

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 971 of 2012

(Arising out of Order-in-Original No. 03/2012 dated 18.01.2012
passed by the Commissioner of Service Tax, Bangalore.)

M/s. Annapoorna Health Foods,

Represented by its partner

Sri. M. Srinivasa Rao,

No. 258/A, Bommasandra Industrial Area,

Anekal Taluk,

Bangalore – 560 099.

Appellant(s)

VERSUS

Commissioner of Central

Excise and Service Tax,

No. 16/1, 5th Floor, S.P. Complex,

Lalbagh Road, Bangalore.

Respondent(s)

APPEARANCE:

Mr. S. Annamalai, Advocate for the Appellant

Mr. Malatesh S Kulkarni, Assistant Commissioner (AR) for the
Respondent

CORAM:

HON'BLE MR P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21238 /2026

DATE OF HEARING: 27.05.2026

DATE OF DECISION: 23.10.2026

PER : P. A. AUGUSTIAN

The issue in the present appeal is regarding demand of service tax by considering the activity carried out by the Appellant as falling under outdoor catering service.

2. The Appellant is engaged in the activity of supply of food to patients of M/s Narayana Hridayalaya Pvt Ltd. (NHPL for short), patient's relatives and Doctors and other staff of M/s

NHPL. Both the firms are situated at the same premises. Alleging evasion of service tax for the period from March, 2006 to 2010-11 (upto 30.09.2010), proceedings were initiated and show cause notice was issued on 21.04.2011. Thereafter Adjudication authority as per the impugned order dated 23.01.2012 confirmed the demand and also imposed penalties under various provisions of law. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, Learned Counsel for the Appellant draws our attention to the show cause notice and submits that once it is an admitted fact that the Appellant were paying VAT by considering it as sale of goods, demand of service tax is unsustainable by referring to the Form VAT 120 composition tax return filed by the appellant under the VAT Act, 2003. In this regard, he also draws our attention to the definition of outdoor caterer which is reproduced below:-

60.1. The Outdoor Caterer as defined under Section 65 (76a) of the Finance Act, 1994 is as under:

"outdoor caterer means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services".

60.2. The term 'Caterer' is defined under Section 65 (24) of the Finance Act, 1994 as under;

or any "caterer means any person who supplies, either directly indirectly, food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion".

60.3. Taxable service relating to Outdoor Catering service is defined under section 65(105)(zzt) of the Finance Act, 1994 as under;

"taxable service means any service provided or to be provided to any person, by an outdoor caterer".

4. Learned Counsel for the appellant further submits that the appellant is not registered with the service tax authorities and not providing any catering services as defined under the Finance Act 1994 and it is not covered by the notification No.2/2006 ST dated 01.03.2006. He also draws our attention to the Circular No. 96/7/2007-ST dated 23.08.2007 where in response to question whether spare parts sold by service station during the servicing of vehicle is liable to payment of service tax, it is clarified that service tax is not leviable on a transaction treated as sale of goods and subject to levy of sales tax/VAT. It is also clarified that whether a given transaction between the service station and the customer is a sale or not is to be determined, taking into accounts the real nature and material facts of the transaction and payment of VAT/sales tax on a transaction indicates that transaction is treated as sale of goods.

5. Learned Counsel also draws our attention to the agreement entered by the Appellant with M/s Narayana Hridayalaya dated 02.12.2005 where it is specifically stated that the Appellant will be responsible for sale of fresh and quality food items at all times to the public visiting the hospital, hospital staff, patients and hospital inpatients and appellant is responsible for collecting the sale proceeds. It is also stated that the details of the VAT paid for the period from 01.04.2006 to 31.03.2007, the statement recorded from Sri. G. Ramachandran on 30.04.2007 relied in the show cause notice wherein it is categorically stated that the Appellant is paying VAT as applicable on total sales made to M/s Narayana Hridayalaya Hospital and Central Lab. Further it is clarified that the activities of appellant are limited to sale of food items at its counter and all further services such as collection of food items and supply to the respective patients are undertaken by M/ s Narayana Hridayalaya Hospital. Thus, it is

sale of food and same is not covered by the above said notification. Relies on the judgment of Hon'ble High Court of Karnataka in the matter of **M/s Sky Gorment Catering Pvt Ltd vs Assistant Commissioner of Commercial Taxes & others** in Writ Appeal No. 671-726/2011 dated 18.04.2011, the judgment in the matter of **Grand Ashok (2011) 32 STT 223 (Kar)** and on the decision of **M/s. Idea Mobile Communications Ltd-2006 (4) STR 132 (Tri-Del)** wherein the Tribunal has held that no service tax is payable when sales tax has been already paid.

6. Learned Counsel further places reliance on the decisions of the Hon'ble Tribunal in the case of **Daspalla Hospitals Ltd Vs. Commissioner of Central Excise, Vishakapatnam (2010) 36 VST 587 (CESTAT-Bang)** where the Hon'ble Tribunal held that:-

"5. In the instant case, the appellants have produced evidence to substantiate their claim that they have paid value added tax on the value of food and beverages sought to be taxed under "convention service" vide the impugned order. In the light of the Constitutional provisions relied on by the Tribunal in Sky Gourmet Pvt. Ltd. case (2010) 36 VST 557 (CESTAT-Bang); [2009] 14 STR 777 (Tri-Bang) and the ratio thereof to the effect that once the sales tax had already been discharged on food, beverages, etc., the appellants could not be required to pay service tax on the same value, the impugned demand of service tax is not sustainable in law. We find that the appellants have rightly relied on the judgment of the honourable apex court in Bharat Sanchar Nigam Ltd. v. Union of India [2006] 3 VST 95".

7. it is further submitted that vide Notification No.12/2003 service tax dated 20.06.2003, exempts so much of the value of goods and material sold by the service provider to the recipients

of service, from the service tax leviable thereon under section 66 of the Finance Act, subject to condition that there is a documentary proof specifically indicating the value of the said goods and material and in support of the same paces on record the copy of the VAT returns.

8. With regard to limitation it is submitted that substantial part of the demand is barred by limitation under Section 73(6)(c) of the Finance Act, 1994. The show cause notice for the said period ought to have been issued within 31.03.2011 but was issued on 21.04.2011 for the period March 2006 is barred by limitation. The appellant places reliance on the decision of the Hon'ble Apex Court in the case of **Indian Farmers Fertilizer Co-Op Ltd Vs. CCE, Bareilly (UP) 2007 (5) STR 281 (Tri-Del)**. The appellant also places reliance on the decision of the Hon'ble Jurisdictional High Court in the case of **Commissioner of Service Tax Vs. The Grand Ashok reported in (2011)32 STT 223 (Kar)**.

9. Learned Authorized Representative (AR) reiterated the findings in the impugned order and submits that as per the definition of outdoor caterer under Section 76(a) 'means a caterer engaged in providing services in connection with the catering at a place other than his own' and as per the amendment with effect from 16.06.2005, it is added that but including a place provided by way of tenancy or otherwise a person receiving such services. He further submits that the Annual Report of NHPL for 2005-06 indicated that Dr. Devi Prasad Shetty is Chairman & Managing Director and Smt. Shakuntala Shetty is Director of NHPL and that during the said period NHPL has purchased Patient Food items amounting to Rs. 52,96,129.00 from AHF, a firm where the Directors son (Mr. Varun Shetty) is a partner and that NHPL has shared House Keeping Expenses with AHF. In the Balance Sheet of NHPL for the F.Y. 2005-06 expenditure of Rs. 1,14,01,739.00 has been

shown towards Patient Food Expenses and Rs. 91,86,250.00 in respect of previous year i.e., 2004-05. He further submits that as per Canteen Sales Extract for the month of March 2006 furnished by the appellant, Canteen sales including sales to NHPL, staff and others is Rs. 22,80,195.00.

10. Learned AR further submits that as per Section 65(105)(zzt) of the Finance Act, 1994, the term taxable service for outdoor caterer services reads as "Taxable service means any service provided or to be provided to any person, by an outdoor caterer" and the term outdoor caterer is defined under section 65(76a) of the said Act as "outdoor caterer" means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of a tenancy or otherwise by the person receiving such services. He also submits that while the conventional meaning of the term catering would refer to the preparation or the service of food, the definition under the service tax law has been substantially expanded to cover even cases of supply of food. The term caterer is defined under section 65(24) of the said Act which reads as "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion. As per Section 67 of the Act, the value of the taxable service shall be the gross amount charged to the client which include any amount received towards the taxable service before, during or after provision of such service but in respect of outdoor catering services, 50% abatement is granted towards the cost of food, when bill is inclusive of the charges for food vide Notification No. 20/04-ST, dated 10.09.2004. Thus, the appellant was admittedly operating from premises provided by NHPL and the food was prepared as per specifications and requirements of the hospital and supplied for consumption within the hospital ecosystem. The activity was therefore not a mere sale of food from an independent

restaurant (even which the appellant is not claiming) but a catering arrangement undertaken from the premises of the service recipient thus the essential ingredients of the taxable service are fully satisfied.

11. He further states that in the present case, the Appellant is operating out of 1,000 sq. ft. space in the basement floor provided entirely by NHPL, the recipient establishment, food is prepared on day-to-day orders placed by the respective ward in-charges of the hospital, customized to patient specifications, and billed directly to the hospital on a monthly basis. Since the activity is carried out at a location provided "by way of tenancy or otherwise" by the recipient of the service, it perfectly fits the statutory definition of an outdoor caterer. He also submits that the statute is not merely on preparation of food but on provision of catering at a place other than the caterer's own premises and the records reveal that the appellant was carrying out the activity from hospital premises made available by NHPL. The food was prepared and supplied pursuant to an arrangement with the hospital for catering to patients and other persons within the hospital premises. Under the agreement, the hospital management dictates the operating hours, approves the specific menu items offered for sale, and enforces rules regarding cleanliness and service quality. Furthermore, the accounting in-charge of the Appellant admitted in his statement that sales are heavily restricted to meeting the inpatient requirements of NHPL, and the bills are raised directly on the hospital entity rather than individual walk-in customers. Because the place of service belongs to the recipient and the operations are strictly regulated by the recipient, the transaction loses the characteristics of an over-the-counter retail sale and emerges strictly as an institutional catering service executed inside a medical establishment.

12. Learned AR further submits that the appellant is attempting to characterize the activity as a simple counter sale of food ignoring the true nature of the contractual arrangement. The activity cannot be viewed in isolation as a sale transaction when the entire arrangement involved preparation and supply of food from the recipient's premises in accordance with the requirements of NHPL. The substance of the transaction clearly answers the description of outdoor catering service. Regarding the submission that because they have paid Value Added Tax (VAT) to the state sales tax authorities, no service tax can be levied on the exact same transaction value, it is submitted that this line of argument completely overlooks the well-settled "Aspect Theory" validated by the Hon'ble Supreme Court. The Apex Court in **Federation of Hotel & Restaurant Association of India v. Union of India [1989 (3) SCC 634]**, held that a single composite transaction can possess multiple legal dimensions, allowing both the Union and the State to legislate and levy tax on distinct components of that transaction without violating constitutional mandates. The legislative intent behind taxing outdoor catering recognizes that it involves both a service aspect (preparation, institutional delivery, procurement, and customization) and a goods aspect (the food and drink consumed). Regarding the judgment of Hon'ble Supreme Court in the matter of **Bharat Sanchar Nigam Ltd. (BSNL) v. Union of India [2006 (2) STR 161 (SC)]** to claim absolute immunity from service tax, it is submitted that it is wholly misplaced. The BSNL case addressed the "transfer of right to use goods" under telecommunication services and laid down tests to determine the dominant nature of a transaction to prevent the artificial splitting of an indivisible contract. The Hon'ble Supreme Court in **Bharat Sanchar Nigam Ltd. v. Union of India reported in 2006 (2) STR 161 (SC)** had examined the constitutional principles governing overlapping taxation and recognized the doctrine of "Aspect Theory". The Hon'ble Court held that the same

transaction may involve different taxable aspects and each aspect can be subjected to a distinct levy. The Court observed that there is no overlapping when the taxes are imposed on different aspects of the same transaction. However, the service of catering operates under an entirely different statutory fiction.

13. Learned AR further submits that in the case of **Tamil Nadu Kalyana Mandapam Assn. v. Union of India [2004 (167) ELT 3 (SC)]**, the Hon'ble Supreme Court explicitly evaluated the constitutional validity of service tax on catering services. The Apex Court held that catering undeniably involves a substantial element of service, including the specialized preparation, layout, and supply of food tailored to the specific needs of an organization or event. The court clarified that the tax is not on the sale of food articles, but rather on the activity of catering provided to a person or client. The statutory definitions under Section 65(24) and 65(76a) were specifically expanded to cover institutional supply arrangements exactly like the one executed by the Appellant inside the medical establishment. Thus, the principal contention of the appellant that once VAT/Sales Tax has been discharged on the impugned transaction, Service Tax cannot be levied on the same consideration is contrary to the settled constitutional and legal position laid down by the Hon'ble Supreme Court. It is well settled that a single transaction may contain multiple taxable aspects. Different legislatures may validly tax different aspects of the same transaction. Levy of VAT on the transfer of property in goods does not prohibit levy of Service Tax on the service element embedded in the same transaction. The significance of the BSNL judgment is that payment of Sales Tax/VAT on one aspect of a transaction does not automatically exclude taxation of the service aspect. The appellant's reliance on payment of VAT is therefore misplaced. The real test is whether the transaction contains an identifiable service element which is liable to tax under the Finance Act, 1994.

14. Learned AR further submits that the issue was considered in greater detail by the Hon'ble Supreme Court in **Association of Leasing & Financial Service Companies v. Union of India reported in 2010 (20) STR 417 (SC)**. The challenge therein was that leasing and hire-purchase transactions were already subjected to Sales Tax/VAT and therefore Service Tax could not be imposed on the same transactions. Rejecting the challenge, the Hon'ble Supreme Court upheld the levy of Service Tax and reiterated that Sales Tax and Service Tax operate in different fields. The Court held that the finance and service element in leasing transactions can be separately subjected to Service Tax even though the goods component may simultaneously suffer Sales Tax/VAT. The judgment is a direct authority for the proposition that dual levy is constitutionally valid when the taxes are imposed on different aspects of the same transaction. Thus, composite transaction may contain separate goods and service elements. VAT is leviable on the goods aspect. Service Tax is leviable on the service aspect. Payment of VAT does not grant immunity from Service Tax. Aspect Theory permits simultaneous taxation of different aspects of the same transaction. Therefore, the argument that the entire consideration has suffered VAT and consequently cannot suffer Service Tax is legally unsustainable.

15. As regarding extending the Benefit of Abatement, it is stated that while quantifying the demand, the Department has already extended the abatements and deductions available under the statutory scheme governing outdoor catering services. The value attributable to goods has thus already been taken into consideration in the manner prescribed under law. Having availed the benefit intended to neutralize the value of goods involved in the transaction, the appellant cannot further contend that the entire consideration escapes service tax merely because VAT was paid. Acceptance of such a proposition would defeat the statutory scheme itself.

16. As regarding the submission that the demand confirmed by invoking the Extended Period of Limitation, Learned AR submits that the Department had no prior knowledge of their activities and only through statements recorded during the investigation, appellant had disclosed that transactions in their local VAT returns. Further this argument fails on basic principles of non-registration under the Finance Act, 1994. The service tax regime relies entirely on the honesty and proactive compliance of the assessee. The Appellant was operating inside a private hospital facility, executing specialized contracts, and collecting commercial consideration from NHPL without even seeking registration with the Service Tax Commissionerate or filing statutory ST-3 returns during the material period. The mere fact that they were registered with and filing returns before the state VAT authorities does not translate into a disclosure to the Service Tax authorities, as the two administrative machineries are completely independent. In this regard, Learned AR relied on the judgment of Hon'ble Supreme Court in **Madhumilan Syntex Ltd. v. Union of India [2007 (210) ELT 484 (SC)]**, where it is held that once a statute requires a party to pay tax and stipulates the period within which such payment is to be made, the payment must be made within that period, and any failure constitutes a clear default. Further, as established in **Chaitanya Advertising v. CCE & C, Ahmedabad [2007 (5) STR 204 (Tri-Ahmedabad)]**, '*mens rea*' or a specific evil intent is not a necessary ingredient for imposing penalties or invoking statutory liability when there is a clear breach of civil obligations. Failure to register, failure to file statutory returns, and complete non-disclosure of taxable revenues earned from institutional contracts amount to a deliberate suppression of facts with an intent to evade tax. Consequently, the invocation of the extended period of limitation under the proviso to Section 73(1) is completely valid, legal, and justified. The adjudicating authority has recorded detailed findings on suppression and the

appellant has not produced any evidence establishing bona fide disclosure of taxable activity before the Department during the relevant period.

17. Heard both sides. The period of dispute is from 01.03.2006 to 30.09.2010 and during the said period, definition of outdoor catering service as defined under Section 65 (76a) of the Finance Act, 1994 reads as -

"Outdoor caterer means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services". As per Section 65(105)(zzt) of the Finance Act, 1994, the term taxable service meant "Taxable service means any service provided or to be provided to any person, by an outdoor caterer". The caterer as per Section 65(24) of the said Act was defined as "caterer means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion".

18. Based on the above definitions a person undertaking catering in his own premises or premises offered by the clients and who supplies food directly or indirectly falls under the definition of outdoor caterer. In this case it is an admitted fact that the appellant was to supply food at Narayana Hrudayalaya Hospital to their clients and the definition of the outdoor caterer has been expanded to cover all types of canteen contractors with effect from 16.06.2005, hence appellant's submission that no service element is involved is not tenable and that they are engaged only in the sale of food is unfound. Further, the very important segment of the definition of outdoor caterer is that the caterer must supply the specified items at a place other than his own and in this case admittedly it is served from the Hospital premises. Further the appellant has emphasized payment of VAT on the contract value which

establishes that the goods component has suffered VAT but no service tax is paid on the services rendered by them. We also find that the adjudicating authority has already extended the benefit of statutory abatements/deductions on the goods while quantifying the demand and abatements are granted on the value attributable to goods which stands excluded to the extent permissible under law. Consequently, the demand pertains only to the service portion of the transactions. Further we find that the Notification No.21/2004-ST had previously exempted outdoor caterers operating within medical establishments, but this specific exemption was consciously rescinded by the legislature via Notification No. 2/2006-ST with effect from 01.03.2006 and therefore the appellant is liable to pay service tax considering the fact that these activities carried out by him are rightly classifiable under the definition of the "Outdoor Catering Service". We also find that the case laws relied upon by the appellant are different from the present set of facts and the provisions of laws existing during the relevant period.

19. As regarding the demand confirmed by invoking extended period of limitation and penalty, we find that entire demand is made based on the records maintained by appellant. We find that Hon'ble Supreme Court in the matter of **M/s. Anand Nishikawa Co. Ltd Vs. Commissioner of Central Excise, Meerut -2005 (188) E.L.T 149 (S.C)**, held that mere failure to declare the facts does not amount to willful suppression of facts. Further the judgment of Hon'ble High Court of Karnataka rendered in the case of **Commissioner of Service Tax, Bangalore Versus Motor World [2012 (27) S.T.R 225 (Kar)]**, wherein it was held that notwithstanding anything contained in Sections 76, 77 and 78 of the Act, penalty is not imposable if the non-payment of service tax is on account of reasonable failure as per Section 80 of the Act which was in

existence. Further as held by the Hon'ble Supreme Court in the matter of **M/s Pushpam Pharmaceutical Company Vs. CC (1995 (78) E.L.T 401 (SC)**, extended period of limitation is not invocable if for just any omission of Appellant unless it is deliberate to escape from payment of duty. Also, Hon'ble Supreme Court decision in the matter of **M/s Cosmic Di Chemicals vs CCE, Mumbai (1995 (6) SCC 117)** held that intention to evade duty must be proved for invoking the provision of Section 11A(1) for extended period of limitation. Accordingly, the demand confirmed by invoking extended period of limitation and penalty are unsustainable.

20. Accordingly, appeal is partially allowed by confirming the demand only for the normal period along with interest as applicable. All penalties are set aside.

(Order pronounced in Open Court on 23.10.2026)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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