

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.52667 of 2015

[Arising out of Order-in-Original No.19/AKJ/ST-1/2015 dated 15.04.2025
passed by the Commissioner, Service Tax Commissionerate, Delhi-I]

**M/s.Indian Railway Catering & Tourism
Corporation Ltd.,**

11th Floor, B-148, Statesman House,
Barakhamba Road,
New Delhi-110 001.

Appellant

VERSUS

**Commissioner of Service Tax,
Delhi-I,**

I.A.E.A. House, 17-B, I.P. Estate,
M.G. Marg,
New Delhi- 110 002.

Respondent

ST/52668/2015

ST/51990/2018

APPEARANCE:

Shri Sanjeev Sachdeva, Shri Nikhil Kapoor, Ms. Anagha, Advocates
ST/52667 & 52668/2015) and Shri S.C. Kamra, Advocate (in ST/51990/
2018) for the appellant.

Shri V.K. Jain, Authorised Representative for the respondent.

CORAM:

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NOs.51339-51341/2025

DATE OF HEARING:10.09.2025

DATE OF DECISION:22.09.2025

BINU TAMTA:

1. M/s Indian Railway Catering and Tourism Corporation
Limited¹, a Government of India Enterprise working under the aegis
of Ministry of Railways in terms of the Catering Policy, 2005² and

¹ (IRCTC) The Appellant

² Policy

Memo of Understanding³ has been authorized to award licenses for various catering stalls, Food Plaza, building belonging to Indian Railways. IRCTC was incorporated as an independent legal corporate body registered with the Service Tax Department under the category of "rail travel agent, air, travel agent, tour operator, advertisement, outdoor catering service, business, auxiliary services and information technology services" and has been depositing service tax. For operational and accounting purposes, IRCTC is divided into separate zones and each zone is registered separately for service tax.

1. On the basis of an intelligence, investigation was initiated against the appellant that they have leased out the Food Plaza, Fast Food units to other catering/vending contractors and for which they have received the license fees on which they have not discharged the service tax under the category of 'Renting of Immovable Property' which is taxable from 1.06.2007. The allegation in the show cause notice was that under the MOU and the Policy, the properties belonging to Indian Railways⁴ were handed over to IRCTC for further licensing these properties to private contractor for which IRCTC received amount from private contractor in the form of User Charges and License Fee. The said amount has been accounted in the Trial Balance and reflected in the consolidated Profit and Loss Account as income. Therefore, the amount collected by IRCTC in respect of renting/leasing/licensing

³ MOU

⁴ IR

of the property for the period 1.06.2007 to 31.03.2012 is to be treated as taxable value under Section 67 of the Act and the service tax liability was worked out as Rs.2,83,44,301/-. As the appellant failed to inform the Department that they are renting immovable property to various customers and receiving the license fee in lieu of such renting, there was deliberate intention not to pay the service tax and defraud the government exchequer, hence the proviso to Section 73(1) was invokable. Further, interest under Section 75 and penalty under Section 76, 77 and 78 was imposable. The Adjudicating Authority vide impugned order ⁵ concluded that the services provided by IRCTC with regard to renting/leasing/licensing out specific location on platforms or concourse area of railway station to various persons for setting up of kiosks, planet yum, Food Plaza, Milk Booth, AVM, Book Stall, Fruit, stall, etc, falls under the category of 'Renting of Immovable Property Service' and the amount collected/charged by them from their customer for use of the specified location on the platform or concourse area on railway station in form of License Fee and User Charges are taxable value in terms of Section 67 of the Act for the purpose of payment of service tax. The demand of service tax along with interest and penalties under Section 77 and 78 were affirmed. Being aggrieved, the appellant has preferred the present appeals.

2. Heard both sides and perused the records of the case.

⁵ Order-in-Original No.19/AKJ/ST-1/2015 dated 15.04.2015

3. Shri Sanjeev Sachdeva, the learned Counsel for the appellant has extensively taken us through the MOU entered between the Indian Railways and IRCTC, the Catering Policy, 2005 and the License Agreements executed by IRCTC in favour of the private parties/licencees and vehemently argued that the agreement is basically for the licensing of the activity of operation and management of Food Plaza at various Railway stations and not for renting of immovable property. The ownership of the entire land of railway station and peripheral area belongs to the Indian Railways and in that capacity, they allowed IRCTC to set-up at the railway stations/platforms kiosks/stalls providing food articles, water, beverages, books and certain other basic items. Emphasis was laid on the principle of essential character of the agreement or the dominant intention of the parties, was not to enter into an arrangement for renting or leasing of immovable property, and the space provided to the licenses was ancillary to the dominant intention to facilitate the purpose of providing the amenities to the passengers at the railway station. Also, the consideration for the permission to operate and manage the Food Plaza cannot be considered as taxable under the category of 'renting of a property' under Section 65 (105)(zzzz) as it is not in the nature of rent earned for the immovable property, which is normally fixed amount whereas the license fee charged by the appellant from the licensee operating the food Plaza was a percentage of the sales turnover of the licenses, which means the amount could vary. The learned Counsel stressed that the agreement was in the nature of revenue sharing arrangement on principal to principal basis and

not for provision of any service by one party to another. Challenge was also made to the invocation of the extended period of limitation. Firstly, on the ground that there is no allegation in the show cause notice disclosing any deliberate and conscious act of omission or commission on the part of the appellant, which establishes the intention to evade payment of tax. Secondly, the issue of taxability of the activity as renting of immovable property was subject to litigation, leading to divergent views expressed by different forums and therefore, the appellant was under a bonafide belief that they are not liable to pay service tax on the activity in dispute. Lastly, the learned counsel submitted that the appellant is a Government undertaking and as per the views taken by the Tribunal, the allegation of fraud, suppression, collusion and wilful mis-statement cannot be attributed. The appellant is registered under the various categories of taxable services and has been paying service tax as per its understanding of law. In view thereof, the imposition of penalty under the various provisions is unsustainable.

4. Learned counsel for the appellant has relied on the following decisions:-

(a) Gujarat State Fertilizers & Chemicals Ltd. Vs. Commissioner of Central Excise⁶

(b) Reliance Ada Group Pvt. Ltd. Vs. Commissioner of Service Tax⁷

⁶ 2016(45) STR 489 (S.C)

⁷ 2016 (43) STR 372 (Tri-Mum).

(c) M/s Historic Resort Hotels (Pvt.) Ltd. Vs. CCE, Jaipur⁸

(d) Asian Hotels Ltd. Vs. Commissioner of Central Excise⁹

(e) Hazira LNG Pvt. Ltd. Vs. Commr. of Service Tax, Ahmedabad¹⁰

5. Per contra, Shri V.K Jain, the learned Authorised Representative for the Revenue, contested the appeal, reiterating the findings of the Adjudicating Authority.

6. The basic question, which falls for our consideration is whether the activity performed by IRCTC to award licensees for setting-up and operation of Food Plaza and other stalls by the licensees amounts to 'Renting of Immovable Property' as defined under section 65(90a) read with the definition of taxable service as per section 65(105)(zzzz) of the Act.

7. Before considering the issue at hand, it is necessary to take note of certain basic facts. The entire land forming the railway station including the peripheral area is under the ownership of the Indian Railways, which is discernible from the provisions of Section 2(31)(d) of the Railways Act, 1989, whereby "Railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes, inter-alia stations. Further, Section 2(20) of the said Act says "Government Railway" means railway owned by the Central Government. Apart from providing

⁸ **2017-VIL-707-CESTAT-DEL-ST.**

⁹ **2019-VIL-595-CESTAT-DEL-ST.**

¹⁰ **2022-VIL 837-CESTAT-AHM-ST**

the public utility service for transportation of passengers and carriage of goods, Indian Railways has been looking after catering through eating joints. This activity by the railways was not with any profit motive, but as an amenity to enable the passengers to have the facility of food and beverages. The refreshment stalls, food kiosk at the platform were run departmentally or through licenses up to the year 2005, however, there was no lease of any portion of the railway property at the railway station in technical sense of leasing the property. In their capacity as owner, Indian Railways handed over the catering facility to IRCTC, (incorporated as a company on 27.09.1999) which was formed with the object of upgrading, professionalisation, and managing catering and hospitality services at railway stations, on trains and other locations. The Railway Board introduced the Catering Policy, 2005, providing for a completely new set-up for managing and organising catering eateries so as to reduce overall congestion on the platforms and at the same time making convenient for the passengers to avail the facility of food items, beverages etc at rational rates. A complete code has been provided in the Policy for allotment of catering licences through open tenders and the offers received are scrutinized by a Three Member Tender Committee as per the eligibility criteria prescribed. For operational charges, Policy itself provides for revenue sharing as per the Memorandum of Understanding between Indian Railways and IRCTC, sub clause (vii) of clauses 14.5 of the Policy is quoted below:

“ **(vii)** No other operational charges like haulage/ maintenance/ detention etc. in case of mobile services will be recoverable from the licenses. In the

case of static units, also, there will be no separate charges payable towards rent for building/land, vendor's fee and conservancy charges etc. except electricity and water charges, which will be based on actual consumption.

However, nominal and license fee for land leased to IRCTC, will be payable by IRCTC and revenue sharing will be as per Memorandum of Understanding in vogue between IR and IRCTC."

8. Under the MOU dated 17.01.2007, IR authorised IRCTC to grant licenses to third parties for activities relating to passenger amenities on revenue sharing basis. Para 2.1 of the MOU reads as:-

"2.1 Use of Infrastructure

The land and buildings owned by the Indian Railways and so identified mutually will be licensed for provision of services at mutually agreed commercial licence. fee / sharing of revenue to the IRCTC Ltd. with permission to sub-license the rights to third parties in regard to activities related to passenger amenities and essential services like food & beverages outlets, pantry cars, passenger information services, retiring rooms/ budget hotels, pre-departure & post arrival services, development of passenger terminals, etc. in consideration of sharing of revenues in the pattern mentioned in clause 2.3.1. For Budget hotels and food plazas, a nominal land licence fee of Rs. 5 sqm. along with sharing of agreed percentage of revenue by IRCTC as per clause 2.3.1, subject to minimum total fee of 2.5% of land value will have to be paid by IRCTC in terms of board's letter No. TG-III/673/1/IRCTC dt. 16.11.2005. IRCTC will also follow relevant guidelines and instructions issued by Railway Board from time to time on the subject.

IRCTC Ltd. will not only continue to provide these essential services but will also induce investment in their upgradation and professionalisation. IRCTC Ltd. will with the participation of private entrepreneur manage these activities and Indian Railways' liabilities will reduce to that extent. To enable the Corporation in providing upgraded facilities and improving customers' satisfaction, IR

will license land / buildings / rolling stock to the IRCTC Ltd. at mutually agreed commercial license fee / revenue sharing for specified periods.”

Further, the activities entrusted to IRCTC were characterised as under:-

“2.3.1 Broadly the activities to be handled by IRCTC can be grouped under following four categories: -

- Category 1.....**
- Category 2**
- Category 3**
- Category 4**

The following revenue sharing arrangement for different activities to be undertaken will remain in force till the time this MoU is modified, after which the sharing ratio could be reviewed mutually between IR and IRCTC.

Categories	Remarks	Proposed percentage sharing of total revenue earned in different projects/activities.	
		IRCTC	IR
Category I	Essentially a passenger amenity area: IR will save overhead costs to the tune of 60% to 80% of turnover in case of departmental units. In the case of licensee operated units IR will save cost of documentation, supervision, etc.	85%	15% Or 15% of net profit in case of Dept. units as there is no licence fees.
Category 2	Passenger amenity related area: IR will save investments and existing losses. Projects will ensure utilization of sleeping assets like unutilized land. Revenue of IRCTC will be earmarked for future development/investment on behalf of IR.	75%	25%
Category 3	Commercial Projects: Greater share of IRCTC in view of heavy initial investment on these projects and the need for resources generation for future development/investment on behalf of IR.	60%	40%
Category 4	Tourism related projects: IR will act as a carrier only. All arrangements including Boarding, lodging, sightseeing, transfer facility and marketing expenses to be borne by IRCTC. These projects will improve IR image and result in growth in passenger traffic.	IRCTC will be free to market the product and retain the margin after guarantee payment to the IR.	IR will be guaranteed payment as decided on case to case basis.

10. In pursuance to the MOU, IRCTC awarded licenses to various private parties for setting up food plazas, automatic vending machines, Book stalls etc. for which IRCTC allotted vacant space to the vendors on the platform or in the concourse area of railway stations. The appellant has placed a few samples of license agreement entered with the third parties, the contents thereof, are set out below:-

“(i) Agreement with M/s R. K. Agrawal for Vijaywada Railway Station (referred to in Para 6.4 of the SCN):

"2. BROAD SPECIFICATIONS OF FOOD PLAZA

IRCTC will provide space, as per site plan, enclosed as Annexure-A, on as is where is basis. The licensee will have to construct the building in consonance with the existing building bylaws of the State.

8. OBLIGATION AND RIGHTS OF THE IRCTC

8.1 IRCTC will provide space on 'as is where is basis' and free from all encumbrances to the Licensee on leave and License basis.

9. OBLIGATION AND RIGHTS OF THE LICENSEE

9.1. Licensee will construct and operate the Food Plaza and will have the right of user only on leave and License basis.

9.2 Licensee will construct Food Plaza on the maximum area of the provided space as per building bylaws of the State.”

Further, Clause 13.3 of aforesaid agreement requires the licensee to vacate the space and deliver vacant possession to IRCTC. The said clause reads as:-

“13.3 Upon the expiration of this agreement, or its earlier termination in accordance with the terms, conditions, obligations hereof the Licensee/Sub-Licensee shall take away all its belongings and effects and shall deliver vacant possession of the said space to the IRCTC.”

11. For appreciating the activities performed by IRCTC pursuant to the Policy, MOU and further Licences issued in favour of 3rd parties amounts to rendering the services of 'renting of immovable property', it is necessary to produce the provisions of Section 65(90a) and 65(105)(zzzz) which are quoted below for ready reference:

"Clause (90a) of Section 65 of the Finance Act, 1994 which defines 'Renting of Immovable property' as follows:-

(90a) 'Renting of immovable property' includes renting, letting, leasing, licensing or other similar arrangement of immovable property for use in the course of furtherance of business or commerce but does not include-

(i) renting of immovable property by a religious body or to a religious body; or

(ii) renting of immovable property to an educational body, imparting skill or knowledge or lesson on any subject or field, other than a commercial training or coaching center

Explanation 1:-For purpose of this clause 'for use in course of furtherance of business or commerce' includes use of immovable property as factories, office building, warehouse, theatres, exhibition halls and multiple use building.

Explanation 2:- For the removal of doubts, it is hereby declared that for the purpose of this clause 'renting of immovable property' includes allowing or permitting the use of space in an immovable property, irrespective of the transfer or possession or control of the said immovable property."

"Section 65(105) (zzzz)"taxable service" means any [services provided or to be provided] to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce. Explanation 1.— For the purposes of this sub-clause, "immovable property" includes—

(i) building and part of a building, and the land appurtenant thereto;

- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, but does not include
 - (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
 - (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
 - (c) land used for educational, sports, circus, entertainment and parking purposes; and
 - (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2.—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce.”

12. For construing whether a particular transaction/activity would attract the levy of service tax in terms of the aforesaid provisions, it is necessary to determine the terms and conditions of the agreement entered between the parties. In the present case, the parties are governed by the MOU and the license agreement and as per the principles of interpretation of documents, the nomenclature of any contract or document is not decisive of its nature, but an overall reading of the document and its effect is to be seen—**State of Orissa versus Titaghur Paper Mills Company Ltd.**¹¹. The Courts have, therefore, consistently applied the test of substance over form, requiring a close look at the contents of the

¹¹ 1985 Supp SCC 280

agreement. As discussed above, IR is the owner of the railway land and apart from its primary function of transportation of passengers and goods, they have been engaged in providing essential public utility services for which railway premises are used. The later activity is purely ancillary to the main activity without any profit element. Pursuant to the introduction of the Catering Policy, IR entrusted the catering activities to IRCTC, however to enable the implementation of this Policy, some space has to be provided within the vicinity of the railway station which by no stretch of imagination can be termed as rendering services of renting. The sole purpose was to provide public utility facilities to the passengers and that is how the Policy is titled as 'Catering Policy' and the various clauses therein lay down the entire mechanism for providing catering or vending facilities including the requirement of food grade material to be of standard quality, packing of food items and other various precautions to be taken. The Policy also provided for allotment of catering licenses, tendering system, eligibility criteria for participating in the tender process and finally the system for awarding licenses.

13. Pursuant to the Policy, MOU was executed by IR in favour of IRCTC. The introductory paragraphs of the MOU itself provides the objectives which reflects to the nature of transaction. Para 1.1 reads as: —

"1.1 Whereas the IRCTC Ltd. has been formed as an extended arm of the Indian Railways (IR) to upgrade, professionalise and manage the catering and hospitality services at stations, on trains and other locations; and to promote domestic and international

tourism through development of hotels, information and commercial publicity and global reservation systems

and

Whereas Ministry of Railways feels that the IRCTC Ltd. would be a Special Purpose Vehicle (SPV) to explore and exploit under utilised assets of IR by forming joint ventures/alliances/networks/associated and subsidiary companies and stimulate private entrepreneurship and investment in the hospitality business

Some of the clauses quoted above provides for use of infrastructure and revenue sharing arrangements. The other clauses in the MOU referred to the payment mechanism, catering services, provision of branded drinking water and water vending machines. Railway administration to have the right to inspect the catering facilities maintained and food items sold under the licenses/Sub- licensee. The responsibility of IR was to provide essential services like electricity, water, drainage, telecom facility and to provide access to the staff of the Corporation or licenses/sub-licensee to the railway premises without any entry fee. In sum and substance the MOU related exclusively to the various aspects of the Catering activity and there is not a whisper about leasing of land/space/building by IR to IRCTC. In other words, IR has not transferred the land in any manner in favour of IRCTC except the right to implement the Catering Policy by way of creating third party rights for setting up public utility facilities at the railway station/platforms.

14. In terms of the Policy and the MOU, IRCTC invited tenders and the title of the Tender Document clearly stated, " **Tender for**

Operation and Management of Food Plaza at Pune Railway Station". The eligibility criteria of the licensee related to the duration of the experience in the catering, business, number of person having qualifications in the line of business and catering establishment. The checklist of the documents was required to mention financial statement showing minimum annual turnover and catering business proof of experience, details of in-house hygiene and food safety arrangements. Also, the special condition required the applicant to give the scope of work as providing a variety of food and beverage items. The technical offer document required details to be given regarding catering establishments, Modern kitchens, CVs of the qualified manager, supervise personal and proof of minimum annual turnover. Also the duration of experience in the relevant line of business. All these reflect the essential character of the activity carried out by the appellant was grant of license for operation and management of Food Plaza, kiosk, stalls, and not for renting immovable property.

15. Agreements were executed by IRCTC titled as, **"Agreement for License to Set-up and Operate Food Plaza at Vijayawada Railway Station with the successful bidders"**. Similar agreements have been executed with respect to other railway stations in favour of third parties. The very opening paragraph says that the licensor has awarded the license to set-up and operate Food Plaza. The agreement postulates the broad specifications of Food Plaza along with the terms and conditions, including the financial terms and payment mode. The agreement then

emphasises on the annual review of Net Sales Turnover. The period of license is specified as, "license for operating the Food Plaza is awarded for a period of 12 years extendable to 15 years". At the same time, IRCTC/IR was free to grant license to any other Caterer in the neighbourhood of the Food Plaza. Under the heading Obligation and Rights of the IRCTC, it is stated that the space has been provided by IRCTC 'on as is where is basis' and free from all encumbrances to the licensee on leave and license basis. Thereafter, other obligations have been specified to be taken care of by IRCTC solely with reference to the operation of the Food Plaza. Similarly, the Obligation and Rights of the licensee clearly enumerates that the licensee will construct Food Plaza as per building bylaws of the State and operate the Food Plaza in terms of other specifications provided therein. The conditions governing the performance of the license specifically provides:-

"10.2 The Licensee will operate the Food Plaza during the term of license on which he would have no legal claim other than that of a user. Premises shall be deemed to be public premises as defined in the Public Premises (Eviction of Unauthorised Occupants) Act 1971 and any amendments thereto".

The Exit Policy is with reference to the business, which reads as under:-

"14.1 In the initial lock-in period of four years, the licensee will be bound by the projections of annual Net Sales Turnover. Following this period, the licensee may exit the business if in his view, the same is not commercially or operationally feasible. The licensee shall be required to communicate his intention of exiting the license in writing by providing a minimum of six months notice to IRCTC. IRCTC will in the meanwhile, initiate the process of fixing up a new licensee for the Food Plaza. In case of an exit under

this clause, the security deposit of the licensee will be forfeited by IRCTC."

Under the heading Hygiene and Quality Control, the licensee is required to provide sale of products of reputed brands only and the storage, handling of raw materials and finished products will have to be in extreme hygienic conditions. Clause 16.2 provides:-

"IRCTC reserves the right to get the food samples/raw material collected and tested at approved laboratories at the cost of the Licensee".

16. Having examined the various clauses of the agreement, it is crystal clear that the agreement purely related to the transaction of business whereby the appellant was actually performing the activity of operation of catering and was not providing any service of renting of immovable property. The terms of the agreement makes it abundantly clear as to what is the true and actual purpose of the agreement and the relationship between the parties. This Tribunal has repeatedly held in series of decisions that operation and management of any hotel, unit or other activity does not amount to rendering services. Reliance is placed on the decision in **Basti Sugar Mills Company Limited versus Commissioner of Central Excise, Allahabad**¹² as confirmed by the Supreme Court in **Commissioner versus Basti Sugar Mills Ltd.**¹³, **Indian Hotels Company Limited versus Commissioner of Service Tax, Mumbai**¹⁴ and **M/s Asian Hotels Ltd.**

¹² 2007(7) STR 431 (Tri.-Del.)

¹³ 2012 (25)STR J-154 (SC)

¹⁴ 2016 (41) STR 913 (Tri.-Mumbai)

17. In support of his submissions, the learned Counsel for the appellant has relied on the decision in the case of **Grand Royale Enterprises Limited versus Commissioner of Service Tax-1 Chennai**¹⁵, where the Tribunal was called upon to consider whether the main object of the agreement between the appellant and IHCL was to assign entire business of the hotel to IHCL or it was for renting of immovable property. The Tribunal observed that the agreement between the parties is not one of renting of Immovable property but is a business transaction. The observations of the Tribunal as are relevant to the present issue are as follows:-

"5.2 From an analysis of the above definitions, in our opinion, to fall within the taxable entry of "renting of immovable property", the immovable rented out should be the genre exemplified in Explanation 1 reproduced supra. **In the present case, however, the agreement between the appellant and IHCL is not merely for renting of the hotel or land appurtenant thereto etc., but is "license to run, conduct and operate Connemara hotel together with all the related facilities and business appertaining thereto".** It appears to reason that not just the immovable property portion of the hotel, but also, the employees and other staff, goodwill and other paraphernalia are also taken into consideration by the two parties involved while framing the license agreement. **It is also relevant to note that there is no "fixed rent" that is payable as would be expected in a normal renting of immovable property transaction. On the other hand, the consideration for license to run, conduct and operate the hotel is a "license fee" equivalent to 15%/20% of the annual sales from the operation of the hotels.** This being so, the license fee that would accrue to the appellant is only a percentage of the turnover. Since the turnover is never static but is dynamic and will go up or down in every succeeding

¹⁵ Final Order No.42539/2018 dated 1.10.2018 (ST Appeal No.41120/2015)

year, the "lease license fees" would also wax or wane in resonance. The license fees are accruing to the appellants therefore have an umbilical cord relation with the turnover and profits of the hotel business under IHCL. **In our view therefore, the transaction between the appellant and IHCL is definitely not one of "renting of immovable property" but a business transaction between the two, where the consideration is not like a regular rent but is dependent on the annual performance and profits of the hotel."**

No doubt, the above case was related to the hotel business, however, the principles enunciated are equally applicable to the nature of dispute arising as a result of the activities in question.

18. Somewhat similar issue had arisen with reference to the agreement between the producer/distributor of the films and the exhibitor who owned the Multiplex theatres which was alleged by the Department to be an agreement for renting of immovable property as defined under section 65(90a) of the Act. In **M/s. M2K Entertainment (P) Ltd.**¹⁶, it was ruled that the purpose of the agreement and the intention of the parties is for screening of the film in the theatre, which cannot be treated as 'renting of immovable property service'.

19. In the context of exhibiting films, CBEC has issued a Circular dated February 23, 2009 clarifying that, screening of a movie is not a taxable service, except where the distributor leases out the theatre and the theatre owner gets a fixed rent. In such case, the service provided by the theatre owner would be categorised as

¹⁶ Final Order No.50949 of 2025 dated 2.7.2025 (ST Appeal No.54027 of 2018)

'renting of immovable property' for furtherance of business or commerce and the theatre owner would be liable to pay tax on the rent receipt from the distributor. In the case of **Mormugao Port Trust versus Commissioner Customs, Central Excise & Service Tax, Goa**¹⁷, the Tribunal considered the said Circular and also the subsequent Circular dated December 13, 2011 and concluded that it will not come to the aid of the department. The decision of the Tribunal has been affirmed by the **Apex Court**¹⁸.

20. In the decision of the Apex Court in **Gujarat State Fertilisers & Chemicals Ltd versus Commissioner of Central Excise**¹⁹, the issue was whether the two Public Sector Undertakings were providing 'Storage and Warehousing Services' under Section 65(105)(zza). The claim of GSFC was that the process undertaken did not amount to rendering of services and it was clarified that the hydro cyanic acid was received from M/s. Reliance through common pipeline, which were partly utilised in their factory and partly in the factory of the other undertaking, for which charges were contributed by both the parties. The Court observed that the handling portion and maintenance, including incineration facilities were in the nature of joint venture between two of them and the parties have simply agreed to share the expenditure which by no stretch of imagination can be treated as common service provided by GSFC to GACL for which it is charging GACL.

¹⁷ 2017 (100) VST 120 (CESTAT – MUM.)

¹⁸ 2018(19) GSTL J-118 (SC).

¹⁹ 2016(45) STR 489 (SC)

21. What emerges from the aforementioned decisions is that the foremost criteria is that in the process of providing service, the relationship of service provider and service recipient exist between the parties. Secondly, the dominant factor for determining whether activity falls within the ambit of renting of immovable property is the concept of 'fixed rent'. The element of consideration, i.e. the *quid pro quo* for services, which is a necessary ingredient of any taxable service is present. In the absence of any consideration, no service can be said to have been provided. Merely because the parties arrive at an understanding by way of an agreement to share the expenditure for availing certain facilities or for performing any activity does not amount to rendering 'services' and in the course of it, just because some amount is being charged by one party to another it cannot be treated as 'consideration'. Neither the activity performed can be stretched to rendering 'services' nor the amount received for performing the activity can be stretched to 'consideration' in the technical sense to be covered under the provisions of Section 65(90a) of the Act. On the said principles, we are of the opinion that there is no concept of service provider and service recipient. Neither the appellant is providing any service nor the third-party/the licensee is in receipt of any services. As per the agreement which we have examined earlier, it is evident that the relationship is on principal to principal basis. Secondly, there is no concept of fixed rent which has been held to be a dominant factor in determining that the activity amounts to renting of Immovable property. In the present case,

the Policy (Para 14.5) itself says that in the case of static units, there will be no separate charges payable towards rent of building/land payable by the licensee to IRCTC. The revenue earned by licensee was shared as percentage of his sales turnover with IRCTC on revenue sharing basis. The Tribunal in **Mormugao Port Trust** also observed that a revenue sharing arrangement does not necessarily imply provision of services unless the service provider and service recipient relationship is established. Also, in the case of **Grand Royale Enterprises**, the observation was that the transaction is not of renting of a property but is a business transaction between the two where the consideration is not like a regular rent but is dependent on an annual performance and profits of the hotel. Upon an overview of all these circumstances, it is clear that the agreement between the parties was essentially for setting-up and operating the Food Plaza at the railway stations with a view to ensuring the availability of public utility facilities. There is nothing unusual in this kind of an arrangement as such business transactions are very much common in today's economic world.

22. One more factor which needs to be considered is the test of dominant intent of the parties. On an overall reading of the documents, the essential character of the agreement is discerned, which is operation and management of Food Plazas and the space provided at the railway stations was merely ancillary and incidental to the implementation of the primary activity. The object is not to give any free land to the licensee for selling the items like a normal

restaurant as neither the title of the agreement nor its contents reflects that the main intention of the parties was to rent out the property/land/building.

23. Shri S.C. Kamra, the learned Counsel for the appellant appearing in Appeal No.ST/51990 of 2018 has harped on the issue of extended period of limitation as the entire demand is beyond the normal period. The learned Counsel has relied on the decision of the Apex Court in **Nizam Sugar Factory Vs. Collector of Central Excise**²⁰, where it has been held that, "allegation of suppression of facts against the appellant cannot be sustained. When the first show cause notice was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices, the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities". In the present case, the Department has already issued two show cause notices to the appellant in respect to the earlier periods and hence the entire transaction was within their knowledge. Both the learned Counsels have also pointed out that the show cause notices have not raised any allegations of suppression of fact or wilful mis-statement and in the circumstances, there is no justification for invoking the extended period. We agree with the learned Counsels that the impugned order has travelled beyond the show cause notice where the allegation of fraud, collusion, willful mis-statement, suppression of

²⁰ 2006 (197) ELT 465 (SC)

facts or contravention of any of the provisions of the Act or Rules with intent to evade payment of duty are absent.

24. In view of our findings that the transaction is purely on business terms on revenue sharing basis, the demand of service tax is not sustainable either on merits or on the ground of limitation. We do not find any merit in the impugned order, and hence the same is set aside. The appeals are, accordingly allowed.

[Order pronounced on 22nd September, 2025]

(Binu Tamta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

Ckp.