

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.59917 of 2013

[Arising out of Order-in-Original No.46-47/AKM/2013 dated 04.07.2013 passed by the Commissioner (Adjudication) Service Tax, New Delhi]

M/s Aircom International India Pvt. Ltd. **.....Appellant**
2nd Floor, Tower-A, The Presidency, 46/4,
M.G. Road, Gurgaon, Haryana

VERSUS

Commissioner of Service Tax, Delhi **.....Respondent**
17-B.I.A.E.A House, M.G.Road, I.P. Estate,
New Delhi-11002

APPEARANCE:

Shri Atul Gupta, Chartered Accountant for the Appellant

Shri Anurag Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60637/2024

DATE OF HEARING: 14.08.2024

DATE OF DECISION: 05.12.2024

P. ANJANI KUMAR:

The appellants, M/s Aircom International (India) Pvt. Ltd., assails the Order-in-Original dated 04.07.2013 passed by Commissioner (Adjudication), Service Tax, New Delhi.

2. The brief facts of the case are that the appellant is engaged in providing services viz. of Consulting Engineer, Maintenance or Repair, Commercial Training and Coaching, Software Development and Product Deployment etc. On the basis of risk profiling and

enquiries conducted, it appears to the Department that the appellants have not discharged applicable service tax under various Heads in respect of the services rendered to their principals in U.K on Reverse Charge Mechanism; the services included Franchise Service, Maintenance or Repair, Training and Coaching etc; it was observed that the appellant made payments to M/s Aircom International, U.K in the form of license fee, support and maintenance charges, training fee, management fee, out of pocket expenses, salary and wages, consultancy, repair and maintenance etc; it was also noticed that the appellant has availed inadmissible credit of Rs.3,90,743/- on invoices received at the premises which is not registered. On conclusion of investigation, two Show Cause Notices dated 15.10.2009, covering the financial years 2003-04 to 2007-08, demanding service tax of Rs.1,16,53,293/- and inadmissible CENVAT of Rs.3,90,743/- and Show Cause Notice dated 24.02.2010, covering the period 2008-09, demanding service tax of Rs.2,81,94,672/- were issued to the appellants; the proposals in the Show Cause Notice were confirmed by the impugned order vide which Rs.72,34,265/- and Rs.3,90,743/- paid by the appellants has been appropriated.

3. Shri Atul Gupta, learned Consultant for the appellant submits that the transaction involved in the case is with reference to the license given by the parent company for using their software to the appellant under the license agreement; the appellant supplies the software to the customers and provides related services like technical support and training; 45% of the gross amount realized is

paid to the parent company; the appellant also customizes the software as per the need of the customer; in both cases, the offer maintenance and other technical support; from the terms of agreement, it is clear that the appellant pays 45% of the Revenue to the parent company basically towards the purchase of software.

Franchisee Service

4. On the demand raised under the heading "Franchisee Service", learned Consultant submits that the appellant pays the license fee in the form of information technology product charges which includes license fee and support and maintenance charge; with effect from 16.06.2005, for a service to be covered under "Franchisee Service" all the four conditions should be fulfilled; in the instant case, all the conditions are not satisfied; it is a pure case of purchase and sale of software; it can be seen that the parent company provides the basic software and any modification or customization is done by the appellant as in the case of Bharati Airtel; therefore, it cannot be said that the appellant works only on the directions given by their parent company.

4.1. He submits that the appellant is not representing or working for the franchiser but has an identity of their own; the appellant is not identified by the parent company; in terms of the agreement, the appellant is entitled to non-exclusive, non-transferrable license to use; giving representational right arises only in the case of an agreement between a principal and an agent, whereas in the instant case, the terms of the contract are on principal-to-principal basis. He relies on the following cases:

- M/s SAP India Pvt. Limited Vs. Commissioner of Central Excise, Bangalore - II - Final Order No.s 2084220843/2020 in Appeal No.s ST/564/2012 & ST/1509/2012 (Tri. Bangalore)
- Rackitt Benckiser (India) Ltd. Vs. Commr. Of C. Ex. & S.T., Panchkula -2021 (46) G.S.T.L. 41 (Tri. - Chan.)
- Delhi International Airport Vs. Union of India 2017 (50) S.T.R. 275 (Del.)
- Global Transgene Ltd. Vs. Commr. Of C. Ex., Cus. & S.T., Aurangabad -2013 (32) S.T.R. 86 (Tri. Mumbai)
- Tata Consultancy Services Ltd. Vs. Commissioner of Central Excise & ST (LTU) Mumbai (Vice-Versa) Mumbai 2019 (6) TMI 109 CESTAT
- National Internet Exchange 27.07.2018-(CESTAT New Delhi) Final order 52638/2018 dated
- Circular No. 59/8/2003-ST dated 20 June 2003

5. As regards the demand under the Maintenance or Repair Service, learned Consultant submits that in terms of Part A of Schedule 1 of the Agreement, the fee payable to the licensor i.e parent company in U.K. comprises of fees payable by the customer for any lease/ rental/ license of the software, for provision of support, maintenance and technical support; Part B of Schedule 1 clearly specifies that in case the overseas entity provides any technical support that will be billed separately; while journalizing the accounts, the appellant has booked both 45% of the amount received towards support and maintenance as well as amount payable towards support services under the same Head. Normally, maintenance service is provided by the appellant to their customers; when the issues arise in respect of basic designing, the parent company provides assistance; however, the consideration for the same is already included in the charge payable to the parent company i.e. 45% of the gross revenue.

6. Regarding the demand with respect to Training and Coaching Service, learned Consultant submits that the training received by the appellant from the parent company is integral to the purchase of software; the personnel of the appellant are trained so that they can attend to the services required by the customers; in the instant case, the alleged training has taken place only once and the same was ancillary to the sale of software; therefore, demand of Rs.4943/- is not tenable; in terms of Section 65A of the Finance Act, the taxability of service requires to be determined on the basis of the principal service and not on the basis of ancillary service provided in the course of main activity.

7. Learned Consultant submits as far as demand on Consultancy Charges is concerned that the Adjudicating Authority made such categorization on the basis of entry in the accounts; these charges pertain to expenses incurred by M/s Aircom, U.K. for their entities on items like postage, rent, travelling expenses etc; the appellant pays back/ reimburses the expenses incurred by the parent company; the same cannot be charged to service tax under the Head "Management or Business Consultancy Service"; learned Adjudicating Authority has dropped the demand for the period prior to 18.04.2006 while agreeing that they are in the form of reimbursable expenses/ out of pocket expenses apportionment etc. He relies on UOI Vs Intercontinental Consultants and Technocrats Pvt. Ltd.- 2018 (10) GSTL 401 (SC).

8. On the demand pertaining to disallowed CENVAT credit of Rs.3,90,743/-, learned Consultant submits that the Department does not dispute the eligibility of input service and seeks to deny credit on the basis that the invoices are received at the premises other than registered premises; impugned order does not specify any other reason for denial of CENVAT credit; registration is not a pre-requisite for claiming the benefit of CENVAT credit. He relies on the following cases:

- mPortal India Wireless Solutions Pvt. Ltd. – 2012 (27) STR 134 (Kar.)
- All Spheres Entertainment Pvt. Ltd. – 2016 (41) STR 104 (Tri. Del.)
- Rajender Kumar & Associates- 2021 (45) GSTL 184 (Tri. Del.)

9. Learned Consultant submits that there are many clerical errors in the OIO; whereas for the period after 18.04.2006, demand of Rs.44,19,028/- was confirmed and demand of Rs.32,17,975/- was dropped; the appellant paid Rs.48,67,133/- during the investigation; learned Commissioner instead of appropriating the confirmed amount of Rs.44,19,028/-, again confirmed duty of Rs.48,67,133/-; learned adjudicating authority appropriated the same amount while confirming the demand of Rs.23,67,132/- already paid over and above Rs.48,67,133/-, confirmed and appropriated Rs.48,67,133/- again; thus, there was excess demand and confirmation. Learned Consultant submits that the service tax was computed at an average rate of 12.36% whereas different rates like 12%, 12% and 10% were applicable during the periods 18.04.2006 to 31.05.2007, 01.06.2007 to 23.02.2009 and from 24.02.2009 onwards respectively.

10. Learned Consultant for the appellants further submits that the second Show Cause Notice for the period 2008-09 was vague and was issued without mentioning any specific Head or category of the services alleged to have been provided by the appellant and the remuneration thereof; learned Consultant submits that demand was computed on same expenses two-three times on the same expenses; he submits that such a Show Cause Notice cannot be sustained as held in the following cases:

- Brindavan Beverages Pvt. Ltd. – 2007 (213) ELT 487 (SC)
- Shubham Electricals – 2015 (40) STR 1034 (Tri. Del.)
- Shubham Electricals – 2016 (45) STR J314 (Del.)

11. Learned Consultant submits that extended period cannot be invoked in the instant case as there was no clarity as regards the taxability of "Software"; on the issue of Franchise Service, there were divergent opinion even among different benches of the Tribunal. Learned Consultant submits that the entire case is made on the basis of the records maintained by the appellants themselves and as such, the appellants have not suppressed any material fact; moreover, the issue being revenue neutral, no allegation of having intent to evade payment of duty can be levelled. He relies on the following cases:

- Commissioner of C. Ex., Cus. & S.T., Bilaspur vs. Bharat Aluminium Company Ltd. – 2017 (349) E.L.T. 32 (Chhattisgarh)
- Commissioner of S.T., Chennai vs. Spectrasoft Technologies Ltd. - 2019 (24) G.S.T.L. 224 (Tri. - Chennai)
- Commissioner of Service Tax, New Delhi Vs. Jitender Lalwani – 2017(51) S.T.R. 312 (Tri. - Del.)

- Shri Balaji Industrial Products Ltd. Vs. Commissioner of Cus. & C. Ex., Jaipur - 2019 (370) E.L.T. 280 (Tri. – Del.)
- Balajee Machinery v. Commissioner of CGST & Excise, Patna - II, reported in 2022 (66) G.S.T.L. 440 (Tri. - Kolkata)
- Jet Airways (1) Ltd. v. Commissioner of S.T., Mumbai, cited in 2016 (44) STR 465 (Tri. - Mumbai) - Affirmed by Hon'ble Supreme Court in 2017 (7) G.S.T.L. J35 (S.C.)
- British Airways v. Commissioner (Adjn.), Central Excise, Delhi, cited in [2015] 64 taxmann.com 421 (New Delhi - CESTAT)
- Asmitha Microfin Ltd. v. Commissioner of Customs, Central Excise & S.T., Hyderabad-III, cited in 2020 (33) GSTL 250 (Tri. - Hyd.)
- Kanchan International Ltd. v/s Commissioner of Central Excise, Daman reported in [2013] 40 taxmann.com 84 (Ahmedabad-CESTAT)
- Punjab Chemicals & Crop Protection Ltd. v. C.C.E., Chandigarh, cited in 2017 (47) S.T.R. 345 (Tri. - Chan.)
- Kanak Metal Industries v. Commissioner of CGST, Jodhpur, cited in 2022 (61) G.S.T.L. 598 (Tri. Del.)
- P.T.C. Industries Ltd. v. Commissioner of Central Excise, Jaipur - I, cited in 2003 (159) E.L.T. 1046 (Tri. - Del.)
- Hindustan Zinc Ltd. v. Commissioner of Central Excise, Jaipur - II, cited in 2008 (232) E.L.T. 687 (Tri. - Del.)
- Hindustan Lever Ltd. vs. Commissioner of Central Excise, Bhopal cited in [2001] (134) ELT 422 (Tri. -Del)
- International Air Charter v. Commissioner of Central Tax (Appeals - II), Delhi Final Order no. 51662/2023 dated 13 December 2023 in ST/52064/2018 (Delhi CESTAT)
- Pushpam Pharmaceutical Co. v. Commissioner of Central Excise, Bombay, cited in 1998 (78) ELT 401 (SC)
- Anand Nishikawa Company Ltd. v. Commissioner of Central Excise, reported in 2005 (188) ELT 149 (SC)
- Uniworth Textile Limited v. Commissioner of Central Excise, Raipur, cited in 2013 (288) ELT 161 (SC)
- Continental Foundation Joint Venture Holding vs. Commissioner of Central Excise, Chandigarh-I, reported in 2007 (216) E.L.T. 177 (SC)

- Bharat Hotels Limited vs. Commissioner of Central Excise (Adjudication), cited in 2018 (12) GSTL 368 (Del.)
- Telephone Nigam Ltd. vs. Union of India and others - W.P. (C) 7542 of 2018 decided on 06.04.2023 (Delhi High Court)
- M/s G.D. Goenka Private Limited vs. The Commissioner of Central Goods and Service Tax, Delhi South Service Tax Appeal No. 51787 of 2022 dated 21.08.2023 (Delhi CESTAT)

12. Learned Consultant lastly submits that as there is no suppression with intent to evade payment of duty, penalty under Section 78 is not tenable; moreover, learned Commissioner have imposed penalty under Section 76 and Section 78 which are mutually exclusive. He relies on the following cases:

- Commissioner of C. Ex. Vs. First Flight Courier Ltd. - 2011 (22) S.T.R. 622 (P&H)
- Madhav NagrikSahkari Bank Ltd. v. Commissioner of C. Ex., Indore - I, reported in 2012 (27) S.T.R. 352 (Tri. - Del.)
- Suganthi Travels v. Commissioner of Central Excise, Trichy, cited in 2011 (22) S.T.R. 72 (Tri. - Chennai)

13. Shri Anurag Kumar, learned Authorized Representative for the Revenue details the issues raised in the Show Cause Notice, appellant's defence and the findings of the adjudicating authority and submits that the adjudicating authority judiciously determined the exigibility to service tax, the Franchise Service availed by the appellants from their overseas masters and other services. Learned Authorized Representative submits that the appellants did not produce evidence documentary or otherwise or certified entries regarding the transactions in the balance sheets and thus, the adjudicating authority had no choice but to confirm the allegations in

the Show Cause Notice. He takes us through different clauses of the agreements and submits that the appellants are involved in receiving "Franchise Service" and are liable to pay applicable service tax on Reverse Charge basis. He relies on the following cases:

- Tata Consultancy Services – 2004 (178) ELT 22 (SC).
- Northern Operating Systems Pvt. Ltd. – 2022 (61) GSTL 129 (SC).

14. Heard both sides and perused the records of the case. We find that duty demand is on the various services such as Franchise Service, Maintenance or Repair Service, Commercial Training or Coaching Service, Management of Business Consultant Service, Reimbursable Expenses, Manpower Recruitment and Supply Service. We proceed to discuss the demand in each of the category in the forthcoming paras.

15. As regards the Franchise Service which accounts for a major portion of the demand, the appellant submits that the parent company gives them license of using the software designed by them to the appellant under a License Agreement; the appellants supply the same software to the customers in India and attend to the work of supporting assistance after the sale; customer pays a gross amount towards the same; in terms of the agreement, 45% of the gross amount is remitted to the parent company. This license fee amount is considered by the Revenue as payment for Franchise Service availed by them from their parent company. Learned Commissioner finds that as payment for Franchise Service availed

by them from their parent company. Learned Commissioner finds that:

55. A.3 As per agreement dated 01.04.2005 between M/s Aircom International Company, UK and the Noticee has, ITP (Information Technology Product) charges are payable to Aircom International, UK (parent company) at the rate of 45% of the total sale value of software, further 20% of total sale value of training booked by the business unit, software development is charged back to the parent company. Further M/s Aircom International, UK granted the representational right to the Noticee including right to sell their software, use their trade mark, service mark, trade name and logo", Aircom International Company, UK provides the concept of business operation such as managerial expertise and training; Further Aircom International India is wholly owned subsidiary company of Aircom International, UK. Such the conditions under franchise agreement are fulfilled by the Noticee, that the amount pending remittances shown as license fee in the balance sheet covered under franchise services only.

16. It is seen that the Department infers that the license fee paid by the appellant to their masters in U.K. fulfills the definition of "Franchise Service" and says that Aircom International Company, U.K. has granted the representational rights to the appellant including right to sell the software, used their trademark, service mark, trade name and logo; 45% of the gross sales and 20% of the training fee booked is paid to the overseas masters; the appellant sells and services the products manufactured by Aircom International Company, U.K. and does not provide any sale and service on their own. On going through the Contract dated 23rd October 2008 between the parties, we find that at Para 19.1, *it is mentioned that the parties acknowledge that they are entering into*

this agreement as independent parties. Unless expressly stated otherwise, neither party shall be construed as legal representative of the other for any purpose. From this, it is apparent that the appellant cannot be treated as a representative of the Aircom International Company, U.K.

17. We find that Section 65(47) of the Finance Act, 1994 defines the Franchise Service as follows:

Up to 15.06.2005

(47) "Franchise" means an agreement by which

(i) franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;

(ii) the franchisor provides concepts of business operation to franchisee, including know how, method of operation, managerial expertise, marketing technique or training and standard of quality control except passing on the ownership of all the know how to franchisee;

(iii) the franchisee is required pay to the franchisor, directly or indirectly, fee; and

(iv) the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person.

from 16-6-2005:

(47) "franchisee" means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trademark, service mark, trade name or logo or any such symbol, as the case may be, is involved'

18. On going through the various clauses of the agreement, it is understood that the appellant is not seen as a representative of Aircom International Company, U.K; no representative rights have been given to the appellant; the independent existence of the

appellant is manifest by various agreement they have entered into with Indian customers. Mere granting of right to distribute sub-license, copy right products of Aircom International Company, U.K; it does not make the appellant a Franchisee of Aircom International Company U.K. We find that this Bench in the case of Reckitt Benckiser India Ltd. (supra) held that:

42. This apart, in a 'franchisee' agreement, the franchisor has the authority to exert a significant degree of control over the method of operation of the franchisee. The agreement executed between the parties in the instant Appeal clearly shows that the licensor does not have any *significant control* over the manner in which the Appellant conducts its operation. The Appellant is free to procure the raw materials as per its will and it has a right to fix the selling price of the final product. It is also free to run its business, marketing, distribution, sourcing and other activities as per its own choice without any inference by the licensors. It also makes its own marketing strategy. The only right which the licensor have is to supervise whether the products manufactured by the Appellant are in conformity with the quality, since the brand name of the licensor is being used by the Appellant. This singular right under the agreement will not constitute any control, much less *significant control* over the operations of the Appellant. Therefore, also the arrangement between the Appellant and the licensors will not constitute a franchisee agreement, since the licensor does not have any significant control over the operations of the Appellant.

43. In this connection it would be pertinent to refer to the decision of the United States District Court in *Englert, INC.* The Court examined an agreement that was executed between the parties for the distribution of LeafGuard gutters. It allowed Seamless Gutters to sell and instalLeafGuard gutters in a limited territory. The agreement provided that Seamless Gutters would purchase a LeafGuard gutter-fabricating machine from the plaintiff for \$26,000, and would comply with numerous conditions including the payment of royalties for each linear foot of LeafGuard gutters produced by the gutter-fabricating machine and certain reporting and minimum sales requirements. The Court examined whether the agreement executed between the parties was 'franchise' or 'a license agreement'. It noticed that though the actual

agreement between the parties was captioned as 'a license agreement', but what was important to find out was whether the relationship was covered by the 'Franchise Rule'. A dispute arose between the plaintiff and defendant LeafGuard involving payment of royalty. The defendants asserted that the agreement between the parties created a franchise relationship and failure to provide FTC franchise disclosure statement under the 'Franchise Rule' amounted to violation of unfair Trade Practice. This decision holds that what has to be seen is -

- (i) Whether the relationship involves distribution of goods or services associated with a franchisor trademark or trade name? A dispute arose between the plaintiff and defendant LeafGuard involving payment of royalty. The defendants asserted that the agreement between the parties created a franchise relationship and failure to provide FTC franchise disclosure statement under the 'Franchise Rule' amounted to violate of unfair Trade Practice;
- (ii) Whether the franchisor has authority to exert a significant degree of control over the franchisee's method of operation or provide a significant assistance in the franchisee's method of operation? and
- (iii) Whether the franchisor must pay a certain amount after the franchise business begins?

44. There was no dispute about the first requirement as the agreement did involve sale or distribution of goods associated with the trademark of the plaintiff. In regard to the second and third requirement, the Court found that from a perusal of the agreement it was reasonable to conclude that *Englert* exercised control over the defendants only in regard to a single product line and that *Englert* did not have the ability to control any of the product of the defendant other than LeafGuard gutters which was one of the multiple products and services provided by the defendants. The level of control exerted by *Englert* over the defendant's method of operation was, therefore, not "*significant*" for the purpose of the FTC Franchise Rule and so the agreement between the parties was not 'franchise' but a 'license agreement'.

45. It would now have to be seen whether the services received by the Appellant can be classified as 'IPR service'.

46. The definitions of IPR and intellectual property service as contained in Section 65(55)(a) and Section 65(55)(b) of the Act have been reproduced above. The taxable service under Section 65(55)(z) of the Act has been defined to mean any service provided or to be provided to any person by the holder of intellectual

property right, in relation to intellectual property service. The agreement executed between the parties is clearly for a temporary transfer of IPR as will be seen from the Preamble and Article 2 of the Agreement. Under Article 3 of the Agreement, the licensee acknowledged that all rights, title, interest or goodwill in the IPR is and remains vested in the licensor and shall not impair the rights of the licensor in the IPR. Article 6 provides that in consideration of the rights and IPR granted by the licensor under the agreement, the licensee shall pay the licensor royalty equivalent to 5% of net sales of products in India and royalty equivalent to 8% on exports in India. It is, therefore, clear that the services have been correctly classified by the Appellant as IPR.

47. The Commissioner committed an error in holding that the service received by the Appellant would fall under 'franchisee' service. The Commissioner completely overlooked that in a franchisee agreement, what was required to be examined was whether any "representational right" was granted to sell or manufacture goods or to provide service or to undertake any process identified with the franchisor. It is only because the Appellant was engaged in the manufacture and sale of products identified with the franchisor that the Commissioner concluded that the agreement was a franchisee agreement, without considering whether any 'representational right' was granted.

19. We find that facts and circumstances of the present case are similar to the above case. We also find that CESTAT Bench of Bangalore in the case of M/s SAP India Pvt. Ltd. vide Final Order No.20842-20843/2020 has decided the issue in favour of the appellants holding that granting of license cannot be construed as appointment of a Franchisee. In view of the same, we are of the considered opinion that the Department has not made out any case regarding the levy of service tax on the appellants on the Franchise Service alleged to have been availed by them.

20. Coming to the demand on the Head of "Maintenance or Repair Service", the appellant submits that as per Part A of the Schedule 1

to the Contact, the fee payable to the licensor includes fee for the license of the software, the fee payable by the customer for the support and maintenance and fee payable by the customer for the technical support by the licensee; Part B of Schedule 1 specifies that Aircom International Company U.K. shall be entitled to invoice the appellant for the cost of providing any technical support. From this, it is clear that whenever Aircom International Company U.K. has provided technical support, the appellant is required to raise an invoice and Aircom International Company U.K. pays for the same; the appellant pleads that charges for such support service are already included in the 45% and the 20% payable to Aircom International Company U.K; therefore, the same cannot be treated as provision of any service by Aircom International Company U.K. to the appellant for which they have to pay service tax on Reverse Charge Mechanism; it is immaterial that the appellant treats the same in their books of accounts. Similarly, the appellant pleads that the expenses of training and coaching were also included in the license fee charged for the use of software; as no separate charges are collected, no service tax is liable to be paid. In respect of service tax demand on consultancy charges, the appellant pleads that the same is nothing but sharing of expenses and reimbursable expenses. They rely on the decision of the Hon'ble Supreme Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. (supra). Regarding the service tax credit denied to the appellants, the appellant contends that the CENVAT credit has been denied for the reason that the same is received in the premises which is not registered. We find that for the reasoning cited in the case of

mPortal India Wireless Solutions (supra), the demand cannot be sustained. Moreover, it is not the contention of the Department that the said service has not been received, applicable service tax is paid and the same is not utilized in the provision of output service.

21. Regarding the Show Cause Notice dated 22.04.2010, the appellant submits that the same has been issued without mentioning any specific Head or category under which the service is provided by the appellants would be classified. We find that it has been held in a number of cases that levy of service tax critically hinges on the identification of service provider, the service provided, the recipient of the service and the consideration paid or payable for the same thereof. We find that Show Cause Notice dated 22.04.2010 simply takes out the figures from the balance sheet on account of license fee; support and maintenance; training fee; reimbursement and management fee etc. and quotes the relevant provisions of law pertaining to the definition of the said services and proceeds to say that the appellant is liable to pay service tax on the same. No identification of the service recipient and consideration is shown and no analysis whatsoever has been done. We find that Hon'ble Supreme Court in the case of Brindavan Beverages (supra) held as follows:

8. Per contra, learned Consultant for the respondents submitted that there is no material that the respondents had ever been parties to the so called arrangement, even if it is accepted for the sake of arguments but not conceded, that such arrangement was in reality made. There was no material brought on record to show that the respondents had any role to play in such matters as alleged. Even the show cause notice did not refer to any particular material to come to such a conclusion. Therefore, the Commissioner and

the CEGAT were justified in holding that the respondents were entitled to the benefits.

9. We find that in the show cause notice there was nothing specific as to the role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents. Independent arrangements were entered into by the respondents with the franchise holder. On a perusal of the show cause notice the stand of the respondents clearly gets established.

10. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by the CEGAT cannot be faulted.

22. Tribunal in the case of Shubham Electricals (supra) held that:

13. We have noticed earlier that the show cause notice itself adverts to the fact that the appellant had provided copies of 20 work orders executed in relation to CWG Projects, particulars of which are set out in a tabular form in para 5 of the show cause notice. From the description of the works in this table, officers could have classified the several works into the appropriate taxable service which may appropriately govern rendition of these services. In any event officers are not handicapped and the Act provides ample powers including of search under Section 82 of the Act to obtain information necessary to pass a proper, disciplined and legally

sustainable adjudication order. The disinclination to employ the ample investigatorial powers conferred by the Act is illustrative of gross Departmental failure and cannot afford justification for passing an incoherent and vague adjudication order. The failure to gather relevant facts for issuing a proper show cause notice cannot provide justification for a vague and incoherent show cause notice which has resulted in a serious transgression of the due process of law.

23. In view of the above, we find that the Show Cause Notice being vague, unsubstantiated and not considering the various premises to levy service tax cannot be sustained. Learned Authorized Representative for the Department tries to argue that the appellant failed to produce documentary evidence or certified entries regarding transactions in the balance sheet and therefore, the assessment by the authorities is hampered and therefore, the appellant is liable to pay the duty demanded along with interest. We are of the considered opinion that such an argument is not tenable. Particularly with reference to the Show Cause Notice dated 22.04.2010, whether or not extended period is invoked, it was open to the Revenue to conduct necessary investigation, to give adequate opportunity to the appellants and issue Show Cause Notice on rational and reasoned grounds. In the absence of the same, the allegations are to be held as unsubstantiated. On this count itself, the Show Cause Notice and the OIO are liable to be set aside. In view of the discussion and findings as above, we do not find it expedient and necessary to go into the other submissions of the

appellants on the issue of invocation of extended period, computation mistakes etc.

24. In view of the above, the appeal is allowed.

(Order pronounced in the open court on 05/12/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK