

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

PRINCIPAL BENCH – COURT NO. IV
E-Hearing

SERVICE TAX APPEAL No. 55455 OF 2023

[Arising out of Order in Appeal No. 171 (RLM) ST/JPR/2023 dated 13.06.2023 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Rambagh Palace Hotel Pvt. Ltd.
Bhavani Singh Road,
Jaipur, Rajasthan-302005

...Appellant

Versus

**Principal Commissioner of CGST &
Central Excise - Jaipur**
NCR Building,
Statue Circle,
C-Scheme, Jaipur,
Rajasthan-302005

....Respondent

APPEARANCE:

Mr. Sanjiv Agarwal, Chartered Accountant for the appellant
Mr. Aejaz Ahmad, Authorized Representative for the Respondent

Coram:

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

DATE OF HEARING/DECISION: 24/04/2025

FINAL ORDER NO. 50794/2025

DR. RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No.171/2023 dated 13.06.2023 which is a common order with respect to two Show Cause Notices as were served upon the appellant. The details of the Show Cause Notices are as follows:-

Description	Show Cause No.1 Dated 24.11.2010	Show Cause No.2 Dated: 03.12.2012
Period of Dispute	01.10.2010-31.03.2010	01.04.2010-31.03.2011
Service tax and penalty demanded in Show Cause Notice	Cenvat Credit amounting to Rs. 1,50,46,840/- with interest and penalty	Cenvat Credit amounting to Rs. 39,19,748/- with interest and penalty.
Order-in-Original		19-20(ST)JP/KKS/2021-22/JC/dated 04.02.2022 (Page 120-162)
Service Tax and Penalty confirmed in Order-in-Original		
Order-in-Appeal		13.06.2023

2. The facts relevant for the adjudication are as follows:-

That the appellant was registered for providing the taxable services under various categories of Mandap Keeper, Internet Café, Outdoor Catering, Health Club & Fitness Service, Dry Cleaning, Banking & Other Financial Services, Renting of Immovable Property, Business Auxiliary Services, Transport of Goods by road and Tour Operator Services and was taking Cenvat credit in respect of service tax paid on the various input services used for providing the output services. One of the major input services the appellant is taking service tax credit relates to operation and management services provided by IHCL, Taj Mahal Hotel, Mumbai. Department observed that the appellant, M/s. Rambagh Palace Hotels Pvt. Ltd. were not following the procedure laid down under Rule 6 (3)(ii) of Cenvat Credit Rules, 2004.

2.1 On plain reading of the respective contract, it appeared that the services provided by IHCL are comprehensive and collaborative

services for operation, running, maintenance and promotion of the hotel while the owning company only meets the operating expenses. The actual power for running and operating the hotel are being exercised by the operating company, i.e. IHCL. The services being provided by IHCL are therefore appropriately classifiable as "Business Auxiliary services", or "Business Support Services". In other words it appeared to the Department that in any case these services are not classifiable as "Management or Business Consultancy" service, as mentioned by the appellants.

2.2 From the foregoing, it appears that the services provided by IHCL to M/s. Rambagh Palace Hotel Pvt. Ltd. are not in nature of 'management or business consultancy' service and these have been used for providing both taxable and exempted services whereas the services being provided by M/s IHCL are in the nature of "Business auxiliary services" as observed earlier which do not fall in the category of services listed in sub rule (5) of Rule 6 of Cenvat Credit Rules, 2004. Therefore, M/s Rambagh Palace Hotel Pvt. Ltd. were not entitled to utilize 100% Cenvat Credit of service tax paid on these services. From 01.04.08, as per the provisions of Rule 6(3)(ii) of Cenvat Credit Rules, 2004 they could avail total cenvat credit irrespective of taxable and exempted services but were required to pay an amount equivalent to the Cenvat Credit attributable to input services used for provisions of exempted services and remaining available balance of Cenvat Credit could be utilized for the payment of Service tax in respect of taxable services.

2.3 Based on these observations that the aforesaid two Show Cause Notices were served upon the appellants for such period and demanding reversal of such amount of Cenvat credit as is already mentioned in the table above. The proposal of both the Show Cause Notices was initially confirmed vide Order in Original No.19-20 dated 04.02.2022, which was the common order with respect to both the Show Cause Notices. The appeal against the said order has been rejected by the impugned common order in appeal. Being aggrieved, the appellant is before this Tribunal.

4. We have heard Mr. Sanjiv Agarwal, Id. Counsel for the appellant and Mr. Aejaz Ahmad, Id. Departmental Representative for the Revenue.

5. Ld. Counsel for the appellant has mentioned that the appellants are providing the hospitality services having their chain of hotels and resorts all over the world. That the nature of the services provided by IHCL as per operating agreement (article V) is that of institution and supervision of operating policies, formulating procedures for all the departments of managed hotels like purchases, accounting, public relations, house-keeping etc., planning of various advertising programmes, advising in matters of public relations, negotiation and execution of licenses and concessions including shops in the hotels with approval of managed hotels, supervision and control of the activities of licences, concessionaries, making reasonable repairs, alterations and decoration of managed hotels.

6. Further, it is submitted that the definition of support services was amended w.e.f. 01.05.2011 so as to include "operational or administrative assistance in any manner". However, in the instant appeal, the relevant period is 01.10.2006 to 31.03.2011. Therefore, any attempt to levy Service Tax under the category of business support services would be without jurisdiction and unsustainable in law.

7. The services are undoubtedly management consultancy services falling under Rule 6(5) of Cenvat Credit Rules, 2004. Since, it is a settled issue that classification cannot be changed by the Appellant, jurisdictional commissioner nor can the Appellant himself change the classification, Appellant is correctly and legally bound by such classification and is rightly entitled to 100% Cenvat Credit as per Rule 6(5) of Cenvat Credit Rules, 2004 for the entire period i.e. from October, 2006 to March. 2011. When such rule was in force upto 31.3.2011, the entire demand of Rs. 1,89,66,588/-is therefore, not sustainable.

8. Ld. Counsel further submitted that the authorities have ignored, the said submissions and the relevant date of amendment in the definition of Business Axilliary Service. The authority below have also failed to consider and have actually ignored binding precedents on the same issue in relation to hotel industry and other Taj Group Hotels of the country including the decisions of CESTAT against the revenue and SLP's before the Supreme Court. The copies of all such orders were made available to the respondent vide Para 1.3 of the additional submissions made on 17.04.2023.

9. The issue is otherwise stands already decided in favour of the appellants. Ld. Counsel has relied upon the following case laws:-

1. Commissioner vs. Piem Hotels Ltd. – 2019 (29) GSTL J 78 (S.C.)
2. Commissioner vs. Indian Hotels Co. Ltd. – 2018 (17) G.STL J111 (SC)
3. Commissioner v. Taj GVK Hotels & Resorts – 2018 (18) GSTL J124 (SC)
4. Commissioner vs. Newlight Hotels & Resorts Limited – 2016 (44) STR J142 (SC)

10. Finally, submitting that extended period has wrongly been invoked while issuing the impugned Show Cause Notices, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

11. While rebutting these submissions, Id. Departmental Representative at the outset has reiterated the findings arrived at by the adjudicating authorities below. It is mentioned that the plain reading of the contract between the appellant & M/s IHCL, it is evident that the services provided by M/s IHCL are comprehensive and collaborative services for operation, running, maintenance and promotion of the hotel while the owning company only meets the operating expenses. The actual powers for running and operating the hotel are being exercised by the operating company, i.e. M/s IHCL.

12. Ld. Departmental Representative also submitted that the Tribunal in a number of judgments as mentioned in para 5.8 of the Order-in-Original, held that such collaborative agreement for comprehensive running of business organization are appropriately classifiable as "Business Auxiliary Service" rather than being classified

as "Management or Business Consultancy" services as discussed in para 5.1 to 5.9 of the Order-in-Original. The CENVAT credit was correctly denied in respect of service received by the appellant from M/s. IHCL as "Business Auxiliary Service" do not fall in the category of services listed in sub-rule (5) of the CENVAT Credit Rules, 2002, hence the appellant is not entitled to utilize 100% CENVAT Credit of service tax paid on these services. With these submissions the appeal is prayed to be dismissed.

13. Having heard both the parties we observe that there is no denial of the fact that the appellant has been receiving the taxable services from M/s. IHCL and others as named in the Show Cause Notice. This clarifies that the appellants were entitled to claim the Cenvat credit thereof. The issue here is with respect to the availment of 100% Cenvat Credit on the services when the appellant has been receiving various other non-taxable services. We observe that this issue of availment of 100% Cenvat Credit despite being the collaborative agreement of receiving several services by the hospitality industry stands already covered by the decision of this Bench itself in addition to various other decisions. It has already been observed as under:-

"7.1.2 The perusal makes it clear that the provisions of Rule 6 of Cenvat Credit Rules, 2004 are not applicable on 16 services as mentioned in the said provision. One of such services is of Management Consultancy Service defined under Section 65 (105) (r) of Finance Act, 1994. According to the said provision 100% credit on the Management Consultancy Service is specifically allowed even if it is partially used in providing the

exempted services. The rule clarifies that the credit taken on Management Consultancy Service is not liable for proportionate reversal under Rule 6 of Cenvat Credit Rules, 2004. We accordingly hold that the amount of Cenvat credit was not supposed to be reversed vis-à-vis Management Consultancy Services. The original adjudicating authority also in Para 4.4.1 in sub-para 2 has held that appellant to be entitled to avail 100% credit of the same irrespective of their utilization in taxable or non-taxable service during the period under question. However, relief has been denied as the said sub-rule (5) was omitted vide Notification No. 3/2011. However, we observe that the said notification is dated 01.03.2011 which omits sub-rule (5) of Rule 6 of Cenvat Credit Rules, 2004 w.e.f. 01.04.2011. The period in question is March 2010 to March 2011 which means the notification has wrongly been applied by the adjudicating authority for denying the availment of 100% credit on the Management Consultancy Services.”

In the light of the above findings, the demand for the period 2010-11 vis-à-vis the amount of Cenvat credit availed on Management Consultancy Services is hereby set aside. The demand from April 2012 to June 2012 stands modified as discussed above. The order with respect to demand for the period July 2012 to March 2013 is hereby upheld. Consequent thereto, the order under challenge is hereby modified and the appeal stands partly allowed.

14. This decision has been upheld even by the Hon’ble Apex Court in the case titled as **Commissioner vs. Piem Hotels Limited reported as 2019 (29) GSTL J 78 (S.C.)** holding as follows:-

“The Appellate Tribunal in its impugned order had held that Management Consultancy services received by the assessee, a hotel company from another hotel company i.e. Indian Hotels Company Ltd. being in the nature of advice, consultancy and assistance in respect of its management

cannot be considered as Franchisee services and the assessee is entitled to avail 100% Cenvat credit of Service Tax paid on such services and the same cannot be restricted to 20% in terms of Rule 6(3) of Cenvat Credit Rules, 2004.”

15. In view of the earlier decisions on the same issue even in the case of appellants also and that we do not find any reason to differ from those decisions including the earlier decision of this Bench also. Also in view of the fact that period involved in the present appeal is till March, 2010 i.e. when the impugned activity is not covered under Business Auxilliary Service. We hereby hold that the demand has wrongly been confirmed. Resultantly, the order under challenge is hereby set aside. Consequent thereto the appeal is allowed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)