

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50157 of 2025

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-49-2024-25 dated 27.06.2024 passed by the Commissioner of CGST, Customs & Central Excise (Appeals), Indore]

M/s. Hotel President Planet

3, RNT Marg, Indore,
Madhya Pradesh - 452001

...Appellant

VERSUS

**Principal Commissioner of CGST &
Central Excise, Indore**

Manik Bagh Palace,
Indore, Madhya Pradesh - 452001

...Respondent

APPEARANCE:

Shri Krishan Garg, Advocate for the Appellant

Shri Rohit Issar, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 28.08.2025
DATE OF DECISION: **06.11.2025**

FINAL ORDER NO. 51682/2025

DR. RACHNA GUPTA

Present order disposes of an appeal arising out of Order-in-Appeal No. 49-2024-25 dated 27.06.2024 vide which the confirmation of demand of service tax with interest and penalty has been upheld against the appellant. The facts in brief are as follows:

1.1 M/s. Hotel President Planet, the appellant herein, is registered with the service tax department for rendering services of Renting of Immovable property. The appellant had a hotel property in New Delhi which they leased out to Hotel Lemon Tree vide lease agreement dated 25.03.2008. During the course of audit of records of the appellant for the period from October 2016 to June 2017 it

was observed from the said lease agreement that in addition to agreed contracted lease rent, the appellant had received various additional considerations as follows:

(a) As per the Article XV of agreement lessor was entitled to use privilege of stay during the term 'use of 75 room nights per annum for family and friends of the promoters and directors of the lessor, free of all charges.

(b) Food, liquor and beverage, laundry and other services and consumables were agreed at 50% discount whether such person/s are staying in the hotel or not.

1.2 It was also observed that the expenses of insurance for protection of leased property of the appellant were also borne by Hotel Lemon Tree, the recipient of the services. Department formed the opinion that the cost of free room charges and discounts as mentioned above and the insurance expenses should have been included in the gross value calculated for discharging the tax liability. Accordingly, alleging the service tax to be short paid by the appellant that the Show Cause Notice No. 737/2020 dated 02.03.2022 was served upon the appellant proposing the recovery of service tax of Rs.1,00,486/- along with the proportionate interest and appropriate penalties. While adjudicating the said proposal, the original adjudicating authority vide Order-in-Original No.115/2022-23 dated 29.03.2023 has confirmed the demand of service tax amounting to Rs.66,362/-. However, the demand of service tax amounting to Rs.41,302/- vis-à-vis the amount of insurance of property has been dropped. The said order has been

confirmed vide the aforesaid Order-in-Appeal. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Krishan Garg, learned Advocate for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that the demand of tax on complimentary night stay and the discount on food and beverages has wrongly been confirmed. It is mentioned that the lease rent amount was based on monthly turnover of the lessee/Hotel Lemon Tree. However, lessor/the appellant was required to visit the hotel premises time to time for verification of the leased out premises as well as for the verification of settlement of books of account based on which the rental income was to be calculated. It is for the convenience that the clause in the agreement was incorporated allowing the appellant maximum up to 75 stays per annum. This facility was available only to the directors or their family members/friends who visit for the verification purposes. For the same reason the discount on food and beverages was also extended. Hence it is wrongly alleged that the discount on room rent, food and beverages is the additional benefit generated to the appellant. The Value of the said discount is wrongly held to be the part of gross assessable value for rendering Renting of Immovable Property Service.

3.1 It is further submitted that the demand on room stay has otherwise been calculated on the higher side. Only 44 number of complimentary nights were availed by the appellant during the

period in dispute (October 2016 to June 2017). The value of 31 nights have wrongly been included. There is no valid justification given in the order by either of the adjudicating authorities. For the same reason, the food discount calculated is also on the higher side.

3.2 Finally, it is submitted that the extended period has wrongly been invoked. The impugned agreement is of 25.03.2008. The books of account of appellants were regularly been audited by the department from time to time without raising any kind of objection on the transactions. The service tax returns were also regularly filed. Thus the appellant was under bona fide impression of no tax liability on the amount of discounts/additional complementary nights extended by the lessee/ Hotel Lemon Tree. The show cause notice dated 02.03.2022 has wrongly invoked the extended period. The demand of time barred show cause notice is prayed to be set aside. With these submissions, the appeal is prayed to be allowed.

4. While rebutting these findings, learned Departmental Representative has reiterated the findings arrived at by the adjudicating authority below and has prayed for dismissal of the appeal.

5. Having heard both the parties and perusing the entire records, It is observed that the only issue to be adjudicated is:

“Whether the complementary nights extended by the lessee to the lessor along with the respective food discount is to be considered as the part of gross value/taxable value as has been held by the adjudicating authority below?”

6. For adjudication thereof foremost I have perused the relevant provision for the purpose i.e. Section 67 of the Finance Act, 1994, as amended in 2017:

SECTION 67. Valuation of taxable services for charging service tax.—

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.—*For the purposes of this section, —*

(a) "consideration" includes—

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

*(b) [* * * *]*

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

7. The perusal thereof reveals that the section caters the situation where any part of consideration or the full consideration itself for the service provided or to be provided is not received in money. This section takes care of the cases where the service provider receives any part of a consideration in non-monetary form or by way of reimbursement and that such item does not figure in the invoices raised, thereby resulting in the real value of taxable service. From the above provision it is also clear that as per clause (ii) of section 67(1), the value shall be such amount in money as charged either wholly in money or partly consisting of money or for something for which the amount is not ascertainable. But it should be received for providing 'such service' as is either agreed to be provided or is provided. the word 'such' means having a particular quality or character specified, representing or referring to object as already particularized in terms which are not mentioned. As per Webster dictionary also 'such' means 'of kind specified or understood'. Thus it is clear if any other amount in money or otherwise, is charged which is not paid in relation to taxable service provided or to be provided, the service tax will not be payable on such charge.

8. Reverting to the facts of the present case, admittedly the service agreed to be provided by the appellants to Hotel Lemon Tree is of renting/leasing of immovable property. The agreement to

this effect is dated 25.03.2008 vide which the appellant had leased out their property to Hotel Lemon Tree for running a hotel along with the following conditions:

(a) Lease rent will be based on monthly turnover with a minimum guaranteed rent.

(b) Property Tax payment and Insurance of the property as well as furniture and fixtures will be on part of the lessee.

(c) Lessee will allow certain room nights free of cost to the lessor (for verification and settlement of account).

(d) During stay in hotel, lessor will be entitled for discount on Food and Beverage services.

9. The perusal makes it abundantly clear that vide one single agreement of renting/leasing of immovable property the appellant in addition to receiving the rent based on monthly turnover i.e. the amount in money, has simultaneously agreed for getting certain room nights free of cost and discount on food and beverage services i.e. in kind. This observation makes it abundantly clear that the consideration received by the appellant was not wholly in money but was also in kind i.e. the value of free nights and discount on food and beverages.

10. These observations are sufficient for me to hold that the adjudicating authorities have rightly held that the value of free nights for the period in dispute and the discount on food and beverages availed by the appellant are liable to be included in the taxable gross value. With these observations, I hereby uphold the

findings that the privileges availed by the appellant's directors/promoters and their family and friends is clearly an additional consideration, over and above the amount of lease rent received time to time from the recipient of service. Though the appellant has taken the plea that higher value of extra nights and extra discount has been added to the taxable value but, I observe that no evidence has been placed on record by the appellant in support of the said contention. Otherwise also, the verification and calculation is not permissible at this stage.

11. In totality of the entire above discussion, I hereby uphold the order under challenge. Consequent thereto, the appeal stands dismissed.

[Order pronounced in the open court on **06.11.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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