

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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 82 of 2012

(Arising out of STC/49/COMMR/AHD/2011 Dated- 15/11/2011 passed by Commissioner of SERVICE TAX-AHMEDABAD)

VODAFONE WEST LTD.

VODAFONE HOUSE, A, CORPORATE ROAD,
PRAHLADNAGAR ROAD, OFF S G HIGHWAY,
AHMEDABAD-GUJARAT

.....Appellant

VERSUS

C.S.T. -SERVICE TAX - AHMEDABAD

7 TH FLOOR, CENTRAL EXCISE BHAWAN, NR. POLYTECHNIC
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

.....Respondent

APPEARANCE:

Shri Jigar Shah & Amber Kumrawat (Advocate) for the Appellant
Shri Kalpesh P. Shah, (Superintendent) Authorised Representative for the Respondent

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

Final Order No. A/ 11164 /2022

DATE OF HEARING:22.09.2022

DATE OF DECISION:22.09.2022

RAMESH NAIR

The brief facts of the case are that during the course of investigation against M/s BCCI-IPL and franchisees/ service providers in respect of IPL series by the Service Tax – Commissionerate (Mumbai), it was revealed that the appellant had made a payment of Rs. 1,63,15,200/- to BCCI-IPL for sponsorship service in the month of September 2008. The appellant made further payments of same amount for the year 2008-09 and 2009-10. Against the said payment as being pointed out by BCCI-IPL, as an official partner of the league for the duration of the rights period i.e. from 07.05.2008 to 31.12.2012 according to which the BCCI-IPL has been granting Vodafone Essar the exclusive rights to use the rights during the rights period in relation to the advertisement and promotion of the brand Vodafone along, within the product category in India and the right to any Affiliates and or sub-licensees, whether in India or outside India to use right strictly in accordance with the terms of the agreement. The case of the department is that the payment made by the appellant towards the

service of sponsorship service is liable to service tax under reverse charge mechanism in the hands of the appellant. Accordingly, the show cause notice was issued and same was adjudicated by the impugned order, whereby the demand of service tax was confirmed along with interest and penalty. Therefore, the present appeal filed by the appellant.

2. Shri Jigar Shah, learned counsel appearing on behalf of the appellant submits that this issue is squarely covered by various decision as follows:

- Doypack Sysyems Pvt. Ltd. 1998 (36) ELT 201 (SC)
- KPH Dream Cricket Pvt. Ltd. 2019 (5) TMI 1171 (Tri. Chandigarh)
- Vodafone Celular Ltd. 2017 (2) TMI 1152 (Tri. Mum.)
- Hero Honda Motors Ltd. 2013 (4) TMI 428 (Tri. New Delhi) Affirmed by Supreme Court 2015 (11) TMI 162 (SC)

3. He submits that sponsorship service relates to the sports event which was excluded from the purview of taxable service up till 01.07.2010. The period in the present case involved is prior to 01.07.2010. The exclusion of sports activity in the definition of sponsorship service was removed w.e.f. 01.07.2010. It is his submission that till 01.07.2010 any sponsorship service which relates to the sports events was not taxable. He also relied on the following Board's Circular.

- D.O.F. No. 334/1/2010-TRU Dated 26.02.2010
- D.O.F. No. 334/4/2006-TRU Dated 28.02.2006

4. On the other hand, Shri Jayesh P. Shah, learned (Superintendent) Authorized Representative appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. We have considered the submissions made by both the sides and perused the records.

6. We find that the Revenue's contention is that the appellant is liable to pay service tax on the sponsorship service under reverse charge mechanism. For the ease of reference, the definition of '**Sponsorship Service**' is given as under:

"(zzzn) to any body corporate or firm, by any person receiving sponsorship, in relation to such sponsorship, in any manner, but

does not include services in relation to sponsorship of sports events;

From the above sub clause, it is clear that receipt of sponsorship service in relation to sports events was not included in the taxable service of sponsorship. The aforesaid clause was amended w.e.f. 01.07.2010 and the amended clause is as under:

"(zzzn) to any person, by any other person receiving sponsorship, in relation to such sponsorship, in any manner;"

From the clause related to sponsorship service before and after the amendment makes it clear that prior to 01.07.2010, the receipt of sponsorship in relation to the sports event was not taxable, however the same became taxable after 01.07.2010. In the present case, the sponsorship received from BCCI-IPL is clearly in respect of cricket sports events which conducts cricket matches of T-20, therefore, the sponsorship is clearly related to the sports events which was not included under the sponsorship service as per **sub clause (zzzn)** prevailing prior to 01.07.2010, therefore, the same is not taxable. This issue is no longer res-integra as absolutely identical activity and in respect of identically placed company M/s Hero Honda Motors Limited who entered into agreement with M/s BCCI for the same sponsorship in relation to IPL matches, the Tribunal held as under:

"2. These appeals challenge distinct adjudication orders passed against the appellant assessee herein levying service tax in relation to sponsorship of IPL League matches, in IPL1, IPL-2 and IPL-3 during the period 2008 to 2010. The issue falling for our appellate consideration is whether sponsorship of the IPL matches by appellants falls within the exclusionary clause of Section 65 (105) (zzzn) of the Finance Act, 1994 (hereinafter referred to as the Act).

3. The provision enjoins levy of service tax on services provided or to be provided to anybody corporate or firm, by any person receiving sponsorship, in relation to sponsorship, in any manner, but excluding services in relation to sponsorship of sports events.

4. It is the admitted position by Revenue that appellants are sponsors of IPL League matches Revenue contends before us, reiterating the conclusion recorded by the adjudicating authority that IPL League matches in relation to which the appellants had provided sponsorship does not constitute sponsorship of sports events since:

(a) a league match is not comprehended within the expression sports events;

- (b) there is a commercial element involved in IPL matches; and
- (c) IPL tournaments are in any event not sports events.

The adjudication order is predicated fundamentally on the aforesaid premises of Revenue which are reiterated before us.

5. Sponsorship as defined in Section 65 (99a) includes activities of the assesseees (appellants herein). This is not in dispute.

6. It is required to summarise the reasons recorded by the adjudicating authority for its conclusion that the transactions in issue fall outside the exclusionary clause of Section 65 (105) (zzzn). According to the adjudicating authority, BCCI IPL is not per- se a sports event. It is a society registered under The Tamil Nadu Societies Act, 1975, with which the assesseees have entered into an agreement termed. Title Sponsor Agreement. The adjudicating authority refers to a Circular dated 26.07.2010 issued by the CBEC wherein the CBEC clarifies: it is felt that sponsorship of IPL is not sponsorship of any sport event, since IPL in itself is not a sports event but an entity of franchisee teams and therefore it is taxable. On the same analogy the sponsorship received by a player or a Team would be independent of sport event and hence taxable. The adjudicating authority further states that since departmental officers are bound to follow Instructions/ Circulars / Clarifications issued by the CBEC, sponsorship fee paid by the assesseees to the BCCI / IPL cannot be considered to be sponsorship of any sports event, being clearly in the nature of obtaining sponsorship rights for being designated as the exclusive Title Sponsor of the League by the BCCI IPL, which is not a sports event but a society registered under The Tamil Nadu Societies Act, 1975.

7. We confess our inability to comprehend the contrived reasoning recorded by the adjudicating authority It is not the assesseees case that they were sponsoring BCCI/IPL. It is their contention as revealed from the show cause notices issued, the responses thereto, and the (illustrative) agreement dated 13.02 2008 (entered between the appellant in Appeal No. ST/627-629 of 2011 and the BCCI) that sponsorships are in relation to T-20 Cricket League matches to be held under the auspices of BCCI The sponsorship agreement confers participative and associative rights to the assesseees in relation to the IPL events, which assesseees assume would contribute to augmentation of their business by way of advertisement of their presence in the fields of their core endeavour and business. Inasmuch the analysis by the adjudicating authority proceeds on the assumption that BCCI/IPL is not a sports event but a society registered under The Tamil Nadu Legislation, and the sponsorship agreements between the assessee and BCCI/IPL are thus not sponsorship in relation to sports event, this premise constitutes a fundamental fallacy, fatal to the impugned orders, of the adjudicating authority.

8. The adjudication authority's reasoning. that since what is sponsored by assesseees are a series of league matches conducted by the BCCI IPL, these do not constitute sports event. and are therefore outside the purview of Section 65 (105)(zzzn), is also in our considered view fallacious.

9. The provision in issue excludes from liability to service tax, service in relation to sponsorship of sports event in our considered view the exclusionary clause admits of no ambiguity grammatical, syntactical or contextual. The legislature in its wisdom has considered it appropriate to extend the benefit of immunity to service tax, to the service of sponsorship in relation to sports events. The legislature has incorporated no restriction upon the exclusion by enacting that where a sports events has a commercial purpose, the exclusion is inapplicable. In the absence of ambiguity, the golden rule of construction namely a construction

whereby the literal meaning corresponds to the legal meaning, must be adopted.

10. We find no justification for the adjudicating authority's assumption that since there is an underlying commercial element in the IPL events, the sponsorship, which is otherwise in relation to a sports event, is not so. In the absence of any limiting words or phrases in the provision (excluding sponsorship of sports events having a commercial purpose from the benefit of immunity to service tax), the adjudicating authority cannot engraft its own policy choices and preferences to the legislatively conferred immunity.

11. The expression sport is not defined in the Act.

12. The Oxford Advanced Learner's Dictionary of Current English, Sixth edition defines sport to mean inter alia, an activity that you do for pleasure and that needs physical effort or skill, usually done in a special area and according to fixed rules. The International Webster's Comprehensive Dictionary of the English Language 2003 Edition also defines sport analogously as a particular game or play, especially games, such as baseball, football etc.

13. It is not the case of Revenue that cricket is not a sport. What is creatively recorded in the adjudication order and reiterated in oral argument before us is that since the assessee's sponsorship is of a league match it is not sponsorship of a sports event.

14. The adjudicating authority (though a different incumbent of the authority) passed an order which is the subject matter of Service Tax Appeal No. 1418 of 2011. The core reason recorded for disallowing the claim of the appellant herein is that while T-20 matches played under the banner of IPL are clearly sports events, BCCI/ IPL cannot be imagined to be a sporting event. The authority records that from the agreement dated 18.04.2008 (the relevant sponsorship agreement), the assessee was appointed the official partner as set out in clause 2 thereof and franchisee rights accrue to the assessee for a consideration (sponsorship fee) paid to the BCCV IPL: and the terms and conditions in the sponsorship agreement clearly disclose that the assessee had made the payment to the BCCI IPL, not for a T-20 tournament of any cricket match but to BCCI IPL which itself is not a game.

15. The above analysis of the adjudication authority, creative as it goes, defies comprehension. On a true and fair analysis of the sponsorship agreement, that the sponsorship agreement is in relation to cricket tournaments conducted under the auspices of BCCI IPL; that cricket is a sport and the tournament (league) by the nature of its process is a sporting event, is indisputable. To dissect the generic composition of the sponsorship agreement by reference to a circumstance that payments are made not to the T-20 tournament of cricket matches but to the BCCU IPL (which is not a game), is an extravagant and logically misconceived analysis. Surely, it is not anybody's case that the payments were made to BCCI IPL for the latter's intrinsic brand image and not for or in relation to the tournament (T-20, which is the subject matter of the sponsorship agreement). The charging provision clearly excludes from chargeability to service tax, sponsorship in relation to sports events. The expression in relation to connotes activities associated with sports events.

16. On the analysis above we conclude that the several adjudication orders, impugned in these appeals are predicated on a raft of fundamental fallacies:

(a) that sponsorship of a sports event, which has a commercial element (the IPL events) is disentitled to the benefits of immunity to service tax,

notwithstanding the clear phraseology of section 105(65) (zzzn) of the Act, and

(b) since the sponsorship is in relation to league matches conducted under the auspicious of BCCI/ IPL and payments were made to the BCCI IPL, the sponsorship is not in relation to sports events, but is sponsorship of BCCI/IPL.

17. Both fundamental premises of the adjudication authority are misconceived and

unsustainable. The impugned adjudication orders are therefore quashed.
18. These appeals are allowed but in the circumstances without costs.”

7. The aforesaid judgement of this Tribunal was upheld by the Hon'ble Supreme Court reported at Commissioner vs Hero Honda Motors 2015 (11) TMI 162 (SC).

8. In view of the above judgement, the issue in hand stand settled in favour of the assessee. Accordingly, we are of the view that the appellant is not liable to pay service tax on the sponsorship service in the facts of the present case. Hence, the impugned order is set aside. Appeal is allowed with consequential relief.

(Operative portion of the order pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)