CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

COURT HALL - I

Service Tax Appeal No.41289 of 2014

(Arising out of Order in Original No. CHN-SVTAX-000-COM-053-13-14 dated 30.1.2014 passed by the Commissioner of Service Tax, Chennai)

M/s. West Asia Maritime Ltd. **Appellant**
Buhari Towers, 6th Floor
No. 4, Moores Road
Chennai – 600 006.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
No. 26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600034.

<u>APPEARANCE:</u>

Shri Joseph Prabhakar, Advocate for the Appellant
Shri Harendra Pal Singh, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40341/2024

Date of Hearing : 22.03.2024
Date of Decision: 25.03.2024

Per P. Dinesha,

This appeal arises against Order in Original No.53/2013-14 dated 30.1.2014 passed by the Commissioner of Service Tax, Chennai.

Facts are not in dispute, the appellant had availed the services provided by Protection & Indemnity Clubs (P&I Clubs) located outside India for covering third party liabilities but did not pay Service Tax as required under section 66A of the Finance Act, 1994. It appears that there were exchange of letters between the appellant and the Revenue which prompted the Revenue to issue a Statement of Demand dated 22.5.2013 proposing to demand service tax of Rs.16,21,120/- for the period April 2011 to March 2012 on reverse charge basis.

2. It appears that thereafter, personal hearing was also granted during which time, the appellant appears to have, inter alia, contended that they are a member of the P&I Club located in London. The demand of service tax under general insurance scheme related to P&I Clubs which is only a membership fee paid to the club for third party insurance and hence, the same could not be classified under insurance service and that the membership fee so paid to a club or association is not taxable, as held by the Hon'ble High Court of Gujarat in the case of Sports Club of Gujarat Ltd. Vs. UOI reported in 2013 (31) STR 645 (Guj.).

3. The Commissioner of Service Tax – original authority, having considered the explanation of the appellant in adjudication, however, proceeded to confirm the demand of service tax along with applicable interest and penalties as proposed in the statement of demand vide the impugned Order in Original. Insofar as the contention of the appellant as regards payment to club or association vis-à-vis mutuality, the learned

Commissioner has held that the decision of the Hon'ble High Court of Gujarat (supra) was not applicable since the payment made by the appellant was rightly classifiable under general insurance service. It is against this order that the present appeal has been filed before this forum.

4. Heard Shri Joseph Prabhakar, learned Advocate for the appellant. He would contend, at the outset, that the original authority failed to appreciate that even if the insurance service is held to be rendered by a club to its members, the same becomes non-taxable in the absence of duality. He would also contend that any service rendered by club or association to its member is thus not taxable which protection is not available to an outsider. Moreover, P&I Club services are not insurance service but a unique plan provided for the members which is not offered by any insurance company in India or abroad. He would also contend that the decision of the Hon'ble Supreme Court in the case of State of West Bengal Vs. Calcutta Club Ltd. reported in 2019 (29) GSTL 545 (SC) considered an almost similar issue which decision was not available when the impugned order was passed. The impugned order was passed on 30.1.2014 whereas the decision of the Hon'ble Supreme Court came much later i.e. on 3.10.2019 and hence, he would request for remanding the matter for denovo

adjudication to consider the above decision of the Hon'ble Supreme Court. In this regard, learned Advocate also relied on an order of the jurisdiction Hon'ble High Court in the case of State Bank of India Officers Association Vs. Commissioner of CGST, Chennai vide order dated 25.1.2021 in W.P. No. 28696 of 2019 wherein, the Hon'ble High Court has set aside the order of assessment and remanded the matter to the file of the original authority for denovo adjudication in the light of the above judgment of the Hon'ble Supreme Court.

5. Per contra, Shri Harendra Pal Singh, learned Assistant Commissioner expressed no objection for remanding the matter back to the file of the original authority to consider the above decision of the Hon'ble Supreme Court and passing a denovo order but, however, he would contend that the original authority has held that the services received by the assessee were rightly classifiable under group insurance service and hence, the principle of mutuality has not been accepted.

6. Having considered the rival contentions, since both the counsel agree for remanding the matter back to the file of the original authority for denovo adjudication, we deem it appropriate to set aside the impugned order and restore the matter back to the file of the original authority who shall pass a denovo adjudication order in the light of the judgment of the

Hon'ble Supreme Court in Calcutta Club Ltd. (supra). All the issues / contentions of both the parties are left open.

7. In the result, the appeal is allowed by way of remand.

(Order pronounced in open court on 25.03.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex