IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75930 of 2019

(Arising out of Order-in-Original No. COMMR/BBSR/ST/40/2018 dated 28.12.2018 passed by the Commissioner of Goods and Services Tax, Central Excise and Customs, Bhubaneswar, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Odisha State Beverages Corporation Limited : Appellant
2nd Floor, Fortune Towers,
Chandrasekharpur,
Bhubaneswar – 751 007, Odisha

VERSUS

Commissioner of C.G.S.T. and Central Excise : Respondent
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007, Odisha

APPEARANCE:

Shri Arnab Chakraborty, Advocate, for the Appellant

Shri Argho Mukherjee, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76277 / 2026

DATE OF HEARING: 22.09.2026

DATE OF DECISION: 25.09.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal challenges the Order-in-Original No. COMMR/BBSR/ST/40/2018 dated December 28, 2018, whereby demand of Service Tax of ₹53,88,08,005/-, together with interest and penalties, has been confirmed on the licence fees and additional licence fees paid by Odisha State Beverages Corporation Limited (herein after referred to as the "appellant") to the Government of Odisha during the period from July 1, 2012 to March 31, 2017.

2. The facts of the case are that the appellant, namely, Odisha State Beverages Corporation Limited, is a Government of Odisha undertaking incorporated pursuant to the decision of the State Government to regulate the wholesale trade and distribution of foreign liquor in the State. In exercise of powers under Section 20A of the Bihar and Orissa Excise Act, 1915, the State Government vested in the appellant the exclusive right and privilege of importing, exporting and carrying on the wholesale trade and distribution of foreign liquor in the State of Odisha. The appellant accordingly undertakes wholesale purchase and sale of Indian Made Foreign Liquor, beer and wine through its depots in the State, subject to the applicable excise laws, rules and policies.

2.1. For carrying on the aforesaid wholesale trade, the appellant was required under the applicable excise laws and Excise Policies issued by the Government of Odisha from time to time, to obtain/renew the requisite licence and pay the prescribed licence fees. During the financial years 2015-16 and 2016-17, the State Government also prescribed an "Additional Rounding Off Licence Fee" consequent upon its decision to round off the MRP of liquor to the next ₹5/- for convenience of cash transactions at retail shops. The amounts so paid were reflected in the appellant's books under the respective heads of licence fee and additional licence fee.

2.2. An investigation was initiated by the Directorate General of GST Intelligence, Bhubaneswar Zonal Unit, on the premise that the exclusive right and privilege vested in the appellant by the Government of Odisha constituted a 'Service' rendered by the State Government and that the licence fees and additional licence fees paid by the appellant constituted 'Consideration' therefor. In the course of such investigation, records were obtained and statements were recorded from the appellant, whereafter the Department formed the view that the appellant had received "support services" from the State Government up to March 31, 2016 and "any service" with effect from April 1, 2016, on which service tax was payable by the appellant under the reverse charge mechanism.

2.3. Pursuant thereto, a Show Cause Notice dated April 18, 2018 was issued proposing recovery of service tax for the period from July 1, 2012 to March 31, 2017 on the licence fees aggregating to ₹308.84 crore and additional licence fees aggregating to ₹105.90 crore. On the aforesaid taxable value, service tax together with applicable cesses aggregating to ₹53,88,08,005/- was proposed to be recovered under Section 73(1) of the Finance Act, 1994, along with applicable interest and penalties.

2.4. The appellant contested the aforesaid proceedings, inter alia, contending that the licence fees and additional licence fees were statutory imposts under the applicable State excise law and were not 'Consideration' for any service rendered by the Government of Odisha; that there was no reciprocity, quid pro quo or corresponding obligation upon the State Government to provide any service against such payments; and that the grant of a statutory licence could, in any event, not constitute "support services" within the meaning of Section 65B(49) of the Finance Act, 1994. The appellant also contested invocation of the extended period of limitation.

2.5. The learned Commissioner, however, rejected the aforesaid contentions and, by the impugned Order-in-Original No. COMMR/BBSR/ST/40/2018 dated December 28, 2018, confirmed the demand of service tax of ₹53,88,08,005/-, together with applicable interest and penalties, holding *inter alia* that the licence fees and additional licence fees represented 'consideration' for the exclusive privilege granted by the Government of Odisha; that the same constituted consideration for taxable "support services" up to March 31, 2016 and for taxable services provided by Government thereafter up to March 31, 2017; and that the extended period of limitation was invocable.

2.6. Aggrieved by the confirmation of the demand of Service Tax along with interest and penalties, the appellant has filed this appeal.

3. The Ld. Counsel for the Appellant submits that the very foundation of the impugned demand is misconceived, inasmuch as the licence fees and additional licence fees paid by the appellant to the Government of Odisha do not constitute 'Consideration' for any "service" rendered by the State Government within the meaning of Section 65B(44) of the Finance Act, 1994. Section 65B(44) necessarily contemplates an activity carried out by one person for another for consideration.

3.1. It is the case of the appellant that the nature of the appellant's rights has necessarily to be appreciated in the context of the constitutional and statutory regime governing intoxicating liquor. The appellant submits that there is a distinction between the State parting with or regulating its exclusive privilege and the State rendering a service for consideration; that in the present case, the impugned order does not identify any independent activity or service actually performed by the Government of Odisha for the appellant in return for the licence fees and that the mere statutory grant or continuance of a licence to carry on the regulated liquor trade cannot, by itself, establish the essential relationship of service provider and service recipient contemplated by the Finance Act, 1994.

3.2. It is also submitted by the Ld. Counsel for the appellant that the aforesaid position stands expressly recognised by the Tribunal in *Anheuser Busch InBev India Ltd. v. Commissioner of Central Tax, Bengaluru North West, 2021 (52) G.S.T.L. 429 (Tri.-Bang.), Final Order No. A/20038/2021 dated February 18, 2021*; that te principle in *Anheuser Busch InBev India Ltd.* (supra) was thereafter followed in *United Spirits Ltd. v. Commissioner of Central Taxes, Bangalore North GST Commissionerate, Service Tax Appeal No. 20156 of 2021, Final Order No. 20178/2022 dated April 11, 2022 (CESTAT Bangalore).*

3.3. Apart from the aforesaid principle, the appellant contends that the demand for the period **July 1, 2012 to March 31, 2016** is independently unsustainable having regard to Section 66D(a)(iv) read with Section 65B(49) of the Finance Act, 1994 as they then stood; services provided by Government or a local authority were placed in the Negative List, subject, inter alia, to an exception in respect of "support services" provided to business entities. "Support services" under Section 65B(49) contemplated infrastructural, operational, administrative, logistic, marketing or other support comprising functions which entities ordinarily carry out themselves but may obtain as services by outsourcing from others. It is the appellant's stand in this regard that the statutory grant of a liquor licence or privilege plainly answers none of these descriptions. Grant of a licence is not a function which the appellant could itself perform and thereafter elect to "outsource" to the State Government. Consequently, even assuming an activity by Government, it remained within Section 66D(a) of the Finance Act, 1994 and outside the taxable exception during this period.

3.4. It has been stated that the amendment effective from **April 1, 2016**, whereby the expression "support services" in Section 66D(a)(iv) was substituted so as to bring within the tax net generally services provided by Government to business entities, does not cure the more fundamental defect in the Department's case; that the amendment merely altered the scope of the Negative List; it did not dispense with the threshold requirements of Section 65B(44); there must still be a "service", namely an activity carried out by one person for another for consideration. The Ld. Counsel for the appellant argues that if the licence fee represents a statutory impost or the price attached to the State parting with its exclusive liquor privilege, rather than consideration for an activity performed for the appellant, the substitution of "any service" for "support services" cannot by itself create a taxable service where none otherwise exists.

3.5. Further, it is also the appellant's submission that the legislative and executive developments concerning liquor licence fees place the matter beyond doubt for the period commencing April 1, 2016. Reference was drawn to the 26th Meeting of the GST Council held on March 10, 2018, Agenda Item 14(iv), which specifically considered taxability of licence fee and application fee for alcoholic liquor for human consumption and decided that GST was not leviable on such licence/application fee "by whatever name called", and that the same treatment should apply *mutatis mutandis* to demands raised under the service-tax regime for the period April 1, 2016 to June 30, 2017; that the decision was accepted by the Central Government and communicated to its field formations and this contemporaneous governmental understanding directly contradicts the premise upon which the impugned order proceeds.

3.6. In this regard, the appellant places reliance on the decision of the Hon'ble Delhi High Court in *Jagatjit Industries Ltd. v. Union of India, 2019 (22) G.S.T.L. 350 (Del.), W.P.(C) Nos. 3277 and 4204 of 2017, decided on August 10, 2018* which as per the appellant has specifically considered the above scenario; that the same development also resulted in disposal of the challenge before the Punjab and Haryana High Court in *Divya Singla & Ors. v. Union of India & Ors., 2018-TIOL-2875-HC-P&H-GST, CWP No. 12390 of 2017 (O&M), decided on August 27, 2018.*

3.7. The appellant has also drawn attention to the fact that the position subsequently received express statutory recognition through **Section 117 of the Finance (No. 2) Act, 2019**, whereby Parliament retrospectively provided that no service tax shall be levied or collected in respect of taxable services provided or agreed to be provided by the State Government by way of grant of liquor licence against consideration in the form of licence fee or application fee, "by whatever name called", during the period April 1, 2016 to June 30, 2017. It is therefore vehemently argued that the legislative provision thus squarely covers the latter part of the period involved in the present proceedings, namely April 1, 2016 to March 31, 2017; that consequently, quite apart from the appellant's contention that no taxable service existed in the first place, the demand pertaining to this period cannot survive the retrospective statutory dispensation.

3.8. The appellant, on this score, refers to the subsequent decision of the Tribunal in *Tamilnadu State Marketing Corporation Ltd. v. Commissioner of GST and Central Excise, (2025) 31 Centax 41 (Tri.-Mad.), Final Order Nos. 40518–40520/2025 dated May 7, 2025,* to further support their case.

3.9. In view of the aforesaid facts, statutory provisions and settled judicial position, the Ld. Counsel for the appellant submitted that the licence fees and additional licence fees paid by them to the Government of Odisha cannot constitute 'consideration' for any taxable service rendered by the State Government. Thus, the appellant's contention is that the demand of Service Tax of ₹53,88,08,005/-, together with consequential interest and penalties, confirmed in the impugned order is legally not sustainable.

3.10. Alternatively, the appellant has also contested the demand on the ground of limitation. The appellant submits that the show cause notice proposing recovery of service tax for the period from July 1, 2012 to March 31, 2017 was issued on April 18, 2018, invoking extended period of limitation. On the grounds that they are a Government of Odisha undertaking, incorporated for the purpose of regulating the wholesale trade and distribution of foreign liquor in the State and that, all the activities undertaken by them are in the public domain and they have not suppressed any information from the department, it is submitted that extended period cannot be invoked to demand Service Tax in this case

4. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the Appeal documents.

6. We find that the State Government of Odisha vested in the appellant the exclusive right and privilege of importing, exporting and carrying on the wholesale trade and distribution of foreign liquor in the State of Odisha. The appellant accordingly undertakes wholesale purchase and sale of Indian Made Foreign Liquor, beer and wine through its depots in the State, subject to the applicable excise laws, rules and policies. Under the applicable excise laws the appellant is required to pay the prescribed licence fees and "Additional Rounding Off Licence Fee". The Department considered this exclusive right and privilege vested in the appellant by the Government of Odisha as a 'Service' rendered by the State Government and that the licence fees and additional licence fees paid by the appellant as 'Consideration' for the said 'service'. Thus, the Department is of the view that the appellant had received "support services" from the State Government up to March 31, 2016 and "any service" with effect from April 1, 2016, on which service tax was payable by the appellant under the reverse charge mechanism.

6.1. We observe that Section 65B(44) contemplates an activity carried out by one person for another for 'Consideration' as a 'service' . In the present case, we find that the impugned order does not identify any independent activity or service actually performed by the Government of Odisha for the appellant in return for the licence fees. The mere statutory grant or continuance of a licence to carry on the regulated liquor trade cannot, by itself, establish the essential relationship of service provider and service recipient, as contemplated by the Finance Act, 1994. We find that the licence fees and additional licence fees paid by the appellant to the Government of Odisha do not constitute 'Consideration' for any "service" rendered by the State Government within the meaning of Section 65B(44) of the Finance Act, 1994.

6.2. In this regard, we also note that Entry 8 of List II of the Seventh Schedule to the Constitution specifically places within the legislative competence of the State the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, while Entry 66 empowers the State Legislature to levy fees in respect of matters contained in List II. In exercise of such legislative competence, Section 20A was inserted in the Bihar and Orissa Excise Act, 1915, whereunder the exclusive right and privilege of importing, exporting and carrying on wholesale trade and distribution of foreign liquor was vested in the State Government, with power to appoint a corporation owned or controlled by the State Government for such purpose. The Government notification issued thereunder thereafter vested such wholesale trade and distribution in the appellant. The appellant's position thus flows directly from the State excise legislation and the statutory notification issued thereunder and not from any consensual arrangement for procurement of a service. This constitutional character of the liquor licence assumes particular significance because the State does not stand in the position of an ordinary commercial service provider. The right to manufacture, possess, transport, purchase or sell intoxicating liquor is within the exclusive regulatory domain of the State and the State may permit its exercise upon such terms and payment as the governing excise law prescribes. The amount charged for permitting exercise of such privilege consequently cannot, merely because it is described as a "licence fee", be equated with consideration paid by a customer for receipt of a service. The distinction between the State parting with or regulating its exclusive privilege and the State rendering a service for consideration. We agree with the submission of the appellant that the licence fees and additional licence fees are statutory imposts under the applicable State excise law and the same are not 'Consideration' for any service rendered by the Government of Odisha. In this case, we find that there is no reciprocity, quid pro quo or corresponding obligation upon the State Government to provide any service against such payments. Accordingly, we hold that the grant of a statutory licence would not constitute "support services" within the meaning of Section 65B(49) of the Finance Act, 1994.

6.3. The aforesaid position stands expressly recognised by the Tribunal in *Anheuser Busch InBev India Ltd. v. Commissioner of Central Tax, Bengaluru North West, 2021 (52) G.S.T.L. 429 (Tri.-Bang.), Final Order No. A/20038/2021 dated February 18, 2021*. The Tribunal, after considering Entries 8 and 66 of List II of the Seventh Schedule to the Constitution, expressly observed that the fee charged for grant of a liquor licence is not consideration for a service but the price charged for the "exclusive privilege" parted with by the State, which possesses exclusive rights concerning manufacture, possession, consumption and transport of liquor and grants licences and permits in exercise thereof. Significantly, the Tribunal separately upheld service tax upon the Storage Licence Renewal Fee relating to CO_2 on the ground that the same could not be considered a fee paid towards grant of a liquor licence, thereby itself recognising the material distinction between an ordinary regulatory licence and fees connected with the State's exclusive privilege in intoxicating liquor.

6.4. The principle in *Anheuser Busch InBev India Ltd.* (supra) was thereafter followed in *United Spirits Ltd. v. Commissioner of Central Taxes, Bangalore North GST Commissionerate, Service Tax Appeal No. 20156 of 2021, Final Order No. 20178/2022 dated April 11, 2022 (CESTAT Bangalore)*. The Tribunal noticed that the adjudicating authority had itself dropped the demand upon the licence fee but had sought to distinguish permit fee, import pass fee, export pass fee and other fees. Rejecting such distinction, the Tribunal held that these were statutory levies connected with the State's exclusive privilege concerning liquor and were not charges against provision of any service. The Tribunal accordingly held that, in the absence of any service corresponding to the statutory fees paid to the State Government, service tax could not be levied thereon. The decision expressly follows *Anheuser Busch InBev India Ltd. v. Commissioner of Central Tax, Bengaluru North West, 2021 (52) G.S.T.L. 429 (Tri.-Bang.).*

6.5. For the period prior to 01.04.2016, we find that the services provided by Government or a local authority were placed in the Negative List, subject, inter alia, to an exception in respect of "support services" provided to business entities. "Support services" under Section 65B(49) contemplated infrastructural, operational, administrative, logistic, marketing or other support comprising functions which entities ordinarily carry out themselves but may obtain as services by outsourcing from others. The statutory grant of a liquor licence or privilege plainly answers none of these descriptions. Grant of a licence is not a function which the appellant could itself perform and thereafter elect to "outsource" to the State Government. Consequently, even assuming an activity by Government, it remained within Section 66D(a) of the Finance Act, 1994 and outside the taxable exception during this period.

6.6. We observe that the amendment effective from **April 1, 2016**, whereby the expression "support services" in Section 66D(a)(iv) was substituted so as to bring within the tax net generally services provided by Government to business entities, does not cure the more fundamental defect in the Department's case. The amendment merely altered the scope of the Negative List; it did not dispense with the threshold requirements of Section 65B(44). There must still be a "service", namely an activity carried out by one person for another for consideration. If the licence fee represents a statutory impost or the price attached to the State parting with its exclusive liquor privilege, rather than consideration for an activity performed for the appellant, the substitution of "any service" for "support services" cannot by itself create a taxable service where none otherwise exists.

6.7. We find that the position subsequently received express statutory recognition through **Section 117 of the Finance (No. 2) Act, 2019**, whereby Parliament retrospectively provided that no service tax shall be levied or collected in respect of taxable services provided or agreed to be provided by the State Government by way of grant of liquor licence against consideration in the form of licence fee or application fee, "by whatever name called", during the period April 1, 2016 to June 30, 2017. The legislative provision thus squarely covers the latter part of the period involved in the present proceedings, namely April 1, 2016 to March 31, 2017. Consequently, quite apart from the appellant's contention that no taxable service existed in the first place, we find that the demand pertaining to this period cannot survive the retrospective statutory dispensation.

6.8. We find that the subsequent decision of the Tribunal in *Tamilnadu State Marketing Corporation Ltd. v. Commissioner of GST and Central Excise*, *(2025) 31 Centax 41 (Tri.-Mad.), Final Order Nos. 40518–40520/2025 dated May 7, 2025,* further supports the appellant's case. TASMAC, a 100% Government of Tamil Nadu undertaking vested with the exclusive privilege of wholesale distribution and retail vending of IMFL under the Tamil Nadu Prohibition Act, 1937, was authorised, upon insertion of Rule 9A in the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 with effect from March 29, 2013, to grant to private parties the privilege of running bars by tender. The Tribunal held that, from the date on which such statutory authority was conferred, the activity constituted a statutory function carried out under authority of law and fell within the Negative List, and consequently held that no service tax liability arose from March 29, 2013 onwards. The decision thus reinforces the appellant's submission that an activity undertaken in exercise of authority specifically conferred by the governing State liquor legislation cannot be characterised as an ordinary commercial service exigible to service tax.

6.9. In view of the above discussions, we find that for the period up to March 31, 2016, the grant of licence or exclusive privilege did not constitute "support services" within the meaning of Section 65B(49) of the Finance Act, 1994 and remained covered by the Negative List under Section 66D(a); while for the period from April 1, 2016 to March 31, 2017, the levy stands expressly neutralised by the retrospective statutory dispensation subsequently enacted by Parliament. The consistent judicial treatment of liquor licence fees and allied statutory imposts, as discussed hereinabove, further establishes that the impugned payments cannot be subjected to service tax merely by characterising the statutory privilege granted by the State as a 'service'.

6.10. Thus, we hold that the licence fees and additional licence fees paid by the appellant to the Government of Odisha do not constitute consideration for any "service" rendered by the State Government within the meaning of Section 65B(44) of the Finance Act, 1994 and remained covered by the Negative List under Section 66D(a); while for the period from April 1, 2016 to March 31, 2017, the levy stands expressly neutralised by the retrospective amendment brought in by Section 117 of the Finance (No. 2) Act, 2019. Accordingly, we hold that the demand of Service Tax, along with interest and penalties, as confirmed in the impugned order, is legally not sustainable and hence we set aside the same.

6.11. We also find merit in the contention of the Appellant that part of the demand is barred by limitation. We find that in this case, the Show Cause Notice proposing recovery of Service Tax for the period from July 1, 2012 to March 31, 2017 was issued on April 18, 2018, invoking extended period of limitation. It is an admitted fact that the appellant is a Government of Odisha undertaking, incorporated for the purpose of regulating the wholesale trade and distribution of foreign liquor in the State. We find that all the activities undertaken by the appellant are in the public domain and they have not suppressed any information from the department. Accordingly, we hold that suppression of facts with intention to evade the tax is not established in this case. Thus, we also hold that the extended period cannot be invoked to demand Service Tax in this case.

7. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on **25.09.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd