5)
13	(zzzzv)	Services provided or to be provided, to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in	-	30

		any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;		
14	(zzzzw)	Services provided or to be provided, to any person, by a hotel, inn, guest house, club or campsite, by whatever name called, in relation to providing of accommodation for a continuous period of less than three months;	-	50

STATUTORY PROVISIONS WITH EFFECT FROM 01-07-2012

30. However, with effect from 01-07-2012, the entire service tax regime underwent sweeping changes. For the first time, services were defined in the Finance Act, 1994 and it was provided under Section 65B (44) that:

> (44) **"service" means any activity carried out by a person for another for consideration, and includes a declared service,** but shall not include—
>
> (a) an activity which constitutes merely,––
>
> (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
>
> (ii) a transaction in money or actionable claim;
>
> (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
>
> (c) fees taken in any Court or tribunal established under any law for the time being in force.
>
> Explanation- xxxxx **(emphasis supplied)**

31. Section 66E stipulated as under:

> **66E. Declared Services.-**The following shall constitute declared services, namely:–
>
> (a) xxx
>
> (b) xxx
>
> xxx
>
> (i) **service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or**

not intoxicating) is supplied in any manner as a part of the activity.

32. The Notification No.1/2006-ST dated 01-03-2006, inter-alia, amended by Notification No.34/2011-ST dated 25-04-2011, was rescinded vide Notification No.34/2012-ST dated 20.06.2012, with effect from 01-07-2012 and exemptions were provided to taxable services from the whole of service tax leviable under Section 66B with effect from 01-07-2012, vide Notification No.25/2012-ST dated 20.06.2012, wherein at Sl.No. 19 it was stipulated as under:

"19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;

33. In parallel, by Notification No.24/2012-ST dated 06.06.2012, the Service Tax (Determination of Value) Rules, 2006 came to be amended by the Service Tax (Determination of Value) Rules, 2012 which was brought into force from the 1st day of July, 2012, and rule 4 of the latter provided as under:

"4. In the said rules, after rule 2B, the following rule shall be inserted, namely :-

"**2C. Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering**. - Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely :-

Sl. No.	**Description**	**Percentage of the total amount**
(1)	(2)	(3)
1	**Service portion in an activity wherein goods, being food or any other article of human consumption or any drink**	40

	(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	
2	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	30

(emphasis supplied)

Explanation 1. — For the purposes of this rule, "total amount" means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the

generally accepted accounting principles.

Explanation 2. — For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986)."

34. By Notification No.03/2013 dated 01-03-2013, the aforementioned entry Sl.No.19 in the Notification No.25/2012-ST ibid was substituted, with effect from 01-04-2013, as under:

"19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year;"

ANALYSIS AND REASONINGS

35. Bearing the above in mind, what becomes clear is that the intention of the Government to tax the services provided by an airconditioned restaurant that has licence to serve liquor was brought into effect from 01-05-2011 by giving an abatement of 70% and it was made amply clear that for the services provided by a restaurant, by whatever name

called, to be liable to service tax the two conditions to be cumulatively satisfied is that, first, the restaurant should have the facility of air conditioning in any part of the establishment, at any time during the financial year, and second, it should have license to serve alcoholic beverages. Thus, the service provider whose services were subjected to levy was to be identified positively as a restaurant, by whatever name called, which satisfies the aforesaid two conditions and even if such a restaurant served food and or/beverage which is not alcoholic, yet it would be liable to pay service tax on the said activity. Therefore, any other restaurant, even if it satisfied one of the above conditions, but not the other, remained outside the ambit of the levy.

36. However, post 01-07-2012, since the definition of service brought within its ambit any activity carried out by a person for another person for a consideration, and included a declared service, and further, since the service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity, constituted a declared service, the Central Government, vide Sl.No.19 of the notification 25/2012 ibid, initially, granted exemption to services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages, and with effect from 01-3-2013, with the substitution of the entry at Sl.No.19, the exemption was available to services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

37. Thus, while prior to 01-07-2012, for the services provided by a restaurant, by whatever name called, to be liable to service tax the two conditions to be cumulatively satisfied is that, first, the restaurant should have the facility of air conditioning in any part of the establishment, at any time during the financial year and second, it should have license to serve alcoholic beverages, post 01-04-2013, i.e.,

for the period under dispute, the levy is attracted on the services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess that has the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, consequent to the exemption under Sl.No.19 being unavailable.

38. At the outset we address the challenge to the impugned order raised by the Appellant that their activity in the non-air-conditioned restaurants only constituted outright and ordinary sale of food and beverages for price in terms of the principles laid down by the Hon'ble Supreme Court in the judgements reported in ***42 STC 386 (Northern India Caterers (India) Limited Vs Lt. Governor of Delhi) and 45 STC 212 (Northern India Caterers (India) Limited Vs Lt. Governor of Delhi***. We are of the view that given our view elaborated supra as to the interpretation of the statutory provisions as well as Sl.No.19 of the Exemption Notification 25/2012-ST ibid as amended, and in view of the settled position in law that there may be more than one taxable events in a single transaction, involving different kinds of taxes and different aspects of taxation, and in light of the decisions of the Honourable High Courts in ***Indian Hotels and Restaurants Association v. Union of India, 2014 (34) S.T.R. 522 (Bom), Hotel East Park v. Union of India, 2014 (35) S.T.R. 433 (Chhattisgarh), Federation of Hotels & Restaurants Association of India v. Union of India, 2016 (44) S.T.R. 3 (Del),*** and ***Ballal Auto Agency v. Union of India, (2025) 30 Centax 147 (Kar)***, the said contention cannot be countenanced.

39. We now proceed to consider the other contentions of the appellant raised in challenge of the impugned order. The appellant contends that the air conditioned and non-air-conditioned restaurants, although found in the same premises, are demarcated and functioning in separate areas. It is also contended that the price at which the Appellant sold the food and drinks in the air-conditioned restaurants were higher when compared to the identical food and drinks sold by the Appellant in the non-air-conditioned restaurants, the Appellant had raised separate sale invoices with separate serial numbers for their sales of food and drinks in the air-conditioned and non-air-conditioned restaurants, there existed

separate set of workers and the ambience was different between the air conditioned and non-air-conditioned restaurants. It was further contended that while the air-conditioned restaurants had separate names, the non-air-conditioned restaurants although did not have separate names, the Appellant had employed the word, "Non-A/C" in the bills raised in the non-air-conditioned restaurants. It was further contended that the food and drinks sold in the non-air-conditioned restaurants were not sourced from the air-conditioned restaurants but were prepared in a centralized kitchen located in a separate area. Furthermore, the price at which the food and drinks sold by the Appellant in the non-air-conditioned restaurants were identical to the price of food and drinks sold on parcel or take away basis. The component of self-service was higher in non-air-conditioned compared to air-conditioned restaurants. For example, at the end of the meal, bowl with hot water and lemon slices was given in air-conditioned restaurants for washing hand. No such service was given in the non-air-conditioned restaurants. Further, air-conditioned restaurants had wider menu choices including made to order food and invariably mint and mouth fresheners were supplied at the end of the meal whereas no such services were provided in the non-air-conditioned restaurants. Consequently, the appellant has contended, the benefit of the Notification ought to have been extended to the Appellant in respect of the services provided in relation to serving of food or beverages in the non-air-conditioned restaurants.

40. The appellant places reliance on the Board's Circular No.173/8/2013-ST dated 07-10-2013 to contend that since the air-conditioned and non-air-conditioned restaurants are clearly demarcated and separately named, with only food being sourced from a common kitchen, the benefit of the said clarification is available. Aid of the TRU Circular on the scope of the levy is also taken. Reliance is further placed on the letter C.No.IV/16/344/2015. S.Tax(CCO) dated 08.12.2015 received by the Tamil Nadu Hotel Association from the Office of the Chief Commissioner of Central Excise Coimbatore.

41. The Appellant has annexed a letter dated 26-11-2025 by the Secretary, Tamil Nadu Hotels Association, addressed to the Chief Commissioner of

Service Tax, Chennai, inter-alia contending that there are very many partially airconditioned hotels in our Country. In such hotels, one room or hall will have AC facility and the remaining portion will be non-air-conditioned with the AC and non A.C. dining halls clearly demarcated, although food is sourced from a common kitchen to both. It was contended that just because a part of the hotel is airconditioned, consumers partaking food in the non-airconditioned section cannot be subjected to the levy of service tax. Attention was invited to the clarification of the Government vide the Circular dated 07-10-2013. Copies of the notice issued to the appellant were also enclosed. It is seen from the reply vide letter C.No.IV/16/344/2015. S.Tax(CCO) dated 08.12.2015 received by the Tamil Nadu Hotel Association from the Office of the Chief Commissioner of Central Excise Coimbatore, that it referred to the Board's Circular dated 07-10-2013 and the clarification provided therein at Sl.No.1 of the said Circular and stating inter-alia that just because there is no name for the non-AC restaurant, the exemption granted to non-AC restaurant cannot be denied and that therefore the food supplied in non-AC restaurant is eligible for the exemption from payment of service tax vide notification No.25/2012-ST dated 20.06.2012 as clarified by Board vide Circular dated 07.10.2013.

42. We find that the Central Board of Excise and Customs vide Circular No.173/8/2013-ST dated 07-10-2013, referring to the exemption for services provided by specified restaurants extended vide serial number 19 of Notification 25/2012-S.T. as modified vide para 1(iii) of Notification 3/2013-S.T, which had become operational on the 1st of April, 2013, clarified as under:

1	In a complex where air-conditioned as well as non-air conditioned restaurants are operational but food is sourced from the common kitchen, will service tax arise in the non-air conditioned restaurant?	Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess, having the facility of airconditioning or central air heating in any part of the establishment, at any time during the year (hereinafter referred as 'specified restaurant') attracts service tax. In a complex, if there is more than one

		restaurant, which are clearly demarcated and separately named but food is sourced from a common kitchen, only the service provided in the specified restaurant is liable to service tax and service provided in a non air-conditioned or non-centrally air-heated restaurant will not be liable to service tax. In such cases, service provided in the non air conditioned/noncentrally air-heated restaurant will be treated as exempted service and credit entitlement will be as per the Cenvat Credit Rules.
2	In a hotel, if services are provided by a specified restaurant in other areas e.g. swimming pool or an open area attached to the restaurant, will service tax arise?	Yes. Services provided by specified restaurant in other areas of the hotel are liable to service tax.
3	Whether service tax is leviable on goods sold on MRP basis across the counter as part of the Bill/invoice.	If goods are sold on MRP basis (fixed under the Legal Metrology Act) they have to be excluded from total amount for the determination of value of service portion.

43. As we had observed supra, from 01-05-2011 and upto 01-07-2012, a restaurant, by whatever name called, was exigible to service tax if it satisfied two conditions, first, the restaurant should have the facility of air conditioning in any part of the establishment, at any time during the financial year and second, it should have license to serve alcoholic beverages. The tax was for the service provided or to be provided by such restaurant to a person in relation to serving of food or beverage, including alcoholic beverages or both, in its premises. However, post 01-04-2013, for the period under dispute, the levy is attracted on the services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess that has the facility of air-conditioning

or central air-heating in any part of the establishment, at any time during the year, consequent to the exemption under Sl.No.19 being unavailable and is a tax in relation to serving of food or beverage, by the said restaurant in its premises.

44. Thus, during the disputed period, from April 2013 to March 2015, though Sl.No.19 of the Exemption Notification 25/2012-ST ibid, grants a broad, category wise exemption to the services of serving food and beverages at all restaurants, eating joints or messes, but with the use of the phrase "other than" it carves out an exception to the exemption. Unlike the general exemption notifications that stipulates conditions that are to be satisfied to garner the benefit of the exemption, the phrase "other than" creates an embargo that completely removes air-conditioned restaurants, eating joints or messes, that have the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, from the scope of the exemption, automatically roping them into the service tax net.

45. What we observe is that the sole condition for the levy of service tax to be attracted that has remained constant right from the inception of the levy, is that the restaurant, eating joint or mess, should have the facility of air-conditioning in any part of the establishment, at any time during the year, with the availability of central air-heating in any part of the establishment, at any time during the year also attracting the levy only with effect from 01-07-2012. However, when it came to effectuating the levy; be it by the definition of taxable service stipulated in the erstwhile Section 65(105) (zzzzv), or by the exception carved out in Sl.No.19 of the Exemption Notification 25/2012-ST ibid as amended; the 'specified restaurant' whose services provided in relation to serving of food or beverages attracted the levy, was effectively characterised as that having '***the facility of air-conditioning in any part of the establishment, at any time during the year***' making it the *defacto* definition of ' air-conditioned restaurant' for all practical purposes.

46. It would be apposite to note at this juncture that the Hon'ble Supreme Court has in ***L. Chander Kumar v. Union of India, 1997 (92) ELT***

318 (SC), addressed the issue of ***whether the Tribunals, constituted either under Article 323A or under Article 323B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?*** and has held as under:

"91. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. **The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.**

xxxxxx

97. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations

enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. **The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.** Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

47. The Appellant has contented before us that the object of the Notification was to grant a benefit to the class of consumers who consumed food and drinks in a non-air-conditioned restaurants and the construction placed by the Adjudicating authority on the Notification has clearly defeated that object. It has also been argued that service tax was not a tax which operates as a cost to a service provider. It is a cost that falls upon the service recipient. The intention of the Notification was not to burden the consumers of non-air-conditioned restaurants and that intention has been defeated by the construction placed by the Adjudicating authority on the Notification.

48. We do believe that while remaining within our remit, we are duty bound to intervene and examine the merits of the aforesaid contentions advanced by the appellant in light of the notification and the Circulars as well as the genesis of the levy as noted above.

49. The origin of the levy indicates, as conveyed in the Budget Speech of the Hon'ble Finance Minister in 2011, that it was intended on the services rendered by air-conditioned restaurants. The Central Board of

Excise and Customs in its circular dated 28-02-2011 had also clarified the scope of the new service, namely, that the levy was on the services provided by high end restaurants that are, inter-alia, air-conditioned restaurants considering that such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations. We find that neither the Finance Act, 1994 or the Notification defines what constitutes 'establishment.' Perforce, an establishment contextually can be considered to be a premise from where such restaurant, eating joint or mess operates and provides the services in relation to serving of food or beverages to a person.

50. That said, Sl.No.19 of the Notification 25/2012-ST ibid as amended, when granting exemption to services provided in relation to serving of food or beverages by a restaurant, eating joint or mess, by characterising the exception after the words 'other than' as ' ***those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year***', has, while, granting relief to such services provided in a non-airconditioned restaurant, however, created a levy that would encompass customers who are served in non-air-conditioned areas of an establishment containing a separately demarcated air-conditioned section. Further, we find that such a levy would extend, say for instance, even to a case where air-conditioning is provided only in the manager's office of the restuarant; notwithstanding that the customers themselves do not enjoy any air-conditioned facility. Such a levy, to our mind would render the provision arbitrary, ambiguous and excessively broad, if not confined to that part of the establishment which alone is air-conditioned, especially in light of the fact that the levy was intended only to be on the services rendered by air-conditioned restaurant as also clarified by the Board in its Circular dated 28-02-2011. After all, it is a settled position in law that tax laws have to be interpreted reasonably and in consonance with justice adopting a purposive approach. ***CIT Bombay v. Gwalior Rayon Silk Manufacturing Co. Ltd, (1992) 3 (SCC) 326*** refers**.**

51. The contention of the appellant that it operates a restaurant where part of the premises is airconditioned and is separately demarcated remains uncontroverted. The appellant too sources its food that is served in the air-conditioned hall and that served in the non-air-conditioned hall, from a common kitchen, a condition that was noted in the Circular of the Board as noted above, and is thus essentially sharing the operational core of a restaurant business, as the food served in the non-air-conditioned hall also originates from a kitchen that feeds the air-conditioned hall. The separate billing, menu pricing and dedicated stewards/waiters indicate that the Appellant has extended the segregation of the air-conditioned restaurant and the non-airconditioned restaurant operationally too apart from their physical demarcation.

52. It would appear that the Revenue has come out with the said Circular No.173/8/2013-ST dated 07-10-2013 to address such incongruity and clarifying that in the case of restaurants, which are clearly demarcated and separately named, but food is sourced from a common kitchen, only the service provided in the specified restaurant is liable to service tax and service provided in a non-air-conditioned or non-centrally air-heated restaurant will not be liable to service tax. The fact that in subsequent orders of the Adjudicating Authority as well as the Appellate Authority in respect of a similarly situated restaurant, relief has been granted is also an indication of the Revenue's stand. The letter dated 26-11-2025 by the Secretary, Tamil Nadu Hotels Association, addressed to the Chief Commissioner of Service Tax, Chennai, stating inter-alia that just because there is no name for the non-AC restaurant, the exemption granted to non-AC restaurant cannot be denied, and that therefore the food supplied in non-AC restaurant is eligible for the exemption from payment of service tax vide notification No.25/2012-ST dated 20.06.2012 as clarified by Board vide Circular dated 07.10.2013, cements the pragmatic stance adopted by the Department in such circumstances. We are also guided by the decisions of the Apex Court in ***K.P.Varghese v. Income Tax officer, Eranakulam, AIR 1981 SC 1922***, and ***CCE v Parle Exports (P) Ltd, 1988 (38) ELT 741 (SC)***, whereby it was held that it is a well-settled principle of interpretation

that courts in construing a statute or notification will give much weight to the interpretation put up on it at the time of enactment or issue and since, by those who have to construe, execute and apply the said enactments. They are in the nature of *contemporanea expositio* furnishing legitimate aid in the construction of the relevant provisions.

53. At this juncture, we notice that the Jurisdictional High Court in ***Anjappar Chettinad A/C Restaurant v. Jt. Commr., Office of the Commissioner of GST & Chennai, South Commissionerate, 2021 (51) G.S.T.L 125 (Mad)*** had while deciding a question as to the liability to service tax under the Finance Act, 1994, on food that is 'taken away' or collected from restaurants or eateries, in parcels, has gone on to hold as under:

> "20**. Levy of tax on service was under Finance Act, 1994 and the Legislative competence to levy a tax on service involved in the sale of food and drink is no longer res integra as held by the Supreme Court in the case of Federation of Hotels (supra footnote 11). Though initially there was some uncertainty on the quantum of the receipts that would attract tax, in time, an abatement was provided for, in recognition of the position that the sale of food and beverages and drinks (including sale of beverages and intoxicating drinks) does involve both aspects of sale as well as service**.
>
> 21. Service tax was initially levied on the sale of food and drink in all restaurants without exception and Entry 19 of Notification 25 of 2012 levied tax on services provided in relation to serving of food and beverages by a restaurant, eating joint or mess.
>
> 22. **The levy was restricted to sales in air-conditioned restaurants alone, vide Notification No. 3 of 2013-S.T., dated 1-3-2013, commonly referred to as the mega exemption notification, that carved out specified exclusions from the coverage of the Act. By virtue of Notification 3 of 2013, the levy of tax was restricted only to those restaurants, eating joints or mess, that have the facility of air-conditioning or central heating in any part of the establishment at any time during the year**." **(emphasis supplied)**

54. The Hon'ble High Court, went on to notice Section 66E, Circular 173/8/2013-ST dated 07-10-2013, whereby Board had provided clarifications on the subject of restaurant service, the Circular No. 334

of 2011, dated 28-2-2011, whereby the scope of various new services including restaurant service, all newly introduced in 1-4-2011, were explained, and had gone on to hold as under:

"26. **Thus, not all services rendered by restaurants in the sale of food and drink are taxable and it is only certain specified situations that attract tax.** The sale of food and drink simplicitor, services of selection and purchase of ingredients, preparation of ingredients for cooking and the actual preparation of the food and drink would not attract the levy of tax. **Only those services commencing from the point where the food and drinks are collected for service at the table till the raising of the bill, are covered. This would encompass a gamut of services including arrangements for seating, decor, music and dance, both live and otherwise, the services of Maitre D'Or, hostesses, liveried waiters and the use of fine crockery and cutlery, among others. The provision of the aforesaid niceties are critical to the determination as to whether the establishment in question would attract liability to service tax, and that too, only in an air-conditioned restaurant**.

27. In the case of take-away or food parcels, the aforesaid attributes are conspicuous by their absence. In most restaurants, there is a separate counter for collection of the take-away food parcels. Orders are received either over telephone, by e-mail, online booking or through a food delivery service such as swiggy or zomato. Once processed and readied for delivery, the parcels are brought to a separate counter and are picked up either by the customer or a delivery service. More often than not, the take-away counters are positioned away from the main dining area that may or may not be air-conditioned. In any event, the consumption of the food and drink is not in the premises of the restaurant. In the aforesaid circumstances, I am of the categoric view that the provision of food and drink to be taken-away in parcels by restaurants tantamount to the sale of food and drink and does not attract service tax under the Act."

55. Thus, the jurisdictional High Court has, after considering the relevant provisions and the Board's Circular, observed that the provision of the attendant niceties that was associated with airconditioned restaurants is critical to the determination as to whether the establishment in question would attract liability to service tax and that too only in an airconditioned restaurant, thereby fortifying our aforesaid view.

56. In view of the above, we find merits in the appellant's contention that in the given circumstances the appellant is not liable to pay service tax for providing services relating to supply of food and beverage in the non-air-conditioned portion of the restaurant which is located in the same establishment during the period from April 2013 to March 2015. Therefore, we find the impugned order cannot be sustained and is liable to be set aside. Ordered accordingly.

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

(Order pronounced in open court on 06.07.2026)

Seperate Order

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

ra

Per M. Ajit Kumar

57. I have perused the order of the learned Member (Judicial), Shri Ajayan T.V. I agree with the opinion expressed by him on the merits of the case.

58. I am, however, not persuaded that paragraph 46 of the order, citing the judgment in L. Chander Kumar (supra), was necessary. In my view, that paragraph does not advance the reasoning on which the order is founded, particularly since neither party has challenged the constitutional validity of any statutory provision or rule before us and is distractive. In these circumstances, paragraph 46 is unnecessary and superfluous, and I am therefore unable to concur with it.

59. I, however, agree with the learned Member (Judicial) that the impugned order deserves to be set aside, with consequential relief to the Appellant in accordance with law.

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

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