

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No.10877 of 2013**

(Arising out of OIO-19-20/SERVICETAX/2012 dated 23/01/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**Gujarat Jhm Hotels Ltd**

Ambika Niketan, Athawalines,  
Surat, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Surat-i**

New Building...Opp. Gandhi Baug,  
Chowk Bazar,  
Surat, Gujarat-395001

**.....Respondent**

**With**

**Service Tax Appeal No.10878 of 2013**

(Arising out of OIO-19-20/SERVICETAX/2012 dated 23/01/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**Gujarat Jhm Hotels Ltd**

Ambika Niketan, Athawalines,  
Surat, Gujarat

**.....Appellant**

*VERSUS*

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Chowk Bazar,  
Surat, Gujarat-395001

**.....Respondent**

**APPEARANCE:**

Shri T.C. Nair, Advocate for the Appellant

Shri Prabhat Rameshwaram, Additional Commissioner (AR) for the Respondent

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

**Final Order No. A/10189-10190 /2023**

DATE OF HEARING: 10.01.2023  
DATE OF DECISION: 01.02.2023

**RAMESH NAIR**

The issue involved are as under:-

- Whether 100% credit of service tax paid by Indian Hotel Co. Ltd. (IHCL) under Management or Business Consultancy Services is admissible to Gujarat JHM Hotels (Appellants) in view of specific coverage of the said service under Rule 6(5) of CCR, even though said services were used for taxable as well as non-taxable/exempt services;
- Whether the jurisdictional Officers of the Appellants are empowered to question the correctness or change the classification of service adopted by the provider of such service;
- Whether extended period and penal provisions are invocable in the absence of any suppression of fact, willful mis-statement etc. any, in any case, when the disputed issue pertains to interpretation of law... (Appeal No. ST/10877/2013)

02. Shri T.C. Nair, learned counsel appearing on behalf of the appellant submits that the service provider M/s. Indian Hotels Co. Ltd. has provided service under the head of Management or Business Consultancy Services which is specified under Rule 6(5) of Cenvat Credit Rules, 2004 therefore, the appellant is entitled for 100% credit on such input service irrespective of whether the same was used in exempted as well as taxable service. He further submits that the issue of classification cannot be raised at the service recipient end. Moreover, in case of M/s. Indian Hotels Co. Ltd., the department had raised the classification issue on the similar services however, the matter was decided by this tribunal whereby, it was held that the service of M/s. Indian Hotels Co. Ltd. provided to the various hotels similarly placed as the present appellant are Management or Business Consultancy Services and do not fall under Business Auxiliary Service as

claimed by the revenue therefore, the issue is no longer under dispute. He placed reliance on the following judgments:-

- Piem Hotels Ltd.- 2016 (43) STR 211 (T)
- Taj GVK Hotels & Resorts- 2018 (18) GSTL 475 (T)
- Newlight Hotels & Resorts Ltd.- 2016 (44) STR 258 (T)
- Piem Hotels Ltd., Lucknow- 2019 (99) GSTL 328 (T)

2.1 He further submits that the part of the demand is clearly time barred in absence of any conscious and deliberate suppression, mis-statement, etc. in view of filing ST-3 Returns showing availment of credit, maintaining cenvat account, audit of records, visits by the Officers, etc. hence, extended period and penal provisions are not invocable.

03. Shri Prabhat K. Rameshwaram, Learned Additional Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. On careful consideration of the submission made by both the sides and perusal of records, we find that in the present case the cenvat credit was denied in respect of service received by the appellant from M/s. Indian Hotels Co.Ltd. on the pretext that the same is classifiable under Business Auxiliary Service which is not specified under Rule 6(5) of Cenvat Credit Rules, 2004. The contention of the appellant is that the service provider M/s. Indian Hotels Co. Ltd. has provided the services under the head of Management or Business Consultancy Services, accordingly, the classification of service cannot be challenged at the service recipient end. Moreover, the classification of same service was challenged by the department and proceedings were initiated against M/s. Indian Hotel Co. Ltd., the matter was decided by this tribunal in PIEM HOTELS LTD. case (supra). The tribunal has passed the following order:-

**6.** *We have considered the rival submissions and perused the records and find that the nature of service provided by IHCL is of the kind of advice, consultancy and assistance which are directly in connection with management of the respective hotels. It is clear from the submissions and the records that IHCL is not managing or conducting the hotel business of Piem on their behalf, but are only providing the management consultancy and advice by posting only key senior personnel to assist Piem to conduct their hotel business with their own infrastructure and manpower. Further, it is noticed that IHCL is not providing any service on behalf of Piem to Piem's customers, nor are IHCL promoting the hotel business of Piem. Therefore, the services provided by IHCL to Piem cannot be termed as Business Auxiliary Service and the services provided by IHCL is squarely covered under Management or Business Consultant's Service, classifiable under Section 65(105)(r) of Finance Act, 1994, which view of ours gets support from the Tribunal judgments in RPG Enterprise Ltd. - [2008 \(11\) S.T.R. 488 \(T\)](#) and Shervani Indus Syndicate - [2009 \(14\) S.T.R. 486 \(T\)](#). In any case, we are of the view that the change of classification at the end of IHCL would be prospective and cannot have retrospective operation, as held by this Tribunal in various judgments cited supra. Since Piem Hotels have taken credit during the period April, 2005 to September, 2010 and the classification has been changed at IHCL's end, through impugned Order-in-Original dated 25-2-2015, such change in classification would not affect the credit taken by Piem during the period prior thereto. Therefore, the jurisdictional authorities at Piem Hotels have committed an apparent error in denying the credit and it is a well settled position of law that jurisdictional officers at recipient's end are not empowered to question or change the classification or valuation at supplier's end based on various judgments of Hon'ble Apex Court. Since we are allowing the appeals mainly on the ground that the services provided by IHCL is correctly and appropriately classifiable under Management & Business Consultant's Services and not under Business Auxiliary Service and the jurisdictional officers at recipient's unit are not empowered to review or revise the classification at supplier/provider's end, we are not discussing various other propositions made by both sides.*

**7.** *Both the Appeals are allowed in above terms.*

From the above decision, it can be seen that the same services provided by IHCL to M/s. Piem Hotels Ltd. was held classifiable under Management or Business Consultancy Services and not under Business Auxiliary Service accordingly, the Management or Business Consultancy Services clearly specified under Rule 6(5) of Cenvat Credit Rules, 2004 therefore, the appellant have correctly taken 100% credit in respect of such input service. As per this judgment, the entire foundation of the revenue's case gets demolished therefore, the demand cannot be sustained on merit. Since the

appeal is decided on merit of the case, we are not inclined to deal with other issues such as time bar, etc.

05. As per our above discussion and findings, we set aside the impugned order and allow the appeals.

(Pronounced in the open court on 01.02.2023)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

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