CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.50250 of 2021

[Arising out of Order-in-Original No.23-24/TPS/PC/CGST/DSC/2020-21 dated 21.10.2020 passed by the Principal Commissioner, CGST, Delhi South Commissionerate, New Delhi]

M/s. PVR Limited, **Appellant**
61, Basant Lok, Vasant Vihar,
New Delhi-110 057.

VERSUS

Principal Commissioner of Goods & Service Tax & Central Excise, **Respondent**
Delhi South Commissionerate,Plot No.2 B,
EIL Annexe, 3rd Floor, Bhikaji Kama Place,
New Delhi-110 066.

APPEARANCE:

Shri V. Lakshmikumaran and Ms. Shagun Arora and Ms. Shrishti Yadav, Advocates for the appellant.
Ms. Jaya Kumari , Authorised Representative for the respondent.

CORAM:

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

FINAL ORDER NO. 50440 /2025

DATE OF HEARING:04.03.2025
DATE OF DECISION:26.03.2025

BINU TAMTA:

The issue raised in the present appeal is whether the supply of food and beverages in the cinema complex falls within the definition of 'service' and 'declared service' in terms of Section 65B(44) and Section 66E of the Finance Act, 1994.

2. The issue is no longer *res integra and has been decided in the case of the appellant themselves in the case of* **M/s. PVR Limited, Shri Nitin Sood, Shri Ajay Bijli and Shri Brijesh Arora Vs. CST, New Delhi**[1]

[1] 2023(12) TMI 81-CESTAT, New Delhi (Final Order No.51577-51580/2023 dated 30.11.2023)

holding that the supply of food and beverages in the cinema hall does not involve any service element and is merely transaction of sale. The period involved in the said order was from 2013-2014 to 2015 and the present appeal involves the subsequent period from 2015-16 to June, 2017. The facts and the issue being same, the present appeal is squarely covered by the aforesaid decision of this Bench. The observations of the Bench in the earlier order for ready reference is quoted below:-

> "12. The provisions of section 65B (44) and 66E of the Finance Act, defining "service" and "declared services" having been clarified by the Circulars and interpreted in the various decisions, we are of the view that the material issue is no longer res-integra. As noted above in the decisions, in case of take away food, packaged items etc. over the counter, the same amounts to sale of goods and there is no element of service involved therein. The same principle would apply here in the case of PVR Cinemas where fixed menu which is ready to eat is sold by merely reheating, if required. The viewers who have come to watch the movie go to the counters during the interval period, stand in queue and buy the food items which are either already packed or are reheated and sold to people as and when their turn comes. After buying they bring those items to their respective seats and enjoy it while watching the movie. There is no element of service in such transaction as interpreted in the judgments referred above. The facility of availability of the food items within the complex is only with a view that the duration of the movie is between 2/3 hours and the viewers during this time may like to munch something and most of the time there are little children or even elderly people who normally require to have something to satisfy their urge of hunger. The duration of the interval is so short that it is not possible for the viewers to rush outside the cinema complex to buy food stuff and eat there. Just for making it convenient, the cinema complex provides some packaged or ready to eat food items and drinks. The choice of food stuff or soft drink is limited and the viewers have to accept from what is available. There is another aspect of the matter which is peculiar to the cinema complex, that these counters providing food items are not open to the public at large like any snack bar or restaurant but only those who have bought a ticket for viewing the movie can access them. Thus, the supply of food items and drinks to viewers through the counters in the cinema halls is equivalent to the transaction involved in sale of take away/packaged food.

13. The other principle which emerges from the aforesaid decisions is the test to determine the dominant or incidental purpose. If we apply this principle to the cinema complex, their main purpose is to enable the public to view the movie, however to make it more enjoyable and convenient they provide a separate counter outside the movie hall but within the complex where the viewers can themselves go and buy some food or drinks, which implies that the later facility is only incidental and hence cannot be treated as a service within the definition of "service" under the Finance Act, for the charge of service tax. In this regard, we would like to take note of the decision of the Delhi High Court in Indian Railways C. & T. Corpn. Ltd. Vs. Govt. of NCT of Delhi -2010 (20) STR 437 (Delhi), where the petitioner, a Government company was providing services, including catering on board the trains run by Indian Railways and the Court observed:-

> "46. Since there is transfer of goods, by the petitioner company to Indian Railways, for consideration and the property in the goods also passes to Indian Railways, the transactions between them is no doubt a case purely of sale of goods under the provisions of Sale of Goods Acts as well as Delhi Value Added Tax Act and the element of service by way of heating the food, heating/ freezing the beverages and then serving them to the passengers is purely incidental and minimal required for sale of food and beverages in a transaction of this nature. There is no privity of contract between two petitioner company and the passengers travelling in trains."

14. The learned Counsel for the appellant has referred to a decision of Court of Justice (Third Chamber) dated 10.3.2011 in Finanzamt Burgdorf V Manfred Bog (C-497& 499/09) which specifically dealt with the issue whether the various activities of supplying food or meals prepared for immediate consumption in cinema halls constitute supply of goods or supply of services and observed that all the circumstances in which the transaction takes place must be taken into account in order to ascertain its characteristic elements and identify its predominant elements. The Court comparing the same with the restaurant transactions where the provision of food is only one component and in which services largely predominate, they are regarded as supplies of services whereas the situation in hand is different where this transaction of taking away the food is not coupled with services designed to enhance consumption on the spot in an appropriate setting, i e. laying the table, advising customer and explaining the food and drink on the menu to him, serving at table and clearing the table after the food has been eaten, there are no waiters, no service properly, speaking consisting in particular in transmitting orders to the kitchen and then presenting and serving dishes to customers and essentially no crockery, furniture or place settings. Having regard to the qualitatively

predominant elements from the point of view of the consumer, the transaction is one of supply of food and not supply of services.

15. The Revenue has taken the plea that appellant has admitted their service tax liability for this activity and the same activity could not be vivisected as taxable for one category and non-taxable for other. Considering the said argument, we would like to distinguish the Gold Class category which is available in the PVR multiplex where apart from special comfortable seats, the viewers are provided with further facilities where staff member of the multiplex / waiter comes to their seats and take the order and accordingly provide the food and drink to them on a small table like attachment to the seat. After the food is consumed by the viewers, the waiters come and collect the crockery back. This kind of facility is not provided in case of other category of viewers with which we are concerned here and that is the distinguishing feature on which the PVR pays the service tax. The analogy adopted by the earlier Benches of the Tribunal as well as by the High Courts and the clarifications issued by the revenue by way of circulars which are binding on them, will squarely cover the present case. We, therefore are of the firm view that the service tax is not leviable on the sale of food items in packed form or by process of reheating in the cinema halls as there is no element of service involved therein."

3. There is no reason to differ with the aforesaid order and hence, following the same, the impugned order is set aside. The appeal is accordingly stands allowed.

[Order pronounced on 26th March, 2025]

(BINU TAMTA)
Member (Judicial)

(P.V. SUBBA RAO)
Member (Technical)

Ckp.