

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....
(arising out of Diary No.53701/2024)

COMMISSIONER OF CGST AND CENTRAL EXCISE DELHI I Appellant(s)

VERSUS

AMBASSADOR SKY CHEF Respondent(s)

O R D E R

1. There is a gross delay of 154 days in filing the appeal which has not been satisfactorily explained.
2. We find no good reason to interfere with the impugned order dated 19.04.2024 passed by the Customs, Excise & Service Tax Appellate Tribunal in STA No.51913 of 2018.
3. The appeal is, therefore, dismissed on the ground of delay as well as on merits.
4. Pending application(s), if any, stands disposed of.

.....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

Signature Not Verified
Digitally signed by
CHANDRESH
Date: 2025.01.04
16:34:29 IST
Reason: 

New Delhi
02nd January, 2025

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No.53701/2024

[Arising out of impugned final judgment and order dated 19-04-2024 in STA No. 51913/2018 passed by the Custom Excise Service Tax Appellate Tribunal]

COMMISSIONER OF CGST AND CENTRAL EXCISE DELHI I Petitioner(s)

VERSUS

AMBASSADOR SKY CHEF Respondent(s)

(FOR ADMISSION and IA No.293816/2024-STAY APPLICATION and IA No.293817/2024-CONDONATION OF DELAY IN FILING APPEAL)

Date : 02-01-2025 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) Mr. N.venkataraman, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Ms. Chinmyee Chandra, Adv.
Mr. Suyash Pandey, Adv.
Mr. Navanjay Mahapatra, Adv.
Mr. Santosh Kumar, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is dismissed in terms of the signed order.
2. Pending application(s), if any, stand disposed of.

(CHANDRESH)
COURT MASTER (SH)(POOJA SHARMA)
COURT MASTER (NSH)

(Signed order is placed on the file)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

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PRINCIPAL BENCH – COURT NO. 4

**Service Tax Appeal No. 51913 Of 2018**

[Arising out of OIO No. 19/PP/COMMR./CGST/AUDIT-II/2017-18 dated 31.01.2018 passed by the Commissioner of Central Goods, Service Tax, Audit-II- Delhi]

**COMMISSIONER OF CENTRAL GOODS,  
SERVICE TAX & CENTRAL EXCISE-DELHI I**

2<sup>nd</sup> & 3<sup>rd</sup> Floor, Plot No. 2B, EIL Annexee Building  
Bhikaji Cama Place, New Delhi

**Appellant**

Vs.

**AMBASSADOR SKY CHEF**

IGI Airport Complex, Near Centaur Hotel  
New Delhi-110037

**Respondent**

**APPEARANCE:**

Shri Manoj Kumar, Authorized Representative for the Appellant  
Shri Yash Parmar, Chartered Accountant for the Respondent

**CORAM :**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**  
**HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**FINAL ORDER No. 55591/2024**

Date of Hearing:07.02.2024

Date of Decision:19.04.2024

**DR. RACHNA GUPTA**

The present appeal has been filed by the department to assail the order-in-original No. 19/2017-18 dated 31.01.2018.

2. The facts in brief are as follows:-

Intelligence was developed and gathered by the officers of Directorate General of Central Excise Intelligence, Zonal Unit, Mumbai that the respondents were engaged in providing 'in-flight catering services to International and Domestic airlines'. The respondents were observed

to have short paid the service tax by undervaluing the taxable services which were covered under Section 66E (i) of Finance Act, 1994. Vide the show cause notice No. 594 dated 08.02.2017, the department alleged that supply of food and beverages is covered under the head "Outdoor Catering Services" and all other ancillary services are incidental to the main services of outdoor catering services. The respondents are alleged to have deliberately raised separate invoices for supply of food and beverages (in short F&B) and for services like transportation, uploading, offloading, handling and storage of F&B. The gross value is allegedly suppressed to evade the payment of service tax on the food portion. Accordingly vide show cause notice No. 594 dated 08.02.2017, the service tax amounting to Rs. 11,58,48,051/- was proposed to be recovered in terms of proviso to Section 73 (1) of Finance Act read with Section 66 B (effective from 01.07.2012) for the period from July 2012 to March 2016. Also the service tax amounting to Rs. 6,54,93,417/- was proposed to be recovered in terms of proviso to Section 73 (1) of Finance Act, 1994 for services being the declared services under Section 76 (E) (i) of Finance Act, 1994. The appropriate interest and proportionate penalties were also proposed against the respondents. The said proposal has been rejected vide the impugned order. Being aggrieved, the Department- appellant is before this Tribunal.

2. We have heard Shri Manoj Kumar, Authorized Representative for the Appellant Shri Yash Parmar, Chartered Accountant for the Respondent.

3. Learned Authorized Representative for department has mentioned that the respondent-assessee admittedly were discharging the service tax liability on the services like transportation of foods, laundry and bonded stores etc. However, they were intentionally and wrongly not paying service tax on supply of food to the international as well as domestic flights. The activities of respondent are well covered under Section 65 (B) (44) of Finance Act, 1994 which deals with situation where supply of food is the part of the reduced activity. The Respondent themselves have declared the category of service as "Outdoor Catering", however, have raised separate invoices for supply of food and beverages and for other services of transportation uploading, handling and storing of such food beverages. This is a deliberate act of the respondent to evade payment of service tax on the proper value of services including the value of food and beverages. Learned Authorized Representative further mentioned that w.e.f. 01.07.2012 service tax is leviable on value of all services under Section 66B except those as specified in negative list in section 66(D) of the Finance Act irrespective provided or agreed to be provided in the taxable territory by the one person or the other. The impugned activity of respondents is denied to be covered under said negative list.

4. Learned Authorized Representative has laid emphasis upon the definition of declared service under Section 66 E to mean as follows:-

"service portion in an activity wherein goods, being food and any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity."

Since, the bundle of other activities of transportation, handling of food and beverages etc., are ancillary to the catering services, the respondent has wrongly excluded the value of supply of food and beverages from the gross value of the services rendered. Those have wrongly been held as separate activity by the adjudicating authority. The order is therefore prayed to be set-aside and the department's appeal is prayed to be allowed.

5. While rebutting the submission, the assessee-respondent has submitted that the outdoor catering is an activity of catering which is carried out at a place other than that of service provider. In the case of flight caterers, there is no catering at an external location or the airline location, the food only gets loaded on to the aircraft at the Airport but is not catered there. Actual act of catering took place when the flight took off and the food was actually catered to the passengers by the airlines crew. Resultantly, the activity of the respondent is merely the supply of food. The transportation and handling thereof are incidental to the supply of food and not to the activity of outdoor catering as has rightly been held by the adjudicating authority below.

6. It is further impressed upon that the contract with the airline is two fold divisible contract, distinctly identifiable and value of consideration is also separately defined. The dominant intention from both these agreements is that the respondent has agreed to supply food to the airlines. The said supply of food is also not dependent on the other services as the airlines have an option of not availing the transport services from the caterer themselves. Learned Counsel impress upon that the service tax is not payable on the supply of service. Following decisions have been relied upon:-

- **EIHA Unit of Oberoi Flight Services vs. CST, Delhi [2018-TIOL-10-12 2803-CESTAT-DEL]**
- **CST, Bangalore vs. LSG Sky Chef India Pvt. Ltd. [2012 (27) S.T.R. 5 (Kar.)]**
- **CST, Bangalore vs. LSG Sky Chef India Pvt. Ltd. [2017 (49) S.T.R. 286 (Kar.)]**
- **Sky Gourmet Pvt. Ltd. vs. CST, Bangalore [2009 (14) S.T.R. 777 (Tri.-Bang)]**
- **CST, Bangalore vs. The Grand Ashok [2013 (31) S.T.R. 528 (Kar.)]**
- **Goldline Hospitality Solutions Pvt Ltd vs. Comm. GST & C.Ex., Chennai [2019-TIOL-1482-CESTAT-MAD]**
- **Daspalla Hotels Ltd. vs. CCE., Visakhapatnam [2010 (18) S.T.R. 75 (Tri.-Bang)]**

7. It is also mentioned that though the Notification No. 12/2003 dated 12.06.2003 according to which transfer, delivery or supply of goods is deemed to be the sale within the meaning of clause 29(A) of Article 366 of the Constitution was not applicable during the period in question. But, the definition of services in Finance Act, 1994 itself fully captures, said the intent of the said Notification No. 12/2003. Finally, it is submitted by the Learned Counsel for respondent that the extended period has also been wrongly invoked vide the impugned show cause notice, as there is neither any mis-representation nor any suppressed. There is also no iota of evidence that respondent had intent to evade payment of service tax. Impressing upon no infirmity in the order under challenge, the appeal is prayed to be dismissed.

8. Having heard both the parties and perusing the decisions relied upon by the respondent, we observe and hold as follows:-

The activity rendered by the assessee-respondent is alleged to be outdoor catering services. Foremost we need to know the definition of outdoor catering services. Section 65 (76a) of Finance Act defines outdoor caterer to mean 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. The definition of caterer is nowhere defined in the act. However, as per dictionary meaning caterer is a person engaged in providing, laying and serving food. Caterer is a person who makes and serves food. Later section 65 (24) of the Finance Act also defined caterer to mean any person who supplies either directly or indirectly any food edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accouterments for any purpose of the occasions.

9. A joint reading of all these definitions makes it crystal clear that for an activity to be called as outdoor catering, there has to be the preparation of food, supply of food and serving of the food. Apparently and admittedly, the activity of the respondent herein is that they are providing/supplying food to various airlines alongwith the responsibility of packing and handling of food, loading in transportation thereof alongwith the requisite equipments and of providing the laundry services. This admitted fact is sufficient shown that there is no activity of serving the food, the Hon'ble Supreme Court in the case of **Tamilnadu kalayanan Mandapam Association vs. Union of India reported as 2004 TIOL 36 (SC)** has held that a



tax on services rendered by outdoor caterers is in pith and substance a tax on services and not a tax on sale of goods or on hire purchase activities. The Delhi High Court also in the case of **Indian Railways Catering and Tourism Corporation reported as 2010 (20) STR 437 (Del.)** has held as under:-

"5A The transaction of supply of food, snack and water to passengers in the train is not an outdoor catering service, There is no choice for passenger as he cannot ask for a different item or more items or substitute items. Thus he has no role to play and hence there is no element of service except the heating of cooked food and serving the food and beverages. In fact the service component in a restaurant is more than the service component in a train.

5B The property in the goods passes from IRCTC to Indian Railways when the food is loaded in the trains. The moment the food is loaded, the food belongs to Indian Railways. The fact that the food is served while the train is moving through another State is immaterial. It is not possible to accept that property in goods is transferred only when the food is served to the passenger as it would lead to impossible situations."

Even Bombay High Court in the case of **Narang Hotels and Resorts vs. State of Maharashtra reported as 2004 (135) STC 289** has held that the sale by a flight kitchen of eatable or goods is complete when the goods are loaded in the supply unit and despatched when the supplied food is served simultaneously it is outdoor catering else it is merely sale of goods more so in the case when invoice shows it as a separate element. This Tribunal also in the case of **M/s EIHA Unit of Oberoy Flight Services (supra)** has held that since the appellant was simply supplying the food and was not serving the same to the passenger on board, it was specifically a sale of goods, the appellants have already discharged the VAT liability thereof. The activity cannot

be called as outdoor catering service. For the remaining ancillary services, the appellant is discharging the liability under service tax. The demand raised by the revenue, in the given circumstances, was held not sustainable. Karnataka High Court in the case of **Commissioner of service Tax Bangalore vs. LSG Sky Chef India Private Limited reported as 2012 (27) STR 5 (Kar.)** has held as under:-

"The Division Bench held that outdoor catering consists of goods namely, the articles of food etc, which would constitute sale. Hence, the value of the food articles are liable for sales tax which the State Government is liable to impose. The other part of outdoor catering is the service rendered by the assessee in bringing the food articles to a place designated by the client. The service so rendered by the assessee, which also includes the cost of transporting the food articles constitutes service. Therefore, to this extent alone, the assessee is liable for service tax and for the entire cost received from the Airlines. Hence mere has to be a bifurcation with regard to the sale of goods and the service provided. However, it does not empower the State Government to levy tax on the entire amount mentioned in the bill. The entire sale price includes the transportation charges also and out of that sale price what is the service aspect and what is the sale aspect requires to be decided by the authorities. It is only thereafter that sales tax could be imposed on the cost of the food articles arrived at and the remaining extent including transportation is to be treated as liable for service tax. Therefore, the court declared that a contract for outdoor caterings composite contract which falls under sub-clause (f) of clause 29A of Article 366 of the Constitution of India and service tax payable on service aspect and sales tax is payable on deemed sales aspect and it is not an individual contract."

Thus it is clear that the issue involved in the present case is no more res-integra that supply of F&B per se is not the 'outdoor catering service'. It rather amounts to sale of F&B. The Adjudicating Authority has considered most of the above said decisions while dropping the demand proposed by the impugned show cause notice. We observe that the order under challenge is passed in compliance of the judicial

protocol. We find no infirmity in the order, the same is hereby upheld.  
Consequent thereof, the appeal is hereby dismissed.

*(Order pronounced in the open Court on 19.04.2024)*

**(RACHNA GUPTA)**  
MEMBER (JUDICIAL)

**(HEMAMBIKA R. PRIYA)**  
MEMBER (TECHNICAL)

G.Y.