

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

PRINCIPAL BENCH,
COURT NO. III

SERVICE TAX APPEAL NO. 50804 OF 2021

[Arising out of the Order-in-Original No. 15/2020-ST dated 17/08/2020
passed by The Additional Director General (Adjudication), New Delhi.]

M/s Cinepolis India Private LimitedAppellant
IREO Grand View Towers, 14th Floor,
Golf Course Extension Road, Sector 58,
Gurugram – 122 011.

Versus

Additional Director General (Adjudication)Respondent
Directorate General of GST Intelligence
(Adjudication Cell),
West Block – VIII, Wing 6, 2nd Floor, R.K. Puram,
New Delhi – 110 066.

APPEARANCE:

Shri Gopal Mundhra, Advocate for the appellant.
Shri Aejaz Ahmad, Authorized Representative for the Department

CORAM:

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

FINAL ORDER NO. 51889/2025

DATE OF HEARING : 06.08.2025
DATE OF DECISION: 18.12.2025

P.V. SUBBA RAO

The order dated 17.8.2020¹ issued by the Additional
Director General² of Directorate General of GST Intelligence³ is
assailed by M/s. Cinepolis India Private Ltd.⁴ in this appeal. In
the impugned order, demand of Rs. 18,84,18,323/- has been
confirmed as Service tax recoverable from the appellant under

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1. impugned order
 2. ADG
 3. DGGST
 4. the appellant

section 73 of the Finance Act, 1994⁵ along with interest under section 75 of the Finance Act and penalty of Rs. 16,45,68,787/- has been imposed under section 78 of the Finance Act.

2. We have heard learned counsel for the appellant and the learned authorized representative for the Revenue and perused the records. The appellant sets up, operates and manages a chain of multiplexes in which it operates cinema halls. The appellant's multiplexes also has counters where food and beverages such as pop corn, samosas, sandwiches, carbonated drinks, packaged drinking water are sold. According to the appellant, it is only selling food at the counters and therefore it is a transaction of sale of goods and no service is involved. According to the department, there is a service element in selling the food and drinks at these counters which was chargeable to service tax as per section 66E (i) of the Finance Act.

3. A show cause notice dated 17.10.2018⁶ was issued to the appellant by the DGGST proposing demand of service tax with interest and imposition of penalties. These proposals were decided by the impugned order.

4. Learned counsel for the appellant submits that the issue is no longer *res integra* and this bench had, by an order dated 30.11.2023, in the case of **PVR Limited** versus **CST, New**

5. Finance Act

6. SCN

Delhi⁷ decided that the sale of food items in counters at cinemas is a transaction of sale and is not a transaction of providing any service and hence no service tax needs to be paid. This decision was appealed by the Revenue in Civil Appeals No. 849-850 of 2025 and the Supreme Court, by Order dated 15 January 2025, upheld the order of the Tribunal and dismissed the appeals as follows:

- " 1. Delay condoned.*
- 2. We find no good reason to interfere with the impugned order dated 30.11.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi.*
- 3. The appeals are dismissed accordingly.*
- 4. However, the question of law, if any is kept open.*
- 5. Pending application(s), if any, stand disposed of."*

5. Learned counsel further submits that this decision was followed by this bench in Final Order No. 50440/2025 dated 26.3.2025 passed in Service Tax Appeal No. 50250 of 2021. He, therefore, prays that the appeal may be allowed and the impugned order may be set aside.

6. Learned authorized representative for the Revenue reiterated the impugned order.

7. We do find that the issue involved in this appeal is squarely covered by the order of this bench dated 30.11.2023 in **PVR Ltd.** Relevant portions of the order are reproduced below.

7. 2023 (12) TMI 81-CESTAT New Delhi (Final Order no. 51577-51580/2023 dated 30.11.2023)

"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/package 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 latter 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.** versus **Govt. of NCT of Delhi**⁸, where the petitioner, a Government company was

8. 2010 (20) STR 437 (Delhi)

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. 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."

8. This decision has also been upheld by the Supreme Court by dismissing the Civil Appeals filed by the Revenue.

9. There is no reason to take a different view in this case which is on the same question of law. Following the decision in **PVR Ltd.**, we allow this appeal and set aside the impugned order. The appellant will be entitled to consequential relief.

(Order pronounced in open court on 18/12/2025.)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)