CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 23094 of 2014

(Arising out of Order-in-Original No.COC-EXCUS-000-COM-03-14-15 dated 05.06.2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin.)

Kavitha Theatre,
M.G. Road, Ernakulam District,
Kerala-682 016.

Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax,
C.R. Building, I.S. Press Road,
Cochin-682 018, Kerala.

Respondent(s)

APPEARANCE:

Mr. Anil. D Nair, Advocate for the Appellant.

Mr. Rajasekhar, Supt. (AR) for the Respondent.

CORAM: HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21703 / 2025

DATE OF HEARING: 03.07.2025
DATE OF DECISION: 30.10.2025

PER : R. BHAGYA DEVI

Briefly stated that the facts are that the appellant is engaged in the business of execution of movies and has been receiving exhibitor’s share of the income for rendering services to the distributors as reflected in their profit and loss account ledgers. These services rendered by the appellant are considered as ‘Renting of Immovable Property Service’ and accordingly, the Commissioner in the impugned order demanded service tax from the appellant for permitting the use of the theatre for exhibition of films. The impugned order also confirmed service tax under the category of 'Advertising Agency Service', this liability was admitted by the appellant. However, being aggrieved by the demand under the category of 'Renting of Immovable Property Service', the appellant is in appeal before us.

2. The learned counsel for the appellant at the outset submits that the matter is no longer *res integra* in as much as various decisions of this Tribunal have clearly held that when the agreement is on sharing of revenue by the owner of the theatre and the distributor, the question of payment of service tax under the category of 'Renting of Immovable Property Service' does not arise. He also relied on the Board's Circular No.109/03/2009 dated 23.02.2009 wherein the Board had clarified that only when the theatre owner gets a fixed rent from the distributor for screening the movies, the liability arose and in the instant case, since it is an admitted fact that the distribution of income is based on the sale of tickets, there is no liability to pay service tax. Relied on the following decisions:

- **PVS Multiplex India Private Limited vs. Commissioner of Customs, Central Excise and Service Tax, Meerut: Final Order No.70367/2024 dated 01.07.2024; and**
- **Inox Leisure Limited vs. Commissioner of GST and Central Taxes: Final Order No.85212/2022 dated 14.03.2022**

3. The learned Authorized Representative (AR) on behalf of the Revenue reiterated the findings of the learned Commissioner in the impugned order.

4. Heard both sides. It is an undisputed fact that the amounts received by the appellant was his share of the income for rendering services to their distributors. The appellant and the

respective distributors had entered into an contract on a revenue sharing basis from the revenue earned by selling the tickets. As rightly claimed by the appellant, the issue stands settled in view of the Board Circular dated 23.02.2009 followed by the subsequent Circular dated 13.12.2011 which are relied upon by the Tribunal in the case of **M/s. Inox Leisure Ltd. vs. Commissioner of GST** (supra) and **Central Excise and in the case of M/s. PVS Multiplex India Pvt. Ltd. vs. Commissioner of Customs, Central Excise and Service Tax**, (supra). The Tribunal in the case of M/s. Inox Leisure Ltd observed as follows:

"11. The issue that arises for consideration is whether the activity carried out by the appellant would be exigible to service tax under BSS. To appreciate this, it would be pertinent to refer to the agreement. The agreement in the present appeal is almost the same as the agreement in other appeals that have been decided including that in **Inox Leisure Ltd.** It would be seen from the agreement that the producer/distributor is engaged in the business of production and distribution of films, while the appellant is an exhibitor engaged in the business of exhibition of films and owns/operates a chain of multiplex theatres. The exhibitor decides which screens would play the motion picture, the numbers of shows, the show timings and the ticket pricing including the right to decide on a week to week basis, whether or not to continue to exhibit the motion picture. The distributor/producer had granted the exhibitor the non exclusive license to exploit the theatrical rights of a motion picture and each party was entitled to conduct its business in its absolute and sole discretion.

12. In the present case the Department has alleged that the appellant is providing infrastructure support services to the producers/distributors of films under BSS.

13. Such an arrangement between a distributor/producer and an exhibitor of films was examined by a Division Bench of the Tribunal in **Moti Talkies**. The Department alleged that the agreement was for 'renting of immovable property' as defined under section 65(90a) of the Finance Act. This contention was not accepted by the Tribunal and it was observed

that the appellant did not provide any service to the distributors nor the distributors made any payments to the appellant as consideration for the alleged service. In fact, it was the appellant who had paid money to the distributors for the screening rights conferred upon the appellant. The observations of the Bench are as follows:

> *"11. It is more than apparent from a bare perusal of the aforesaid agreements that they have been entered into between the appellant as an exhibitor and the distributors for screening of the films on the terms and conditions mentioned therein. The payments contemplated under the terms and conditions either require the exhibitor to pay a fixed amount or a certain percentage, subject to minimum exhibitor share or theatre share of effective shows in a week.*
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> *xxxxxxxxxxx*
>
> *16. It is very difficult to even visualise that the appellant is providing any service to the distributor by renting of immovable property or even any other service in relation to such renting. The agreements that have been executed between the appellant and the distributors confer rights upon the appellant to screen the film for which the appellant is making payment to the distributors. The distributors are not making any payment to the appellant. Thus, no consideration flows from the distributors to the appellant for the alleged service.*
>
> *xxxxxxxxxxxx*
>
> *18. **It is not possible to accept the reasonings given by the Commissioner (Appeals) for confirming the demand of service tax under "renting of immovable property" for the simple reason that the appellant has not provided any service to the distributors nor the distributors have made any payment to the appellant as consideration for the alleged service. In fact, the appellant who has paid money to the distributors for the screening rights conferred upon the appellant**. The Commissioner (Appeals) completely misread the agreements entered into between the appellant as an exhibitor of the films and the distributors to*

> *arrive at a conclusion that the appellant was providing the service of "renting of immovable property."*
>
> **(emphasis supplied)**

14. Similar views were expressed by Division Benches of the Tribunal in **The Asian Art Printers, Shri Vinay Kumar, M/s. Golcha Properties** and **Satyam Cineplexes Ltd.**

15. What also needs to be noticed is that if the appellant was providing such a service, it would be the producers/ distributors who would be making payments to the appellant, but what comes out from a perusal of the Agreement is that in consideration for the distributor agreeing to grant to the appellant the license to exploit the theatrical rights of a motion picture, the appellant would have to pay such revenue share to the distributor as provided for in the said clause. In fact, the distributor agreed to grant to the Appellant the non-exclusive license to exploit the theatrical rights of a motion picture during the term.

16. This issue had come up for consideration before a Division Bench of the Tribunal in **PVS Multiplex India**. The Bench observed that as the appellant was screening films on revenue sharing basis, the appellant was not liable to pay service tax on the payments made to the distributors for screening the films.

> *"7. Having considered contentions and on perusal of the facts on record, we are satisfied that there is no dispute of fact that the appellant have been screening films in their multiplex on Revenue Sharing basis, which is undisputed finding recorded by the ld. Commissioner in the impugned order. Accordingly, we hold that the appellant is not liable to pay Service Tax for Screening of Films and payments to distributors in their theatre."*
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> *(emphasis supplied)*

17. This apart, a revenue sharing arrangement does not necessarily imply provision of services, unless the service provider and service recipient relationship is established. This is what was observed by the Tribunal in **Mormugao Port Trust, Old World Hospitality** and **Delhi International Airport**.

18. In **Mormugao Port Trust**, the Tribunal explained that public private partnerships between the Government/Public Enterprises and Private parties are in the nature of joint venture, where two or more parties come together to carry out a specific economic venture, and share the profits arising from such venture. Such public private partnerships are at times described as collaboration, joint venture, consortium or joint undertaking. Regardless of the name or the legal form in which the same are conducted, they are essentially in the nature of partnership with each co-venturer contributing some of the resources for the furtherance of the joint business activity. The Tribunal held that such public private partnerships meet the test laid down by the Supreme Court in **Faqir Chand Gulati vs. Uppal Agencies Pvt Ltd**, for ascertaining whether or not the arrangement is one of joint venture. The relevant observations of the Tribunal in **Mormugao Port Trust** are reproduced below:

> *"12 …………………….. In our view this arrangement in the nature of the joint venture where two parties have got together to carry out a specific economic venture on a revenue sharing model. Such PPP arrangement are common nowadays not only in the port sector but also in various other sectors such as road construction, airport construction, oil and gas exploration where the Government has exclusive privilege of conducting businesses. In all such models, the public entity brings in the resource over which it has the exclusive right, whether land, water front or the right to exploit the said land and water front, and the private entities brings in the required resources either capital, or technical expertise necessary for commercial exploitation of the resource belonging to the Government. These PPP arrangements are described sometimes as collaboration, joint venture, consortium, joint undertaking, but regardless of their name or the legal form in which these are conducted. These are arrangements in the nature of partnership with each co-venturer contributing in some resource for the furtherance of the joint business activity.*
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> *………………*
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> *15. An analysis of this judgment shows that in order to constitute a joint venture, the arrangement amongst the parties should be a contractual one, the objective should be to undertake a common enterprise for profit. Joint control over strategic financial and*

operative decisions was held to be the key feature of a joint venture. The other obvious feature of a joint venture would be that the parties participate in such a venture not as independent contractors but as entrepreneurs desirous to earn profits, the extent whereof may be contingent upon the success of the venture, rather than any fixed fees or consideration for any specific services.

17 The question that arises for consideration is whether the activity undertaken by a co- venture (partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture. A contractor contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

19. The Civil Appeal filed by the Department (**Commissioner vs. Mormugao Port Trust)** against the aforesaid decision of the Tribunal was dismissed by the Supreme Court both on the ground of delay as well as on merits and the judgment is reported in **2018 (19) GSTL J 118 (SC)**.

20. The Circular dated 23.02.2009 issued by the Central Board of Excise and Customs, infact supports the case of the appellant. The relevant portion of the Circular, which is in connection with service tax on movie theatres, is reproduced below:

> *"2.4.* ***The arrangement most commonly entered into between a theater owner and a distributor is that the theater owner screens the movie for fixed number of days under a contract. The proceeds earned through sale of tickets go to the distributor but the theatre owner receives a fixed sum depending upon the number of days of screening.*** *In this arrangement, the advertisement and display of posters etc. is done by the distributor.* ***Under this arrangement, the fixed amount contracted is given to the theater owner by the distributor irrespective of the fact whether the movie runs well or not. However, there is no rental arrangement between the theater owner and the distributor as in the arrangement at paragraph 2.1 above. A view has been expressed that in this arrangement, the theater owner provides 'Business Support Service' to the distributor and hence is liable to pay service tax on the fixed amount received by the theater owner****.*
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> *2.5. The matter has been examined. By definition 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver'.* ***In other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theatre owner screens/exhibits a movie that has been provided by the distributor. Such an exhibition is not a support or assistance activity but is an activity on its own accord. That being the case such an activity cannot fall under 'Business Support Service'.***
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> *3. In the light of above, it is clarified that screening of a movie is not a taxable service except where the distributor leases out the theater and the theater owner get a fixed rent. In such case, the*

> *service provided by the theater owner would be categorized as 'Renting of immovable property for furtherance of business or commerce' and the theater owner would be liable to pay tax on the rent received from the distributor. The facts of each case and the terms of contract must be examined before a view is taken.*
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> *4. All pending cases may be disposed of accordingly. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned."*
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> *(emphasis supplied)*

21. The subsequent Circular dated 13.12.2011 issued by the Central Board of Excise and Customs, apart from the fact that it would not be applicable for confirming a demand for any period prior to 13.12.2011, would also not come to the aid of the Department. The relevant portion of the Circular is reproduced below:

> *"9.* ***Thus, where the distributor or sub-distributor or area distributor enters into an arrangement with the exhibitor or theatre owner, with the understanding to share revenue/profits and not provide the service on principal-to-principal basis, a new entity emerges, distinct from its constituents. As the new entity acquires the character of a "person", the transactions between it and the other independent entities namely the distributor/sub-distributor / area distributor and the exhibitor etc will be a taxable service****. Whereas, in cases the character of a "person" is not acquired in the business transaction and the transaction is as on principal-to-principal basis, the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under Sec 65A of Finance Act, 1994."*
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> *(emphasis supplied)*

22. In view of the decision of the Supreme Court **in Faqir Chand Gulati** and the decision of the Tribunal in **Mormugao Port Trust**, no service tax can be levied on the appellant under BSS.

23. All the aforesaid issues were also examined at length by a Division Bench of the Tribunal in **Inox Leisure Ltd.** and the order passed by the Commissioner was set aside.

24. The Department filed Civil Appeal No. 1335 of 2020 (The Commissioner of Service Tax vs. Inox Leisure Ltd) before the Supreme Court and by order dated 28.02.2022, the Supreme Court dismissed the Civil Appeal holding that the Tribunal had taken an absolutely correct view, to which the Supreme Court agreed. The order passed by the Supreme Court is reproduced below:

> *"No case is made out to interfere with the impugned order passed by the Customs, Excise and Service Tax Appellate Tribunal (for short, 'CESTAT'). The CESTAT has taken an absolutely correct view, to which we agree. Hence, the Civil Appeal stands dismissed."*

25. Thus, for all the reasons stated above, it is not possible to sustain the confirmation of the demand by the order dated 30.10.2018 passed by the Commissioner. It is, accordingly, set aside and the appeal is allowed."

5. In view of the above, we do not find any reason to sustain the impugned order, hence the same is set aside. Appeal is allowed with consequential relief, if any.

(Order was pronounced in Open Court on **30.10.2025**.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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