

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11229 of 2013-DB

[Arising out of Order-in-Original/Appeal No SRP-541-VDR-I-2013 dated 13.03.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Ajitesh Kamlesh Argal

.... Appellant

37, Spun Ville Bungalows, Arunodaya Circle,
VADODARA, GUJARAT-390007

VERSUS

Commissioner of Central Excise & ST, Vadodara-I

.... Respondent

1st Floor...Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

AND

SERVICE TAX Appeal No. 13931 of 2013-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-325-2013-14 dated 26.08.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I (Appeal)]

Ajitesh Kamlesh Argal

.... Appellant

37, Spun Ville Bungalows, Arunodaya Circle,
VADODARA, GUJARAT-390007

VERSUS

Commissioner of Central Excise & ST, Vadodara-I

.... Respondent

1st Floor...Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Shri Mrugesh Pandya, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

DATE OF HEARING: 20.02.2023

DATE OF DECISION: 03.04.2023

FINAL ORDER NO. A/10778-10779 / 2023

RAMESH NAIR :

Brief facts of the case are that the appellant is a cricket player and engaged in playing cricket in Indian Premier League for a team owned by M/s. KPH Dreams Cricket Pvt. Limited, Chandigarh, Punjab (KPH for short)

under the agreement between KPH and the appellant Shri Ajitesh Kamlesh Argal. The appellant received remuneration for playing cricket for KPH. He also received a small consideration from M/s. Nike India Pvt. Limited for displaying their brand logo for promotion of their product. As regard the remuneration received from KPH, the case of the department is that the appellant have provided the service of brand promotion which falls under the category of Business Auxiliary Service and the same is taxable under service tax. Similarly, as regards the remuneration received from M/s. Nike India Pvt. Limited for participation in promotional activities, the demand of service tax was raised.

2. Shri Mrugesh Pandya, learned Counsel appearing on behalf of the appellant submits that as per agreement for playing cricket on behalf of M/s. KPH Dreams Cricket Pvt. Limited (KPH), the same is for employment of the appellant with KPH and the appellant received remuneration for the same. He further submits that the appellant is not engaged in the brand promotion of any Company. Therefore, the agreement for employment of the appellant with KPH shall not attract service tax. This issue is settled in the following judgments:-

(a) CESTAT Order No. A/10086-10087/2023 dated 20.01.2023.

(b) Commissioner of Cus. & C. Ex., Goa vs. Swapnil Asnodkar – 2018 (10) G.S.T.L. 479 (Tri. Mumbai).

(c) C.E, C & CGT - Delhi vs. Piyush Chawla - 2018 (7) TMI-1009- New Delhi

(d) Yogesh Takawake - 2019 (8) TMI 1693-CESTAT, Mumbai.

(e) Sourav Ganguly - 2016 (7) TMI-237 - Calcutta High Court.

3. As regards the demand on remuneration received from M/s. Nike India Pvt. Limited, he submits that after deduction of remuneration received from KPH, the remuneration amount is much below the threshold limit of small

scale exemption under Notification No. 06/2005-ST dated 01.05.2005. Therefore, the entire demand is not sustainable.

4. Shri Rajesh K Agarwal, learned Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that the major amount of remuneration received is towards engaging the appellant by KPH to play cricket in Indian Premier League matches. We find that in the identical agreements, assigned other players engaged by different teams, in all those cases, this Tribunal relying on the Calcutta High Court judgment in the case of *Sourav Ganguly vs. UOI & Others - 2016 (7) TMI 237 - CALCUTTA HIGH COURT* held that arrangement between the owner Company and the cricket player is of employment hence players are not directly involved in brand promotion of a brand owner. Therefore, the activity of the cricket player does not fall under the category of Business Auxiliary Services. As per this settled legal position, in the present case also involving similar agreement and arrangement, the demand under Business Auxiliary Service does not sustain.

6. As regards the demand of service tax on remuneration received by the appellant from M/s. Nike India Pvt. Limited, we find that in this case the appellant is indeed involved in direct brand promotion for the brand owner however, the appellant have claimed that the value of such service is well within the threshold limit provided under exemption notification 6/2005-ST dated 01.05.2005. We find that since the remuneration received by the appellant from KPH does not involve any service, the appellant shall be eligible for small scale exemption provided under Notification No. 6/2005-ST

dated 01.05.2005 upto threshold limit of gross value in a financial year. However, the Revenue is at liberty to verify the calculation in this regard. As per our above observation and findings, the demand raised in the impugned orders is not sustainable. Accordingly, the impugned orders are set-aside and the appeals are allowed in the above terms.

(Pronounced in the open court on 03.04.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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