

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 3261/2025

M/s Samaskara Resort, Legal Name Saboo Sodium Cholero Limited, Having Its Principal Place Of Business At Khasra No. 464, 465, Gram Pipla Bharat Singh, Jaisinghpura, Sanganer, Bagru, Jaipur- 302026 Through Its Director Shri M.s. Jain.

----Petitioner

Versus

1. Union Of India, Through Chairman, Central Board Of Indirect Taxes And Customs, Department Of Revenue, North Block, New Delhi.
2. Additional Commissioner Of Central Tax, Central Goods And Service Tax Commissionerate, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur.
3. State Of Rajasthan, Through Chief Commissioner, Rajasthan State Goods And Service Tax, Kar Bhawan, Ambedkar Circle, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Siddharth Ranka with Mr. N.K. Jain and Mr. Rohan Chatter
For Respondent(s)	:	Mr. Kinshuk Jain with Mr. Jay Upadhyay and Mr. Himanshu Agarwal Ms. Kinjal Surana,AGC

HON'BLE MR. JUSTICE AVNEESH JHINGAN

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

17/03/2025

AVNEESH JHINGAN, J (ORAL):

1. This petition is filed challenging the order dated 16.01.2025 passed by the Additional Commissioner, CGST & Central Excise Commissionerate, Jaipur.

2. There is a preliminary issue raised by the counsel for the respondents that the petitioner has a statutory remedy of appeal against the impugned order.

3. The brief facts are that as per the petitioner, a hotel business was started on receipt of commencement certificate on 01.05.2018. First customer invoice was issued on 02.07.2018. The petitioner entered into an agreement on 18.04.2019 with OYO Group. In a search conducted at the premises of OYO, incriminating material relating to the petitioner was seized. Thereafter, on 30.11.2021 search was conducted at the premises of the petitioner. A show-cause notice (SCN) was issued to show-cause that as per the GSTR-2A of M/s Oravel Stays Limited and M/s OYO Hotels and Homes Private Limited invoices amounting to Rs.1,35,78,220/- and 1,20,17,459/- commission was paid by the petitioner. The petitioner responded to the SCN and proceedings culminated in the impugned order.

4. Learned counsel for the petitioner submits that hotel business commenced in May, 2018. There was no occasion to pay commission to OYO earlier to that and yet addition has been made for the period from July, 2017 to April, 2018. The contention is that booking register, police verification record and audit reports were annexed with the reply yet the impugned order was passed creating a demand on hypothetical basis.

5. The petitioner has statutory remedy of appeal. The Supreme Court in cases of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai And Ors. (1998) 8 SCC 1, Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority and Ors. AIR 2023 SC 781 and PHR Invent***

Education Society Vs. UCO Bank and Ors. (2024) 6 SCC 579.

has enunciated the exceptions for interference in writ jurisdiction inspite of availability of alternative remedy. The relevant para from PHR Invent (supra) is reproduced:-

"37.It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
- (ii) it has acted in defiance of the fundamental principles of judicial procedure:
- (iii) it has resorted to invoke the provisions which are repealed: and;
- (iv) when an order has been passed in total violation of the principles of natural justice.

6. No case is made out of violation of principles of natural justice, infringement of fundamental right or order being without jurisdiction. The department had proceeded on the basis of the material collected during the search proceedings at OYO premises as well as the premises of the petitioner. No documents were produced by petitioner regarding booking of rooms through OYO. As per the SCN, there was material seized to the effect that prior to May, 2018 the petitioner paid commission to the OYO Group. The amount received by petitioner from OYO was distributed month wise by the assessing officer. The argument that hotel business was commenced after 01.05.2018 is a disputed question of fact, needs adducing of evidence and has to be co-relate it with the seized material. As per statement recorded of director of petitioner company GST was not paid on room booked at the rate

inclusive of food. Further, it was found that the petitioner was charging 5% GST on the restaurant services instead of 18%.

7. It would be apposite to mention that in the impugned order, it is specifically recorded that the petitioner had not submitted booking, sale register and agreement for the period from July, 2017 to 2019. On other hand, OYO and M/s Oravel Stays Limited have shown receipt of commission from the petitioner in the year 2017 to 2019. No case is made out for interference in the writ jurisdiction. The petition is dismissed relegating the petitioner to the remedy of appeal. All pending application(s) stand dismissed.

(MANEESH SHARMA),J

(AVNEESH JHINGAN),J

Simple Kumawat /06

Whether Reportable: Yes