

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

Regional Bench COURT-2.

Service Tax Appeal No. 2610 of 2010

[Arising out of the Order-In-Original No. 59/2010 dated 13.09.2010 passed
by the Commissioner of Service Tax, Bangalore.]

**Infosys Technologies Limited
Employees Welfare Trust**

C/o, Infosys Technologies Ltd
Electronic city, Hosur Road,
Bangalore, Karnataka – 560100.

.....Appellant

VERSUS

Commissioner of Service Tax,

1st to 5th Floor,
TTMC Building, above BMTC bus stand,
Bangalore, Karnataka – 560071

..... Respondent

Appearance:

Mr. N. Anand, Advocate for Appellant

Mr. M. A. Jithendra, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20567 of 2025

Date of Hearing: 10.10.2024

Date of Decision: 09.04.2025

Per: Pullela Nageswara Rao

The issue in the present appeal is whether 'trust' incorporated by deed of Trust in terms of India Trust Act, 1882 is liable for payment of service tax under the category of 'Club or Association' service under section 65(25a) read with section 65(105) (zzze) and whether doctrine of mutuality applies even in respect of 'Trust' incorporated by Deed of Trust.

2. The brief facts are the Appellant is a Trust as per Section 3 of the Indian Trusts Act, 1882. The Creator/Settlor/Donor/Founder/Trustor of the Appellant-Trust is the company viz., Infosys Limited. The appellant submitted that the company employs thousands of employees and in order to promote the welfare of its employees, the Settlor/Creator created the Appellant as an irrevocable 'Trust, vide Trust Deed dated 15.09.1994. The Appellant-Trust is an "express trust", since it is created by the direct and positive act in writing evidencing an intention to create a trust. It is also in the nature of "private trust" and the "beneficiaries" of the Appellant-Trust are the employees of Infosys Limited. The Appellant-Trust is created exclusively for the benefit and welfare of the employees of the creator/settlor/trustor and the Trust-Fund/property is used only and exclusively for the welfare and benefit of the employees of the Settlor. The Appellant-Trust is administered by the "trustees". The Appellant-Trust has a "trust fund" which is the "trust-property" as envisaged in Clauses 2 and 3 of the Trust Deed dated 15.09.1994. It is this "trust-fund" which is used by the Appellant-Trust for incurring various expenditures "for the benefit of the "beneficiaries" i.e. employees of M/s. Infosys Limited. As per the Trust Deed dated 15.09.1994, Appellant-trust receives periodical contributions from the employees/beneficiaries which are pooled and used by the trust exclusively "for the benefit of employees". Appellant had obtained service tax registration under the category 'Club or Association' in respect of the contributions from employees and from the beneficiaries and has started paying service tax from 01.05.2006 onwards. However, alleging that they were liable to pay service tax of Rs. 22,83,915/-for the said service for the period from 16.06.2005 to 30.04.2006 and also by demanding service tax of Rs. 2,27,40,237/- on Death Benefit Fund, for the period 16.06.2005 to 31.03.2008 proceedings were initiated. Thereafter Adjudication authority confirmed the demand of service tax under 'Club or Association' service for the period from 16.06.2005 to 30.04.2006 along with interest and imposed penalties. However, dropped the demand of service tax in respect of Death Benefit Fund proposed in the show cause notice. Aggrieved by said order, present appeal is filed by the appellant before this Tribunal.

3. The Learned Counsel during the hearing submits that; Appellant is a 'Trust' and as per the provisions of Indian Trust Act, 1882, a trust as defined in the Indian Trust Act, 1882 is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner for the benefit of another, or of another and the owner; when an ostensible owner holds a property for the benefit of another person as an obligation annexed to the ownership, he is said to hold the property in trust for that other person; it is a relationship of a fiduciary character with respect to property, not one involving merely personal duties; it subjects the person by whom property is held to equitable duties to deal with the property for the benefit of another person (beneficiary); trust always involves an equitable ownership as against a contract which is a legal obligation based on an undertaking supported by a consideration, which obligation may or may not be fiduciary in character; there is a fiduciary relationship between the trustee and the beneficiary but not between promisor and promisee or between debtor and creditor; to constitute a "trust" there must be distinct fund which the trustee is required to preserve intact and for which he must eventually account; therefore it is clear that a "trust" is not a distinct person in law; a "trust" in law has no separate legal existence or entity unlike in the case of body corporate; the word "person" is not defined in the Finance Act, 1994 and it cannot include "trust". The Learned Counsel placed reliance on the following judicial decisions;

- a. Pratibha Pratisthan Vs. Manager, Canara Bank, AIR 2017 SC 1303.
- b. K.P.Sahu Vs. State of Kerala, [2019] 215 Comp Cas 327 (Ker).
- c. India Advantage Fund III Vs. CCT, Bangalore, 2024 (388) ELT 276 (Kar.) reversing the Tribunal decision in ICICI Econet Internet & Tech. Fund Vs. CCT, 2021 (51) GSTL 36 (Tri-Bang.).

4. The learned Counsel further submits that; the Appellant-trust is not a "club or association" and taxable service definition is not attracted; there is no "service provider" and "service recipient" relationship between a trust/trustee and its beneficiaries. A trustee possesses a fiduciary responsibility to the beneficiaries of the trust to

follow the terms of the trust. Trustees have a fiduciary duty towards beneficiaries of a trust; as per Black's Law Dictionary, the expression "fiduciary duty" is defined to mean a duty to act to someone else's benefit, while subordinating one's personal interests to that of the other person; it is the highest standard of duty implied by law. Further the expression "fiduciary capacity" is also defined in the above legal dictionary to mean - One is said to act in a "fiduciary capacity" or to receive money or contract a debt in a "fiduciary capacity" when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part; the Doctrine of mutuality also applies and impugned order is opposed to the judgment of the Honorable Supreme Court in State of West Bengal v. Calcutta Club Ltd.

5. The learned Counsel further submits that; in the case of "Trust" as per Indian Trusts Act, 1882, it is clear that - (a) trustee is only to fulfill the purpose of the trust and to execute the trust; (b) trustee is bound to protect title to trust-property; (c) trustee must not for himself or another set-up or aid any title to the trust-property adverse to the interest of the beneficiary; (d) trustee is required to exercise care as a man of ordinary prudence; (e) trustee has to be impartial; and (f) trustee is bound to keep clear and accurate accounts of the trust and is bound to give accounts to the beneficiaries. These features of a trust/trustee establish beyond doubt that "doctrine of mutuality" exists between the trust/trustee and its beneficiaries; there are no two distinct persons, which is a *sine qua non* for attracting any "taxable service" in Section 65(105) of the Act; "No man can trade with himself; he cannot make in what is its true sense or meaning, taxable profit by dealing with himself", this is the doctrine of mutuality. The Appellant- trust is exclusively "for the benefit of the employee-beneficiaries". Hence, the definition of "taxable service" vide section 65 (105) (zzze) of the Act is not attracted to the Appellant-trust.

6. The learned Counsel further submitted that the issue is no longer *res integra* and is settled in favour of the Appellant-trust vide judgment of the Honorable Supreme Court in the case of State of West Bengal Vs. Calcutta Club Limited, 2019 (29) GSTL 545 (SC) and CIT Vs. J.K. Organisation Ltd, [2005] 279 ITR 503 (All.) and therefore the impugned order is unsustainable.

7. The learned Counsel as regards the demand by invoking the extended period of limitation submits that demands confirmed in the impugned order are barred by limitation in as much as the ingredients for invoking the extended period of limitation as envisaged in proviso to Section 73(1) are not present. The entire issue relates to bonafide interpretation of statute. The Appellant had paid service tax for the period from 01.05.2006 (post insertion of Explanation below Section 65 of the Finance Act, 1994 though it was under mistake of law) and the Appellant was on a bonafide belief that prior to insertion of Explanation to Section 65, no service tax is payable. Also, there are catena of judicial decisions of various High Courts and the Tribunal, wherein it was held that there cannot be any levy of service tax between a club vis-à-vis its members. The Appellant's facts are much stronger in as much as they are only a trust created for the beneficiaries and there is no membership concept at all. Hence, invocation of extended period of limitation in the impugned order is not justified in law. In support of this plea, the Appellant placed reliance on the decisions in the matters of **Cosmic Dye Chemical Vs. CCE, 1995 (75) ELT 721 (SC); Continental Foundation Joint Venture Vs. CCE, 2007 (216) ELT 177 (SC)** and several other decisions.

8. As regarding penalty, Learned Counsel submits that penalties imposed under various sections including Section 78 are not justified, as there is no "*mens-rea*" or culpable mental state. There was no deliberate defiance of law, or loss caused to the Revenue and penalties imposed are contrary to Section 80 of the Finance Act, 1994.

9. The Learned Authorized Representative (AR) reiterated the finding in the impugned order and submits that once the Appellant had admitted and paid service tax for the subsequent period, they have no

legal right to plead ignorance of law and only after considering the suppression of the facts, Adjudication authority rightly invoked the extended period of limitation.

10. Heard both sides and perused the records.

11. It is an admitted fact that Appellant had paid service tax for the period from 01.05.2006 after insertion of explanation; *"for the purposes of this section, taxable service includes any taxable service provided or to be provided or any unincorporated associations or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration"* below Section 65 of the Act, though they are claiming that it was under mistake of law. As regards invoking the extended period of limitation the appellant submitted that they were under bonafide believe that prior to insertion of explanation to Section 65, no service tax was payable. Further, there is no allegation that Appellant had willfully suppressed the facts for evasion of tax. We find that in the absence of any such willful intention for evasion of tax and considering the nature of the dispute the demand of service tax by invoking the extended period is unsustainable.

12. As regards the issue on merit and considering the doctrine of mutuality, Hon'ble Supreme Court in the matter of **State of West Bengal Vs. Calcutta Club Ltd., 2019 (29) GSTL 545 (SC)**, categorically held that;

"73. It is, thus, clear that companies and cooperative societies which are registered under the respective Acts, can certainly be said to be constituted under those Acts. This being the case, we accept the argument on behalf of the respondents that incorporated clubs or associations or prior to 1st July 2012 were not included in the Service Tax net."

13. We find that the dispute in the present appeal is for the period from 16.06.2005 to 30.04.2006. In view of the above discussion and considering the ratio of the judgment of the Hon'ble Apex Court in **State of West Bengal Vs. Calcutta Club Ltd.**(supra), the appellant is not liable to pay service tax for the period from 16.06.2005 to

30.04.2006 under the category 'Club or Association' service. Therefore, the impugned order is not sustainable and is set aside.

14. Accordingly, the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 09.04.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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