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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 163 of 2012
(Arising out of OIO-84/COMMR/2011 Dated- 26/12/2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT)

C.C.E. & S.T.-Rajkot **.....Appellant**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

VERSUS

Saurashtra Cricket Association **.....Respondent**
Prasam, 7th Floor, Kasturba Marg,
Near Dharam Cinema,
RAJKOT, GUJARAT

APPEARANCE:
Shri. Ghanasyam Soni, Joint Commissioner (AR) for the Appellant
Shri S S Gupta, Chartered Accountant for the Respondent

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

Final Order No. A/ 11339 /2022

DATE OF HEARING:20.10.2022
DATE OF DECISION:02.11.2022

RAMESH NAIR

The brief facts of the case are that M/s. Saurashtra Cricket Association, Rajkot, are engaged in conducting Cricket Matches of International level, National Level and State level at different places in Rajkot Region. The respondent is an Association registered under the Society Registration Act, 1860 and had conducted the different Inter District Tournaments matches and BCCI Tournaments Matches during the period from April, 2008 to January, 2009 at various places of Saurashtra-Kutchch & Diu as per the direction given by the Board of Control for Cricket in India. It was noticed that the respondent was conducting Cricket Matches as per the direction of BCCI and for that purpose the BCCI are transferring/ paying various type of amounts under the cover of subsidies / subvention

from the amount of profit which was earned by the by way of conducting matches. It is the contention of the department that the respondent were treated as Sponsor/organizer because they are not organizing the event themselves, but for the same, BCCI has appointed/ authorized the respondent to conduct and manage such events. Moreover, it further appears that the respondent is managing all the requirements namely Security, Rent-a-Cab, Photography, Pandal & Shamiana, Caterer, etc which are suppose to be managed by an "Event Manager". The adjudicating authority after considering the submission of the respondent dropped the demand, proposed in the show cause notice against the respondent vide Order-In-Original which is impugned herein. Being aggrieved by the said Order-In-original, revenue filed the present appeal.

2. Shri. Ghanasyam Soni, learned Joint Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

3. On the other hand, Shri. S S Gupta, Learned Charted Accountant appearing on behalf of the respondent submitted the details of support from BCCI whereby he has submitted that the respondent have received subsidy only and not service charges for Event Management Service and respondent have not provided any service to BCCI against the subsidy. He submits that the issue is no longer res integra. The same has been decided in various judgments as follows:-

- C.K . GANGADHARAN-2008 (228) ELT 497 (s.C.)
- PRIYANKA REFINERIES LTD.-2010 (249) ELT 70 (Tri. Bang.)
- SURCOAT PAINTS (P) LTD-2008 (232) ELT 4 (S.C.)
- BOARD OF CONTROL FOR CRICKET IN INDIA-2007 (7) STR 384 (Tri. Mumbai)
- VIDARBH CRICKET ASSOCIATION-2015 (38) STR 99 (Tri.,-Mimbai)

4. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present case the show cause notice was raised by the revenue on the amount receive by the respondent from the BCCI as subsidy. The department has construed the said receipt as service charges received from BCCI against the services of event management. From the facts, it is clear that the respondent have received the subsidy against the expenses incurred for conducting Cricket Matches, therefore, by any stretch of imagination it cannot be said that the respondent has provided any taxable service to BCCI. This issue has already been considered by this tribunal in the case of VIDARBH CRICKET ASSOCIATION (Supra) wherein the Tribunal has passed the following order

> ***"5.5*** *The next issue for consideration is leviability of service tax on the amounts received from BCCI by the appellant by way of subsidies. Revenue's contention is that these amounts have been paid to the appellant for infrastructural support rendered by the appellant to BCCI.*
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> ***5.5.1*** *The following subsidies have been given by BCCI - 1) TV Rights subsidy; 2) BCCI tournament receipts; 3) Infrastructure subsidy; 4) BCCI IPL subsidy; 5) Players expenses reimbursements; 6) lease fees for Corporate Box; and 7) subsidy granted by BCCI. The nature of these subsidies needs examination. From the minutes of the BCCI's meetings distributing subsidies, the following picture emerges :-*
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> *(i) As regards TV rights subsidy, BCCI receives income by selling TV rights of international matches and at the end of the financial year, the income earned by selling these rights are distributed among the affiliates and the formula for distribution is approved by the AGM . This amount has nothing to do with the organizing of any particular match by the affiliates and even associations who do not stage any match also receive subsidy from BCCI.*
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> *(ii) Tournament receipts, reimbursement of players' expenses and payment of subsidy are made when their team participates in any tournament. This amount is paid to meet the expenses of travel, lodging, daily allowance payable to the members of the team.*
>
> *(iii) IPL subsidy is distributed to all affiliates out of the income generated from IPL events. Even when no IPL event is held, the affiliate gets the subsidy. For example in 2009 when IPL events were held in South Africa, each affiliate got a subsidy of Rs. 8,10,43,200/-.*

5.5.2 *The object of grant of subsidy as evident from BCCI's resolution is -*

(a) to promote the game of cricket in India;

(b) to arrange, organize, control and finance the visits of Indian Cricket Team to other countries and visits of Cricket Teams of other countries to India;

(c) to build, construct, maintain and repair various stadia and other amenities;

(d) to help junior cricketers, needy cricketers, retiring cricketers, players, umpires and other persons connected with the game of cricket;

(e) creation of infrastructure.

5.5.3 *The question is whether these activities constitute Business Support services as defined in the law. As per Section 65(104c) of the Finance Act, 1994 -*

'support services for business or commerce' means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation - For the purposes of this clause, the expression 'infrastructural support services' includes providing office along with office utilities, lounge, reception with competent personnel to handle matches, secretarial services, internet and telecom facilities, pantry and security.

From the above definition, it is evident that the support services should be provided in relation to business or commerce. The question is whether conducting cricket tournaments and telecasting the same would constitute business or commerce.

5.5.4 *A similar issue came up for consideration before the Hon'ble Apex Court in the case of Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal (supra) and it was held.as follows :-*

> *"……An organization such as BCCI or CAB in the present case which are indisputably devoted to the promotion of the game of cricket, cannot be placed in the same scale as the business organizations whose only intention is to make as large a profit as can be made by telecasting the game. Whereas it can be said that there is hardly any free speech element in the right to telecast when it is asserted by the latter, it will be warped and cussed view to take when the former claim the same right and contend that in claiming the right to telecast the cricket matches organized by them, they are asserting the right to make business out of it. The sporting organizations such as BCCI/CAB which are*

interested in promoting the sport or sports are under an obligation to organize the sports events and can legitimately be accused of failing in their to do so. The promotion of sports also includes its popularization through all legitimate means. For this purpose, they are duty bound to select the best means and methods to reach the maximum number of listeners and viewers. Since at present, radio or TV are the most efficacious methods, thanks to technological development, the sports organizations like BCCI/CAB will be neglecting their duty in not exploring the said media and in not employing the best means available to them to popularize the game. That while pursuing their objective of popularizing the sports by selecting the best available means of doing so, they incidentally earn some revenue, will not convert either them into commercial organizations or the right claimed by them to explore the said means, into a commercial right or interest. It must be further remembered that sporting organizations such as BCCI/CAB in the present case, have not been established only to organize sport events or to broadcast or telecast them. The organization of sporting events is only a part of their various objects, as pointed out earlier and even when they organize events, they are primarily to educate the sportsmen, to promote and popularize the sports and also to inform and entertain the viewers. The organization of such events involve huge costs. Whatever surplus is left after defraying all the expenses is ploughed back to them in the organization itself. It will be taking a deliberately distorted view of the right claimed by such organizations to telecast the sporting event to call it an assertion of their commercial right."

From the above decision of the Hon'ble Apex Court, it clearly comes out that sports organizations are not business or commercial organizations, conduct of sports or sporting events and their broadcasting/telecasting is not assertion of commercial rights. The ratio of the above judgment applies squarely to the facts of the case before us. It thus clearly emerges that, the service, if at all any, rendered by the appellant is not in relation to any business or commerce and therefore, there is no service tax liability on the said activity under Section 65(104c) read with 65(105)(zzzq) of the Finance Act, 1994.

5.5.5 *From the records, it is seen that the very same activity was examined by the Commissioner of Service Tax at Ahmedabad in the case of Gujarat Cricket Association and Saurashtra Cricket Association and by the Commissioner of Central Excise (Appeals), Pune, in the case of Maharashtra Cricket Association as to their taxability under 'event management service' and the demands were dropped vide orders dated 24-9-2007, 27-3-2009 and 28-7-2006 respectively.*

5.5.6 *In the light of the above decisions, we hold that the appellant is not liable to service tax under the category of BSS and the service tax demands made in this regard in the impugned orders are unsustainable in law and accordingly are set aside.*

5.6 *The next issue for consideration is whether extended time limit could have been invoked to confirm the service tax demands. The appellant has pleaded that it was under the bona fide belief that it was not liable to pay service tax. We have perused the decisions cited by the appellant to*

entertain this belief. The decisions in the case of Delhi Stock Exchange Association and Banaras Brass Merchant and Manufacturers Association was in relation to the provisions of the Income-tax Act which is not pari materia with service tax laws. As regards the reliance on the decision in the case of Secretary, Ministry of Information and Broadcasting, we have already granted the benefit of this decision in the case of BSS Service. As regards the reference to Tribunal's decision in the case of Institute of Banking and Personnel Selection [2007 (8) S.T.R. 579 (Tribunal)], the said case relates to manpower recruitment agency services which is not an issue before us. As regards the decision of the Delhi High Court in the case of renting of immovable property, the said decision was rendered in the case of Home Solutions, the first judgment was rendered in 2009 whereas the demand pertains to the period from 2007 onwards. Therefore, it cannot be said the appellant could have entertained a bona fide belief in 2007 on the basis of a judgment rendered in 2009. In the case of Mandap Keeper Services and Sale of Space or Time for Advertisements, the appellant has not cited any decision/judgment in their favour for entertaining any reasonable belief. Therefore, such belief cannot be automatically presumed.

5.7 *Similarly in the case of Club & Association Service, the decision of the Income Tax Appellate Tribunal holding them to be charitable institution for the purposes of Income-tax Act was rendered on 31-7-2009 whereas the demand of service tax under the said category is for the period 2005-06 to 2009-10. Therefore, the appellant could not have entertained a reasonable belief in 2005-06 onwards about their non-liability to pay tax based on a decision rendered in 2009-10. This Tribunal in the case of Interscape [2006 (198) E.L.T. 275] held that bona fide belief is not blind belief. Belief can be said to be bona fide only when it is formed alter reasonable considerations are taken into account. No evidence has been led before us to show that the appellant undertook such precautions either by way of referring the matter to the Departmental authorities or by seeking a legal opinion. Therefore, the argument of bona fide belief lacks conviction and is not convincing. It appears to be an argument of convenience rather than anything else. On the other hand, it is clear from the records that the appellant did not obtain service tax registration and did not comply with the statutory procedures and requirements of service tax law. Therefore, the inevitable conclusion that emerges is that the appellant has suppressed the facts of their activities from the Department with an intent to evade service tax. The ld. adjudicating authority has also dealt with this issue in detail in paragraphs 15.1 to 15.4 of the impugned order and has based his conclusions relying on the decisions of the Tribunal and the Supreme Court. Accordingly we hold that the extended period of time has been correctly invoked in the present case to confirm the service tax demand.*

5.7.1 *The Hon'ble High Court of Gujarat in the case of Neminath Fabrics [2010 (256) E.L.T. 369 (Guj.)] affirmed in 2013 (287) E.L.T. 149 (Guj.) held as follows :-*

> *"16. The term from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub-section 3(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence if one imports such concept in sub-section (1) of Section 11A of the Act, or the proviso thereunder it would tantamount to rewriting the statutory provision and no cannon of interpretation*

permits such an exercise by any Court. If it is not open to the superior Court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read in to the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation."

A similar view had been taken by this Tribunal in the case of Usha Rectifier Corporation (I) Ltd. [2001 (130) E.L.T. 485] affirmed by the Apex Court in 2011 (263) E.L.T. 655 (S.C.). In the light of these decisions, we are of the considered view that larger period of limitation has been correctly invoked in the present case and the demands are not time-barred.

5.8 *As regards the demand for interest, once the service tax demands are upheld, interest liability thereon is automatic and consequential. Interest is a compensatory payment for the delay in payment of tax. Accordingly we uphold the demand for interest.*

5.9 *The last issue for consideration is with regard to the imposition of penalties under Sections 76, 77 and 78 of the Finance Act, 1994. While penalty under Section 76 is for the default in payment of tax and no mens rea is required to impose this penalty as held by the Hon'ble High Court of Kerala in Krishna Poduval case [2006 (1) S.T.R. 185 (Ker.)], penalty under Section 77 is for non-compliance with the statutory provisions/requirements such as registration, filing of returns and so on. In the present case, there is no dispute in this regard. Therefore, we uphold the penalties imposed under Sections 76 and 77 of the Finance Act, 1994. As regards the penalty imposed under Section 78, except in the case of renting of immovable property (where the levy itself is under challenge before the Supreme Court), we find no reason to interfere with the same in view of our finding in para 5.6 above that the appellant had suppressed the facts from the department with an intent to evade tax.*

6. *To sum up, we hold that,-*

(a) the confirmation of service tax demands under the taxable service category of Mandap Keeper Service, Club and Association service, Renting of Immovable property service and Sale of space for advertisement service is sustainable in law. In the case of Club & Association service, the tax demand has to be recomputed excluding the bar sales subject to the appellant producing satisfactory evidence in this regard.

(b) the appellant is liable to pay interest on the above service tax demands in accordance with law.

(c) the appellant is liable to penalty under Sections 76 and 77 of the Finance Act, 1994.

(d) the appellant is also liable to penalty under Section 78 of the said Finance Act except in the case of Renting of Immovable Property service.

(e) the demand of service tax under the category of Business Support Services is unsustainable in law and the same it set aside. Consequently, there will be no interest and penal liability on account of this demand.

7. *The appeals are disposed of in the above terms."*

4.1 In view of the above majority decision of this Tribunal, it is settled that in the case of the Cricket Association, similarly, placed as the appellant the subsidy received from BCCI was held to be non-taxable. Following the decision in the above case, we are of the view that the demand in the present case in the show cause notice was rightly dropped by the adjudicating authority, therefore, we do not find any infirmity in the impugned order. Hence, the same is upheld, the Revenue's appeal is dismissed.

(Pronounced in the open court on 02.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI