

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

PRINCIPAL BENCH, COURT NO.-1

SERVICE TAX APPEAL NO. 51712 OF 2022

(Arising out of Order-in-Original No. 28/2021-ST dated 24.12.2021 passed by the Additional Director General, Adjudication, New Delhi)

M/s Ambuj Hotels & Real Estates Pvt. Ltd.

Appellant

7575/1, Ram Nagar, Pahar Ganj
New Delhi-110055

H.O. at D-58/9-A, Hotel Siddharth, Sagra,
Mahmoorganj, Varanasi,
Uttar Pradesh-221010

VERSUS

Director General of GST Intelligence

Respondent

West Block-VIII, Wing-6
2nd Floor, R K Puram,
New Delhi-110066

APPEARANCE:

Shri Arjun Raghavendra, Advocate for the Appellant

Shri Rajeev Kapoor, Authorised Representative for the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing: 12.01.2023

Date of Decision: 03.04.2023

FINAL ORDER NO. 50418/2023

Justice Dilip Gupta:

M/s. Ambuj Hotels & Real Estate Pvt. Ltd.¹ has filed this appeal to assail the order dated 24.12.2021 passed by the Additional Director General (Adjudication), New Delhi². The demands proposed in the show cause notice dated 15.10.2018 that have been confirmed in the said order are:

- a. Service tax on the license fee paid by the appellant to the Railways amounting to Rs.

1. the appellant
2. the adjudicating authority

11,15,69,363/- under section 73(2) of the Finance Act, 1994³ along with consequential interest under section 75 of the Finance Act and 100% penalty under section 78 of the Finance Act;

- b. Differential service tax due on the difference in value of catering service as declared in balance sheet and ST-3 returns, amounting to Rs. 10,26,416/- under section 73(2) of the Finance Act, along with consequential interest under section 75 of the Finance Act and 100% penalty under section 78 of the Finance Act; and
- c. Service tax collected in excess, but not deposited, amounting to Rs. 1,32,66,338/- under section 73A along with applicable interest under section 73B and a penalty of Rs. 1,00,000/- under section 78A of the Finance Act.

2. The demand confirmed at (a) relates to taxability of what was alleged in the notice and confirmed in the order as "support services" provided by Indian Railways to the appellant, for which the appellant is said to have paid license fee during the period July 2013 to June 2017. Service tax has been demanded on this amount under a reverse charge. The support services that have been confirmed are infrastructural support, operational support and marketing support. The demands confirmed at (b) and (c) have not been contested by the appellant.

3. the Finance Act

3. It necessary to understand what services are involved and why the license fee is paid, and for that it is necessary to understand the process of issuing licenses by Indian Railways to caterers on board their trains. The Catering Policy, 2010 defines license, lays down the procedure for fixation of license fee and the procedure for bidding and issuing of license. Tenders are called for quoted license fee from all interested bidders. Evaluation of all quoted license fees is undertaken to determine who has quoted the highest license fee. The bidder whose quoted license fee (minimum license fee+ markup) is the highest among all the bids, receives the letter of award. The license is awarded at the quoted license fee to the highest bidder through a Master License Agreement.

4. The process of catering onboard the trains of Indian Railways was governed during the period in dispute by the Railway Catering Policy, 2010⁴ issued under a Commercial Circular dated 21.07.2010 of the Ministry of Railways. It defines 'license' as an authorization to provide catering service onboard the trains covered in the respective Master License Agreements. 'License' and 'Licensee' have been defined in the Master License Agreement as follows:

15. License: is a document issued by either Indian Railways or IRCTV giving authorization to the licensee to operate a particular service. This license can be for a stipulated period defined for that unit. The license can be issued either by calling of applications or through a 2 packet tendering system as the case may be.

16. Licensee: An agency which can be a company or a firm/Society/Cooperative or an individual. The firm can be a proprietorship or partnership. The licensee is the person authorized by railway administration or IRCTC to carry out the business."

4. the 2010 Policy

5. In accordance with this policy, for catering on each train, a minimum license fee is calculated. The fixation of minimum license fee for mobile units is governed by paragraphs 18.2 and 18.3 of the 2010 Policy and it is as follows:-

“**18.2** Minimum licence fee will be fixed as 12% of the estimated **annual sales turnover** for static units, mobile units of Ordinary Mail/Express trains & premium super fast trains and 15% for Rajdhani/Shatabdi trains/Duronto trains of the **annual sales turnover** based on actual occupancy figures certified by the Train Superintendent.

18.3 At the time of renewal of licence, licence fee should be enhanced/reassessed based on actual sales turnover of the unit. Licence fee will be reassessed and revised at the time of each renewal subject to a minimum of 10% increase over the prevailing licence fee of the unit. To arrive at a realistic figure zonal railways will ensure that a **fresh assessment of sales turnover/revenue** is conducted during the peak period and lean period i.e. with the periodicity of three-three months in order to assess the actual sales turnover so as to fix the revised licence fee.”

6. The appellant has described the process pertaining to the license of catering service on the Dhanbad - Alappuzha Express – Train No. 13351/52. Three teams of railway officers carry out an assessment of sales turnover of pantry car on the train in both the directions. The quantity sold of each item is kept count of and the sales turnover for one ride i.e., both directions of the train is arrived at the old rates and at the revised rates. Similar exercise is carried out by two more teams and in total, three such assessments are carried out. The highest value of the three assessments is picked and is subsequently multiplied by the number of days on which the train runs to arrive at the annual assessed value at both the old rates and the revised rates.

7. At the old rate, the assessed value worked out to Rs. 1,42,415/-, while at the revised rate it worked out to Rs. 1,95,895/-. Thus, the annual assessment at the old rate would be Rs. 1,42,415 x 365 days = Rs. 5,19,81,475 and 12% of this annual assessment would be Rs. 62,37,777/-. At the revised rate, the annual assessment would be Rs. 1,95,895 x 365 days = Rs. 7,15,01,675/- and 10% of this annual assessment would be Rs. 71,50,168/-. The prevailing annual license fee till then was Rs. 95,74,740/- and with an increment of 10%, this value would be Rs. 1,05,32,214/-. According to paragraphs 18.2 and 18.3 of the 2010 Policy, the best of three is set as the annual minimum license fee. In the instant case, it would be Rs. 1,05,32,214/-.

8. For a contract term of 5 years, this value would be Rs. 1,05,32,214 x 5 years = Rs. 5,26,61,070. This is the minimum license fee that is determined. Once the minimum license fee is determined, the bidding process starts.

9. The relevant portion of the bid document for the Dhanbad - Alappuzha Express – Train No. 13351/52 is:

“for and on behalf of the Preside of India, East Central Railway invites sealed bid on single stage two packet system, from food and catering service providers for
“Provision of Catering Services on Train Number 13351/52.”

(emphasis supplied)

10. It is clear from the aforesaid bid notice that the invitation is only for bids to provide catering service on board the train and no services are offered in return for the license fee in the bid document.

11. Further, once a bidder is selected as the licensee, then such a bidder has to pay license fee for the authorization to provide catering

services. This is clear from the following extracts of the bid document:

"1.1.3. The Bidder, once selected shall become "Licensee" and shall be liable to pay License Fee as per terms and conditions determined by the Railway.

1.3 (I) In consideration of the award of the License to the Licensee, the Licensee shall be liable to pay License Fee to Railway which shall be more than minimum license fee determined by Railway."

12. In response to the bid notice, all the bidders offer their "quoted license fee", which is defined in the Policy 2010 as :

"23. Quoted license fee:

This is the license fee quoted by a licensee including mark up over minimum license fee."

13. The bid is then awarded to the bidder who has bid the highest "quoted license fee". The relevant extract of the selection process, as stated in the bid document, is as follows:

"3.5 Selection Process

3.5.1 The responsive bids shall be evaluated in the following manner:

- a. Scrutiny of bids for Minimum Eligibility as per Chapter 3 of Section A. Such bids that meet with the eligibility criteria will be called "eligible bids"
- b. The eligible bidders will be evaluated techno-commercially and awarded a Techno-Commercial Score to assess the capability of the eligible bidder(s) on the basis of scrutiny of information provided in Annexure - A/4 (Tech Form 1, 3 to 5) and the scoring scale at Annexure - A/5
- c. The highest Techno-Commercial score (HTS) secured by any of the bids will be the **base Techno-Commercial index**.

- d. All bids whose techno-commercial score is more than or equal to 60% of HTS will be "techno-commercially qualified" for consideration of Railway Administration.
- e. Price Bids will be opened for "techno-commercially qualified" bids only. The date, time and venue of opening of price bid will be intimated only to the "techno-commercially qualified bidders".
- f. Highest Priced bid will be selected for award of contract.
- g. In the event of highest price being the same for more than one bid, bid with higher techno-commercial score should be considered by award of contract."

14. In the instant case, the appellant was the highest bidder with a quoted license fee of Rs. 13,63,51,000/-. This highest quoted license fee becomes the license fee and the license is tentatively awarded, initially through a letter of award. On acceptance of the letter of award, a Master License Agreement is signed between the highest bidder and the Railways.

15. The show cause notice dated 15.10.2018 considered the Master License Agreement between the appellant and the Railways and the relevant portions of the show cause notice are reproduced below:

"5.2 It appears to emerge from MLAs that:

- (i) The support provided in the instant case by Indian Railway includes:
 - (a) Infrastructural support – The Railway provides basic infrastructure to the Licensee as pantry car, manifold room for gas cylinders as mentioned in para 6.25 and 6.29 (iv) of Article 6 of MLA.
 - (b) Operational Support – The Railway issues travel authority/passes on demand to the Licensee and its staff for providing services

on the Train as mentioned in para 7.1 (c) of Article 7 of MLA.

(c) Marketing Support – The Railway grants rights to the Licensee to commercially advertise on disposable accessories alongwith distribution of books, magazines and newspapers or do promotional as mentioned in para 7.2 of Article 7 read with para 1.3K of Annexure-I of MLA.

(ii) Para 19.1 of MLA provides that License Fees (paid in advance) shall be refunded to Licensee on pro-rata basis in the event of permanent cancellation/withdrawal/non-operation of the train services by the Railway. It thus, appears that there is a provision of service by Railway and receipt of Service by Licensee and Licensee shall pay only for the time period in which it obtained and received services from the Railway.

(iii) Licensee shall be liable to pay all taxes payable on account of the grant of License and that Railway shall not be responsible towards the same at any time during the term.

Therefore, it appears that certain individual functions that caterer would carry out in ordinary course of their operations such as arranging their own equipment and spaces for carrying out, managing and supervising their business activities are, in the present case, being enabled to them by the Railway who make available the pantry car, including manifold room and washing facilities, for use of the caterer through granting right to use and right to provide additional services, including advertisement & promotion and provide the caterer with travel passes for providing the service on trains and that Railway principally render assistance to the caterer that is infrastructural, logistical, operational, marketing or of other kind in lieu of the License Fees.

6.2A It appears from the foregoing that the Indian Railways provided "Support Services" to the Licensee. It further appears that these are taxable by virtue of not being covered under Section 66D. It also appears that the tax is payable by the Licensee on reverse

charge basis under Notification No. 30/2012-ST (Sl. No. 6) dated 20.06.2012.

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6.5 Further, it appears that from 01.04.2016, changes were made by Finance Act, 2015 (20 of 2015) whereby the words "support services" were substituted by "any service" in sub-clause (iv) of clause (a) of Section 66D of the Finance Act, 1994. Moreover, clause 49 of Section 65B of Finance Act was omitted from 01.04.2016 by virtue of Not. No. 15/2016-ST dated 01.03.2016 issued in terms of clause (h) of section 107 of the Finance Act, 2015. Further, the words "by way of support services" were omitted against Sl. No. 6 in column (2) of the Notification No. 30/2012-ST dated 20.06.2012 vide Notification No. 18/2016-ST dated 01.03.2016, w.e.f. 01.04.2016. In view of these changes, read with definition of service in Section 65B(44) of the Finance Act. 1994 (service means any activity carried out by a person for another for consideration, and includes a declared service.....), it also appears that License Fee paid to Indian Railway by Ambuj were also taxable from 01.04.2016 onwards under reverse charge mechanism.

6.6 Accordingly, it appears that Ambuj have not paid their Service Tax liability (inclusive of Education Cess, Secondary & Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess) on amount paid as consideration by them to Indian Railways, under reverse charge mechanism, during the period 01.04.2013 to 31.03.2017 which, calculated on the basis of the MLAs (RUD-6 to 13), information provided by Ambuj and information provided by different Railway Zones (collectively RUD-14), totals Rs. 11,15,69,363/-."

16. Shri Arjun Raghavendra, learned counsel for the appellant contends that the license fees paid to the Railways by a licensee is the consideration for award of license and no other services are promised or negotiated in this process between the Railways and the licensee. To support this, learned counsel placed reliance on the communication dated 15.09.2022 sent by the Railways. In this

communication, the request made for reduction in license fee was considered and the calculation is based on a reassessment of the sales turnover alone and not any other parameter associated with any support provided by railways. The contention, therefore, is that the license fee is based solely on the assessed sales turnover and the show cause notice has misread/misinterpreted the rights and obligations of the parties. Learned counsel pointed out that reference to some of the necessary arrangements were misinterpreted and wrongly construed by the department as providing three kinds of support services. Learned counsel referred to a table that provides the exact text of the Agreement based on which the show cause notice made the allegation, the alleged activities and why the allegations were incorrect. The table is as follows:

Sl. No.	Alleged activities as in the show cause notice and subsequently confirmed in the impugned order	Actual text from the Master License Agreement to which the show cause notice refers	Why the allegation fails when read with the actual text of the agreement?
1.	<p>Infrastructural Support:</p> <p>The Railway provides basic infrastructure to the Licensee as pantry car, manifold room for gas cylinders and washing facilities as mentioned in paragraphs 6.25 and 6.29 (iv) of MLA.</p>	<p>ARTICLE 6. RIGHTS AND OBLIGATIONS OF THE LICENSEE</p> <p>6.25 Provision of equipment.</p> <p>The licensee will arrange his own equipment and other than those provided in the Train pantry car for satisfactory provision of service.</p> <p>6.29 Gas room instructions</p> <p>(iv) The manifold room is provided with double</p>	<p>The actual text does not discuss about providing any infrastructure.</p> <p>Instead, it states the responsibilities of the licensee with regard to the existing infrastructure on the train. The mention of “pantry car” and “manifold room” are all incidental in describing the responsibilities of the licensee.</p> <p>The said paragraphs do not discuss providing any infrastructural</p>

		leaf, swing doors (with observation glasses) for removal and replacing of new cylinders. These doors should always be kept closed and locked. Before every trip the pantry car manager should ensure that these doors are locked and sealed even if the cylinders are empty.	support to the licensee.
2.	Operational Support: The Railway issues travel authority/passes on demand to the Licensee and its staff for providing services on the Train as mentioned in paragraph 7.1 (c) of Article 7 of MLA.	ARTICLE 7. RIGHTS AND OBLIGATIONS OF RAILWAY 7.1 General (c) The Railway shall issue travel authority/passes on demand to the Licensee and its staff for providing services on the Train.	The actual text discusses the provision of an essential activity to be on the train and it does not say that this entry on the train is provided in lieu of license fee.
3.	Marketing Support: The Railway grants rights to the Licensee to commercially advertise on disposable accessories along with distribution of books, magazines and newspaper or do promotional as mentioned in paragraph 7.2 of Article 7 read with paragraph 1.3K of Annexure-I of MLA.	ARTICLE 7. RIGHTS AND OBLIGATIONS OF RAILWAY 7.2 Grant of limited rights to advertisement The Railway may grant limited rights to the Licensee to commercially advertise on disposable accessories that may be used by the Licensee in rendering catering services to the passengers on board. Paragraph 1.3K of Annexure-I: The Licensee shall be allowed to provide additional services such	As the text clearly says these are limited and conditional rights and not guaranteed to the licensee. Again, none of these are in lieu of the license fee.

		<p>as distribution of books, magazines, newspapers etc. Licensee on request may be permitted to undertake promotional advertising campaigns for the benefit of travelling passengers subject to authorization from Railway before the commencement of each campaign. The Licensee is expected to conduct appropriate market research/survey beforehand and may factor in such benefits in the price bid. It may be noted that Railway may or may not permit such campaigns. However, no audio/video material/ stickers or materials that may cause any damage to the Railway property shall be permitted under this clause.</p>	
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17. The identification of these activities as ‘support services’ for which license fee was paid is, according to the learned counsel for the appellant, factually wrong and also since these activates do not qualify the definition of ‘support services’, the entire service tax demand on the license fee for an amount of Rs. 11,15,69,363/- has to be set aside in its entirety.

18. Learned counsel for the appellant has, however, not contested the demand made for the differential service tax due and this amount was, according to the learned counsel for the appellant, deposited on 06.10.2015 with interest. Learned counsel for the appellant also

stated that the appellant is not contesting the demand towards deposit of the excess service tax collected by the appellant.

19. Shri Rajeev Kapoor, learned authorized representative appearing for the Department supported the impugned order and pointed out that service tax has been demanded on the license fee paid by the appellant to the Railways in lieu of the support service rendered by the Railway to the appellant. Elaborating this submission, learned authorised representative submitted that the Railways was providing infrastructural support by way of providing space, i.e. pantry car, including manifold rooms and washing facilities for the use of the appellant as well as marketing support by allowing advertisement and promotion and operational support and issue of travel passes for providing catering service on trains. These would fall under 'support service' provided by the Railway and would be taxable as these are excluded from the negative list by virtue of clause (a)(iv) of section 66D of the Finance Act. Under section 99 of the Finance Act, 'support service' provided by the Railways to a business entity are taxable w.e.f. 01.10.2012 and as per rule 2(1)(d)(i)(E) of the Service Tax Rules, 1994, the appellant is liable to pay service tax. With effect from 01.04.2016, 'support service' was substituted by 'any service' in sub-clause (a)(iv) of section 66D of the Finance Act. 'Service' w.e.f. 01.04.2016, has been defined, in section 65B(44) of the Finance Act, as any activity carried out by a person for another for consideration, and includes a declared service. Hence, the appellant is liable to pay service tax of Rs. 11,15,69,363/- on the license fee paid to the Railways for receiving support service/any service under reverse charge mechanism.

20. The submissions advanced by learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

21. The period under dispute can be broken in two different sub-periods since an amendment was made w.e.f 01.04.2016. The taxability of the activity of providing licenses has been clarified by the CBIC Circular dated 11.10.2019. It states that the act of granting license is taxable only after 01.04.2016. Therefore, the grant of license is clearly not exigible to service tax before 01.04.2016 and has to be set aside.

22. The breakup of the demand based both on the normal and the extended period as also for the period prior to 01.04.2016 and post 01.04.2016 is provided in the following table:

Financial Year	License Fee paid (in Rs.)	Service Tax demanded (in Rs.)	Service Tax Demand by different criteria	
			Extended vs. normal period	Pre 01.04.2016 vs. Post 01.01.2016
2013-14	17,80,54,328	2,20,07,515	Extended period is Rs. 3,67,13,086	Pre 01.04.2016 is Rs. 8,23,86,463
2014-15	11,86,77,110	1,47,05,571		
2015-16	32,40,18,260	4,56,73,377	Normal period is Rs. 7,48,56,277	Post 01.04.2016 is Rs. 2,91,82,900
2016-17	14,01,78,000	2,09,14,900		
2017-18	5,51,20,000	82,68,000		
	81,63,47,698	11,15,69,363		

23. If the demand is set aside for the period prior to 01.04.2016, then in effect the entire demand for extended period will be set aside and a partial demand of Rs. 4,56,73,377/- for the normal period will also be set aside, leaving an amount of Rs. 2,91,82,900/-.

24. For this demand of Rs. 2,91,82,900/-, which is the license fee paid after 01.04.2016, the submission of the learned counsel for the

appellant is that the activities alleged in the show cause notice and subsequently confirmed in the impugned order are not the activity for which license fee was paid. Learned counsel submitted that every demand for service tax has to be against a proper taxable service, but the show cause notice does not identify the “grant of license” as a taxable service.

25. The taxable event under the Finance Act is the provision of service and not the consideration paid, as is clear from section 66B of the Finance Act. The liability to pay service tax emanates from section 68 of the Finance Act. Even under section 68(2) of the Finance Act, liability under reverse charge mechanism is in respect of ‘taxable service’. It is, therefore, an essential pre-requisite that a taxable service is identified before any service tax is levied under section 68 of the Finance Act. The demand for recovery of service tax under section 73 of the Finance Act also arises when the service tax which was required to be paid under section 68 of the Finance has not been paid or has been short paid. It is, therefore, important that the correct taxable service is identified in the show cause notice and it is not enough to identify that there is an amount of money paid from one person to another.

26. In the instant case, the show cause notice in paragraph 15 (ii), demanded service tax amounting to Rs. 11,15,69,363/- during the period 01.04.2013 to 31.03.2017, not paid by the appellant on the services described in paragraphs 5 and 6 and paragraph 6.2A concludes that the Indian Railways provided “support services” to the appellant and would be taxable on a reverse charge, as it is not covered in the negative list of service provided under section 66D of the Finance Act.

27. While confirming the demand, the Commissioner observed as follows:

"19.6. xxxxxxxxx. I find from the above-mentioned agreement that the Railways had provided the following supports:

a) Infrastructural support: The Railway provides basic infrastructure to the Licensee as pantry car, manifold room for gas cylinders and washing facilities as mentioned in the para 6.25 and 6.29 (iv) of Article of MLA.

(b) Operational Support: The Railway issues travel authority passes on demand to the Licensee and its staff for providing services on the Train as mentioned in para 7.1 (c) of Article 7 of MLA.

(c) Marketing Support: The Railway grants rights to the Licensee to commercially advertise on disposable accessories along with distribution of books, magazines and newspapers or do promotional as mentioned in para 7.2 of Article 7 read with para 1.3K of Annexure-I of MLA.

The aforementioned services provided by railway to the Noticee is covered under "support services" as defined under section 65B(49) referred to above. Thus, I find that railways had provided support services to the Noticee. The said services provided by the Railways does not fall under Section 66D (Negative list of services) of the Finance Act 1994."

28. It clearly transpires that the license fee is based solely on the assessed sales turnover. It cannot be said that the license fee is quid pro quo for any support offered by the Railways. It also needs to be noted that license fee is paid as consideration for the service provided by the Railways to the appellant by way of grant of the authorization to provide catering service on the train. This would be clear from the bid document and the relevant portion is reproduced:

"1.3.12 In consideration of the award of the License to the Licensee, the Licensee shall be

liable to pay License Fee to Railway which shall be more than minimum license fee determined by Railway apart from the Security Deposit.

The licensee shall submit the bill for providing on-board catering services on 10 days basis and the 90% of the payment will be settled based on the provisional bills while the final bills along with train occupancy certificate issued for each trip by the Train Superintendent will be settled on monthly basis. Railway will make payment of such amounts after due verification. In addition, Railway will make mandatory deductions for tax at source or any other deductions in respect of catering services.

1.3.13 In consideration of the award of the License to the Licensee, the Licensee shall be liable to pay License Fee to Railway which shall be more than minimum license fee determined by Railway. The entire License Fee shall be payable in advance 2+2+1 yearly basis. The License Fee for the first 2 years will be payable fifteen (15 days) prior to commencement of the License at the beginning of license and the license fee for the second 2 years shall be paid within fifteen (15 days) after completion of first two years of the contract subsequently the license fee for the 5th year shall be paid within fifteen (15 days) after completion of the 4th year of the license. In case of renewal for another period of 5 years, the same procedure shall be followed for payment of license fee. The licensee shall submit the bill for providing on-board catering services on monthly basis, along with train occupancy certificate issued for each trip by the Train Superintendent. Railway will make payment of such amounts after due verification. In addition, Railway will make mandatory deductions for tax at source or any other deductions in respect of catering services.”

29. The limited question that arises for consideration is whether the activity identified in the show cause notice qualifies to be a taxable service for which the license fee is said to be the consideration. The demand of tax in the show cause notice is on support services. However, the consideration paid as license fee is not linked with such

support. When the activity identified to be taxed in the show cause notice is found to be non-taxable, the demand proposed in the show cause notice cannot sustain as was held by the Madras High Court in **R. Ramadas vs. Joint Commissioner of Central Excise, Puducherry**⁵. In **Commissioner of Central Excise, Nagpur vs. M/s. Ballarpur Industries Ltd.**⁶, the Supreme Court held that what is not invoked in the show cause notice cannot be examined in proceedings arising from the said notice. As noticed above, the demand on "grant of license" was not invoked in the show cause notice.

30. The license fee is the consideration paid for the 'grant of license'. It is pertinent to note that the words "license fee" is defined the Oxford Dictionary to mean "a fee paid to an organization for permission to own, use or do something." The Supreme Court in **State of Orissa vs. Narain Prasad**⁷ explained the meaning of expression "Privilege" and held that "Privilege really means the license or permit granted by the State". In the instant case, the license fee paid by the appellant to Railways is the consideration for the privilege to be the sole catering agent on board the trains for which a license was issued. This "grant of license/privilege" is the service which was taxable and the value of this service is equal to the license fee which is the consideration paid for this service. The show cause notice has not identified this service. To tax this service would, therefore, result in going beyond the scope to the show cause notice.

31. There is, therefore, merit in the contention advanced by the learned counsel for the appellant that the consideration paid by the

5. 2021 (44) G.S.T.L. 258 (Mad.)

6. 2007 (215) E.L.T. 489 (SC)

7. (1996) 5 SCC 740

appellant as license fee cannot be subjected to levy of service tax. The other two demands proposed in the show cause notice and confirmed by the adjudicating authority have not been contested by the appellant.

32. Thus, the impugned order dated 15.10.2018 in so far as it confirms the demand of service tax on the license fee paid by the appellant to the Railways with interest and penalty is set aside and the appeal is allowed to this extent.

(Order pronounced on **03.04.2023**)

JUSTICE DILIP GUPTA
(PRESIDENT)

P.V. SUBBA RAO
MEMBER (TECHNICAL)