

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD  
REGIONAL BENCH - COURT NO. 3**

**SERVICE TAX Appeal No. 10691 of 2018-DB**

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-420-2017-18 dated 20.09.2017 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

**Matashree Hospitality Services**

B-108, Ambe Green City, Kapodra Patiya,  
Valia Road, Kosamdi, Ankleshwar,  
BHARUCH, GUJARAT

.... **Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Vadodara-ii**

1st Floor, Room No.101, New Central Excise Building,  
Vadodara, Gujarat -390023

.... **Respondent**

**APPEARANCE :**

Shri Shailesh Sheth, Advocate for the Appellant  
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 07.08.2024

DATE OF DECISION: 13.08.2024

**FINAL ORDER NO. 11763/2024**

**RAMESH NAIR :**

The issue involved in the present case is that whether the benefit of Notification No. 25/2012-ST in respect of services of food and beverages by a canteen maintained in a factory is available to the appellant being a service provider or the same is not available to them on the ground that the said exemption is available only to the owner of the premises where the canteen is operated.

2. Shri Shailesh Sheth, learned Counsel appearing on behalf of the appellant at the outset submits that this issue is no longer res-integra as the same has been decided by the CESTAT bench of Allahabad in the case of M/s. ICS Food Pvt. Limited vs. Commissioner of Service Tax, Noida – 2018-TIOL-2349-CESTAT-ALL and the same was upheld by Hon'ble Supreme Court by dismissing the Revenue's appeal reported at Commissioner vs. ICS Food Pvt. Limited – 2019 (22) GSTL J163 (SC).

3. Shri Ajay Kumar Samota, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that in the impugned order the benefit of Notification No. 25/2012-ST was denied to the appellant only on the ground that said exemption is available to the factory and not to the outside contractor who runs the canteen. For the ease of reference the said notification is reproduced below:-

**Exemptions from Service tax — Mega Notifications — Notification No. 12/2012-S.T. superseded**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :-

1 to 17 ..... ..

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

**19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;**

20 to 36 ..... ..

3. This notification shall come into force on the 1st day of July, 2012.

[Notification No. 25/2012-S.T., dated 20-6-2012]

From the plain reading of the above notification, it is nowhere indicated that which person will get the exemption. It is predominantly the service of Food and Beverages by a canteen is exempted irrespective of the fact that who is running the canteen. The only condition is that such canteen should be operated within the premises of the factory as per Factory's Act, 1948 which is not in dispute. Therefore, the exemption of Notification No. 25/2012-ST is clearly admissible to the appellant. As it is the appellant who run the canteen in the factory which is covered by Factory's Act, 1994. This issue is

no longer res-integra as the same has been decided by this Tribunal in the case of ICS Food Pvt. Limited vs. Commissioner of Service Tax, Noida. The order No. 71061/2018 dated 12.05.2018 is reproduced below:-

“The main dispute pertains to entitlement of exemption Notification No.25/2012-ST as amended by Notification No. 14/2013-ST dated 22/10/2013 to the services provided in relation to serving of food or beverages by a canteen maintained in a factory, as required under the Factories Act, 1948 when such food or beverages are prepared and served by a person other than employees of factory itself. From allegations leveled in the SCN, it is clear that the department's interpretation of exemption Notification is that the said canteen should be run by factories themselves. The Adjudicating Authority has taken the same view. The appellant on the other hand argued that service provided in relation to serving of food and beverages from Section 65(76a) [as in existence till 30/06/2012] of the Act provided that - "outdoor caterer means 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 person]".

Even if such services are considered as OUTDOOR CATERING, those have been used for providing services in relation to serving food and beverages in a canteen.

Thus the services provided by the appellant is covered by Entry No. 19A of the Negative List and exempted from payment of Service Tax. Accordingly, the appeal is allowed and impugned order is set-aside.”

5. In view of the above decision which was upheld by the Hon'ble Supreme Court and the observation made by us hereinabove, the appellant is clearly entitled for the exemption under Notification No. 25/2012-ST. Accordingly, the demand in the present case is not sustainable. Hence the impugned order is set-aside and the appeal is allowed.

*(Pronounced in the open court on 13.08.2024)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(C L Mahar)**  
**Member (Technical)**