

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
SZB, CHENNAI

Bench DB 1

|                                                                                                            |                                                                      |                                    |                                  |
|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|------------------------------------|----------------------------------|
| <b>Arising out of Order-in-Appeal No. 1/2014 (MST) dt. 29/01/2014 passed by CCE(Appeals) Chennai</b>       |                                                                      |                                    |                                  |
| <b>1 &amp; 2</b>                                                                                           | <b>ST/41245-41246/2014</b>                                           | <b>CCE &amp; ST,<br/>Chennai</b>   | <b>L. Balaji</b>                 |
| <b>Arising out of Order-in-Appeal No.2/2014 (MST) dt. 29/01/2014 passed by CCE(Appeals) Chennai</b>        |                                                                      |                                    |                                  |
| <b>3 &amp; 4</b>                                                                                           | <b>ST/MISC/40817-<br/>40818/2017 &amp;<br/>ST/41247 – 41248/2014</b> | <b>CCE &amp; ST,<br/>Chennai</b>   | <b>S. Badrinath</b>              |
| <b>Arising out of Order-in-Appeal No.36/2014 (MST) dt. 29/01/2014 passed by CCE(Appeals) Chennai</b>       |                                                                      |                                    |                                  |
| <b>5 &amp; 6</b>                                                                                           | <b>ST/41250 – 41251/2014</b>                                         | <b>CCE &amp; ST,<br/>Chennai</b>   | <b>Dinesh Karthick</b>           |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014 passed by CCE(Appeals) Chennai</b>  |                                                                      |                                    |                                  |
| <b>7 &amp; 8</b>                                                                                           | <b>ST/41400-41401/2014</b>                                           | <b>Murali Vijay</b>                | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014 passed by CCE(Appeals) Chennai</b>  |                                                                      |                                    |                                  |
| <b>9 to<br/>11</b>                                                                                         | <b>ST/41406 – 41408/2014</b>                                         | <b>Balaji L</b>                    | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014 passed by CCE(Appeals) Chennai</b>  |                                                                      |                                    |                                  |
| <b>12 to<br/>14</b>                                                                                        | <b>ST/41409 – 41411/2014</b>                                         | <b>Vidyut<br/>Sivaramakrishnan</b> | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014 passed by CCE (Appeals) Chennai</b> |                                                                      |                                    |                                  |
| <b>15 to<br/>17</b>                                                                                        | <b>ST/MISC/41188-<br/>41190/2017<br/>ST/41412 – 41414/2014</b>       | <b>Aniruda Srikanth</b>            | <b>CCE &amp; ST,<br/>Chennai</b> |

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| <b>18 to<br/>20</b>                                                                                                | <b>ST/41415 – 41417/2014</b>                                                                                  | <b>Suresh Kumar</b>          | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.34 &amp; 35/2014 (MST) dt. 29/01/2014<br/>passed by CC E(Appeals) Chennai</b> |                                                                                                               |                              |                                  |
| <b>21 &amp;<br/>22</b>                                                                                             | <b>ST/ 41418-41419/2014</b>                                                                                   | <b>Yo Mahesh</b>             | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014<br/>passed by CCE(Appeals) Chennai</b>      |                                                                                                               |                              |                                  |
| <b>23 &amp;<br/>24</b>                                                                                             | <b>ST/41420-41421/2014</b>                                                                                    | <b>Hemang Badani</b>         | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014<br/>passed by CCE(Appeals) Chennai</b>      |                                                                                                               |                              |                                  |
| <b>25 to<br/>27</b>                                                                                                | <b>ST/MISC(CT)/41625 –<br/>41627/2017 in ST/41422-<br/>41424/2014</b>                                         | <b>Ashwin R</b>              | <b>CCE &amp; ST,<br/>Chennai</b> |
|                                                                                                                    | <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt.<br/>29/01/2014 passed by CCE(Appeals) Chennai</b> |                              |                                  |
| <b>28 &amp;<br/>29</b>                                                                                             | <b>ST/41425-41426/2014</b>                                                                                    | <b>C. Ganapathy</b>          | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014<br/>passed by CCE(Appeals) Chennai</b>      |                                                                                                               |                              |                                  |
| <b>30 to<br/>32</b>                                                                                                | <b>ST/MISC/41191 –<br/>41193/2017 in ST/41427<br/>– 41429/2014</b>                                            | <b>Arun Karthik K B</b>      | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014<br/>passed by CCE(Appeals) Chennai</b>      |                                                                                                               |                              |                                  |
| <b>33 &amp;<br/>34</b>                                                                                             | <b>ST/41430 – 41431/2014</b>                                                                                  | <b>Kaushik Gandhi</b>        | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014<br/>passed by CCE(Appeals) Chennai</b>      |                                                                                                               |                              |                                  |
| <b>35 to<br/>37</b>                                                                                                | <b>ST/41432 – 41434/2014</b>                                                                                  | <b>Palani Amarnath<br/>C</b> | <b>CCE &amp; ST,<br/>Chennai</b> |

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| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014<br/>passed by CCE (Appeals) Chennai</b> |                                                                |                       |                                  |
| <b>38 to<br/>40</b>                                                                                            | <b>ST/41435 – 41437/2014</b>                                   | <b>Abhinav Mukund</b> | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.1 to 26/2014 (MST) dt. 29/01/2014<br/>passed by CCE( Appeals) Chennai</b> |                                                                |                       |                                  |
| <b>41 to<br/>43</b>                                                                                            | <b>ST/MISC41185 –<br/>41187/2017<br/>ST/41438 – 41440/2014</b> | <b>Badrinath S</b>    | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.379/2015 (STA-II) dt. 29/12/2015<br/>passed by CST (Appeals) Chennai</b>  |                                                                |                       |                                  |
| <b>44</b>                                                                                                      | <b>ST/MISC/41628/2017<br/>ST/42014/2016</b>                    | <b>R. Aswin</b>       | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.375/2015 (STA-II) dt. 29/12/2015<br/>passed by CST (Appeals) Chennai</b>  |                                                                |                       |                                  |
| <b>45</b>                                                                                                      | <b>ST/MISC/41321/2017<br/>ST/42015/2016</b>                    | <b>S. Badrinath</b>   | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.381/2015 (STA-II) dt. 29/12/2015<br/>passed by CST (Appeals) Chennai</b>  |                                                                |                       |                                  |
| <b>46</b>                                                                                                      | <b>ST/42016/2016</b>                                           | <b>Abhinav Mukund</b> | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No.384/2015 (STA-II) dt. 29/12/2015<br/>passed by CST (Appeals) Chennai</b>  |                                                                |                       |                                  |
| <b>47</b>                                                                                                      | <b>ST/42017/2016</b>                                           | <b>Yo Mahesh</b>      | <b>CCE &amp; ST,<br/>Chennai</b> |
| <b>Arising out of Order-in-Appeal No. 36/2014 (MST) dt. 29/01/2014 passed<br/>by CCE(Appeals) Chennai</b>      |                                                                |                       |                                  |
| <b>48</b>                                                                                                      | <b>ST/40599/2014</b>                                           | <b>Dinesh Karthik</b> | <b>CCE &amp; ST,<br/>Chennai</b> |

Shri Joseph Dominic, Consultant for the assesseees at Sl. No. 7 to 47

Shri P.C. Anand, Consultant for Sh. Dinesh Karthik at Sl.No. 5, 6 & 48  
For the assesseees

Shri K. Veerabhadra Reddy, ADC (AR)  
For the Revenue

**CORAM :**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**  
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing : 11.02.2019  
Date of Pronouncement: 30.04.2019

**FINAL ORDER NOs. 40705-40752 /2019**

**Per P. Dinesha**

In all these appeals, as the issue involved is common, are taken up for hearing together. The assesseees are aggrieved by the demand raised against them for the alleged services for the period after 01.07.2010 to 31.03.2011 under the category of Brand Promotion services (BPS) under Section 65(105) (zzzzq); and the department is aggrieved by the deletion of the demand raised against the assesseees for the period upto 30.06.2010 under Business Support Service (BSS).

2. The appellants are cricket players, representing various Teams owned by various franchisees, in the IPL. The Revenue, on the ground that it had gathered some inputs during investigation that the assessee's were providing BSS upto 30.06.2010 and BPS

for the subsequent periods, issued Show Cause Notices which are as under:-

| S.No. | Appeal No.  | Assessee                     | SCN No. & date       | Period involved        | S.Tax demand proposed in the SCN under the category of service |
|-------|-------------|------------------------------|----------------------|------------------------|----------------------------------------------------------------|
| 1     | ST/41245/14 | L. Balaji                    | 667/2010<br>18.10.10 | 2009-10<br>2010-11     | 19,28,999<br>BSS                                               |
| 2     | ST/41246/14 | L. Balaji                    | 335/10<br>30.04.10   | 2008-09                | 14,90,371<br>BSS                                               |
| 3     | ST/41247/14 | S. Badrinath                 | 650/10<br>18.10.10   | 2009-10<br>2010-11     | 19,28,999<br>BSS                                               |
| 4     | ST/41248/14 | S. Badrinath                 | 336/10<br>30.04.10   | 2008-09                | 14,90,371<br>BSS                                               |
| 5     | ST/41250/14 | Dinesh Karthik               | 754/10<br>16.11.10   | 2008-09                | 46,83,646<br>BSS                                               |
| 6     | ST/41251/14 | Dinesh Karthik               | 534/11<br>21.10.11   | 2009-10<br>2010-11     | 19,61,018<br>BSS                                               |
| 7     | ST/41400/14 | Murali Vijay                 | 751/10<br>03.11.10   | 01.07.10 -<br>31.03.11 | 12,92,670<br>BSS                                               |
| 8     | ST/41401/14 | Murali Vijay                 | 65/2011<br>21.10.11  | 2010-11                | 2,61,469<br>BPS                                                |
| 9     | ST/41406/14 | L. Balaji                    | 335/10<br>30.04.2020 | 2008-09<br>2009-10     | 14,90,371<br>BSS                                               |
| 10    | ST/41407/14 | L. Balaji                    | 667/10<br>18.10.10   | 20-10-11               | 19,28,999<br>BSS                                               |
| 11    | ST/41408/14 | L. Balaji                    | 52/11<br>21.10.11    | 2010-11                | 2,94,152<br>BSS                                                |
| 12    | ST/41409/14 | Vidyut Siva-<br>ramakrishnan | 14/10<br>05.04.10    | 2008-09                | 3,90,355<br>BSS                                                |
| 13    | ST/41410/14 | Vidyut Siva-<br>ramakrishnan | 61/10<br>14.10.10    | 2008-09                | 3,08,160<br>BSS                                                |
| 14    | ST/41411/14 | Vidyut Siva-<br>ramakrishnan | 58/11<br>21.10.11    | 2010-11                | 49,025<br>BSS/BPS                                              |
| 15    | ST/41412/14 | Aniruda<br>Srikanth          | 16/10<br>05.04.10    | 2008-09                | 3,90,355<br>BSS                                                |
| 16    | ST/41413/14 | Aniruda Srikanth             | 65/10<br>14.10.10    | 2009-10                | 3,08,160<br>BSS                                                |
| 17    | ST/41414/14 | Aniruda Srikanth             | 58/11<br>21.10.11    | 2010-11                | 49,026<br>BSS/BPS                                              |
| 18    | ST/41415/14 | Suresh Kumar                 | 17/10                | 2008-09                | 3,90,355                                                       |

|    |             |                   |                       |                           |                     |
|----|-------------|-------------------|-----------------------|---------------------------|---------------------|
|    |             |                   | 05.04.10              |                           | BSS                 |
| 19 | ST/41416/14 | Suresh Kumar      | 60/10<br>14.10.10     | 2009-10<br>2010-11        | 3,08,160<br>BSS     |
| 20 | ST/41417/14 | Suresh Kumar      | 57/11<br>21.10.11     | 2010-11                   | 49,025<br>BSS/BPS   |
| 21 | ST/41418/14 | Yo Mahesh         | 60/2011<br>21.10.11   | 2010-11                   | 2,42,791<br>BSS/BPS |
| 22 | ST/41419/14 | Yo Mahesh         | 755/10<br>18.11.10    | 2008-09,<br>2009-10       | 3,97,866<br>BSS     |
| 23 | ST/41420/14 | Hemang Badani     | 70/10<br>18.10.10     | 2010-11                   | 1,21,396<br>BSS     |
| 24 | ST/41421/14 | Hemang Badani     | 66/11<br>14.10.10     | 2010-11                   | 65,368<br>BSS/BPS   |
| 25 | ST/41422/14 | Ashwin R          | 55/10<br>21.10.11     | 2010-11                   | 65,368<br>BSS/BPS   |
| 26 | ST/41423/14 | Ashwin R          | 62/10<br>14.10.10     | 2010-11                   | 3,65,523<br>BSS     |
| 27 | ST/41424/14 | Ashwin R          | 62/10<br>14.10.10     | 1.7.2010 to<br>31.03.2011 | 3,65,523<br>BSS     |
| 28 | ST/41425/14 | C. Ganapathy      | 69/10<br>14.10.10     | 2010-11                   | 95,922<br>BSS       |
| 29 | ST/41426/14 | C. Ganapathy      | 69/10<br>14.10.10     | 2010-11                   | 94,897<br>BSS       |
| 30 | ST/41427/14 | Arun Karthik K.B  | 21/2010<br>05.04.10   | 2008-09                   | 2,58,331<br>BSS     |
| 31 | ST/41428/14 | Arun Karthik K.B  | 63/2010<br>14.10.2011 | 2009-10                   | 2,36,122<br>BSS     |
| 32 | ST/41429/14 | Arun Karthik K.B  | 63/2011<br>21.10.2011 | 2010-11                   | 1,77,426<br>BSS/BPS |
| 33 | ST/41430/14 | Kaushik Gandhi    | 71/2010<br>18.10.10   | 2010-11                   | 38,249<br>BSS       |
| 34 | ST/41431/14 | Kaushik Gandhi    | 62/2011<br>21.10.11   | 2010-11                   | 24,503<br>BSS/BPS   |
| 35 | ST/41432/14 | Palani Amarnath   | 18/2010<br>05.04.10   | 2008-09                   | 3,90,355<br>BSS     |
| 36 | ST/41433/14 | Palani Amarnath   | 59/10<br>14.10.10     | 2009-10                   | 3,48,180<br>BSS     |
| 37 | ST/41434/14 | Palani Amarnath   | 64/11<br>21.10.11     | 2010-11                   | 65,367<br>BSS/BPS   |
| 38 | ST/41435/14 | Abhinav<br>Mukund | 19/10<br>05.04.10     | 2008-09                   | 3,90,335<br>BSS     |
| 39 | ST/41436/14 | Abhinav<br>Mukund | 64/10<br>14.10.10     | 2009-10<br>2010-11        | 3,08,160<br>BSS     |
| 40 | ST/41437/14 | Abhinav<br>Mukund | 61/11<br>21.10.11     | 2010-11                   | 65,367<br>BSS/BPS   |
| 41 | ST/41438/14 | Badrinath S       | 336/10<br>30.04.10    | 2008-09                   | 14,90,371<br>BSS    |

|    |             |                   |                       |                                             |                     |
|----|-------------|-------------------|-----------------------|---------------------------------------------|---------------------|
| 42 | ST/41439/14 | Badrinath S       | 650/10<br>18.10.10    | 2009-10<br>2010-11                          | 19,28,999<br>BSS    |
| 43 | ST/41440/14 | Badrinath S       | 59/11<br>21.10.11     | 2010-11                                     | 3,92,203<br>BSS/BPS |
| 44 | ST/42014/16 | R. Aswin          | SOD 63/12<br>22.10.12 | 2008-09<br>2009-10 to<br>2010-11<br>2011-12 | 4,86,131<br>BPS     |
| 45 | ST/42015/16 | S. Badrinath      | SOD62/12<br>22.10.12  | 2008-09<br>2009-10 to<br>2010-11            | 4,62,441<br>BPS     |
| 46 | ST/42016/16 | Abhinav<br>Mukund | SOD 54/12<br>26.09.12 | 2008-09<br>2009-10 to<br>2010-11            | 58,056<br>BSS/BPS   |
| 47 | ST/42017/16 | Yo Mahesh         | SOD 57/12<br>09.10.12 | 2008-09<br>2009-10<br>2010-11               | 66,708<br>BSS/BPS   |
| 48 | ST/40599/14 | Dinesh Karthik    | 754/10<br>16.11.10    | 01.07.10<br>31.03.11                        | 6,86,357<br>BPS     |

After considering the reply and after due process of law, the adjudicating authority passed Order-in-Original confirming the entire demand as per SCNs and also imposed penalty under Sections 77 & 78 of the Finance Act in respect of the first SCN and penalty under Sections 67 & 77 in respect of the second SCN. An appeal was filed against the OIO before the Commissioner (Appeals) and the Commissioner (Appeals) after considering the plea of the appellants, vide order dated 29.01.2014 in respect of some of the assesseees passed the following:-

i) set aside the service tax demand prior to 01.07.2010 under BSS and the entire service tax pertaining to the SCNs (supra) was set aside,

ii) set aside that portion of the demand pertaining to the period upto 30.06.2010, upheld the balance service tax demand for and from 01.07.2010 onwards under Business Promotion Services,

iii) denied the benefit of value based exemption under Notification No. 6/2005-ST dated 01.03.2005.

iv) upheld the interest under Section 75 on the service tax from 01.07.2010; and

v) set aside/waived the penalties imposed under Sections 76, 77 & 78 of the Finance Act, by invoking Section 80 ibid.

### **Common Facts**

3. The Revenue issued SCNs in respect of the assesseees in appeal as per the table above and it is the case of the Revenue that the appellants provided the services of BSS classified under Section 65 (105) (zzzzq) of the Finance Act, 1994 up to 30.06.2010 and w.e.f. 01.07.2010 to 31/3/2011, they provided the services of "Brand Promotion" which is classified under Section 65 (105)(zzzzq) of the Finance Act. The taxable value adopted by the adjudicator for computing the service tax was the total amount received by each of the players from his respective franchisee, in terms of the contract entered into by each of the above assesseees with his franchisee. The SCNs were adjudicated by various adjudicating authorities and the common factor is that all the adjudicating authorities have confirmed the entire demand, both under BSS in respect of the first SCN and under BPS in respect of the 2<sup>nd</sup> SCN, like for example: in the case of

M. Vijay adjudicating authority reviews/scrutinizes contract, extracts Section 65 (104c) & (105) (zzzq) and at paragraph 11.2, and thereafter imposed equal penalties under Section 76 & 77 of the Act as well. The assessee preferred appeals before the Commissioner of Central Excise (Appeals), who passed a common order dated 29.01.2014 in respect of 13 assessee, in Order-in-Appeals No. 01-26/2014 (MST), a separate order was passed vide OIA No. 34 & 35/2014 on the same day in respect of the assessee Shri Yo Mahesh.

4. Ld. Consultant, Shri Joseph Dominic appeared on behalf of the assessee and the Ld. DR, Shri K. Veerabhadra Reddy, ADC, appeared on behalf of the Revenue.

**Contentions:-**

5.1 It is the case of the Ld. Consultant for the assessee, inter alia, that the conclusion of the Revenue that the assessee had rendered business promotion services which cannot be considered as BSS; M/s. India Cements Ltd. (ICL in short) did not outsource any part of their business activities to the assessee and therefore there cannot be any scope for rendering any service which could be treated as BSS; that prior to 01.07.2010 brand promotion was not a taxable service and therefore, brand promotion, if at all, could not be classified under BSS even prior to 01.07.2010; that even though the activities of the assessee could be brought under Brand Promotion service under Section 65(105) (zzzzq), but however, value of taxable service could only be 10% of the payment received as specified in the contract of

2011; that the payment to the assessee was made by the franchisee ICL for playing cricket which was not a taxable service; that promotional activities were only incidental to playing cricket; that therefore it is only the 10% for the payment that alone could be the taxable value of the service of brand promotion due to the fact that the major share was to be apportioned towards playing cricket, etc. He further pleaded that if 10% of that amount was taken as taxable value, the taxable value in respect of most of the assesseees would be less than Rs. 10.00 Lakhs which would entitle them for claiming the threshold exemption under the Notification No. 6/2005-ST.

5.2 Ld. Consultant during the course of hearing drew strong support from the decision of the Hon'ble High Court of Kolkata in the case of *Sourav Ganguly Vs. UOI* – 2016 (43) STR 482 (Cal.) to buttress his arguments that by virtue of the contract between the assessee and its franchisee, the assessee/player has to be treated as an employee of the respective franchisee, the assessee/player was not providing any service since his status was that of an employee, which could not be classified as BSS; and therefore even in the case on hand there could be no service tax liability. It was pointed out that the Commissioner (Appeals) had held, in one of the cases, that the appellant/player was an employee of the franchisee. In support, Ld. Consultant relied on the order of co-ordinate Bench of CESTAT in the cases of *Shri Karan Sharma Vs. CCE & ST, Meerut* – Final Order No. 70455/2018 dated

10.01.2018 and *CCE, Goa Vs. Swapnil Asnodkar* – 2018 (10) GSTL 479 (Tri.-Mum.).

5.3 Ld. Consultant further argued that the contentions of the department that the purpose of IPL was for commercial venture and to promote brand was incorrect because, the IPL tournament has been recognized as a sporting event by the Hon'ble Delhi Bench of the CESTAT in the case of *Hero Motocorp Ltd. Vs. CST, Delhi* – 2013 (332) STR 371 (Tri.-Del.) which has been approved by the Hon'ble Supreme Court in 2016 (44) STR 159 (S.C). The Ld. Consultant also drew our attention to the CBEC Circular dated 26.07.2010 which in fact has also been referred to by the Hon'ble High Court of Kolkata (supra). Ld. Consultant also relied on the following decisions to support his contention that a composite contract is required to be bifurcated in order to arrive at the taxable value of the services

- a. *National Institute of Bank Management Vs. CCE, Pune*  
2013 (32) STR 340 (Tri.-Mum.)
- b. *Vikas Coaching Centre Vs. CCE, Guntur*  
2011 (22) STR 650 (Tri.-Bang.)

5.4 On the allegation of brand promotion of the franchisee, the Id. Consultant drew support from the decision of the Delhi Bench of the Tribunal in the case of *Peoples' Automobiles Ltd. Vs. CCE, Kanpur* – 2011 (24) STR 635 (Tri.-Del.) to say that using recipient's brand name while providing a service to them would not mean using the recipient's brand name for providing the service.

5.5. With regard to the next batch of appeals pertaining to the period 2011-12 the demand for which were raised under the Brand Promotion service, the Id. Consultant reiterated his primary contention that by virtue of employer-employee relationship as laid down by the Hon'ble High Court of Kolkata, there is no liability under service tax. It was his further contention that the prize money was an amount paid by BCCI to each of the assesseees/players at the end of each season on the basis of the standing of the players' team and is not at all paid by the franchisee of the respective assessee and therefore the same had nothing to do with the alleged services rendered by the assessee/players to his respective franchisee. This prize money was therefore required to be excluded from the taxable value.

6. Per contra, Ld. DR, Shri K. Veerabhadra Reddy primarily contended that there was no employer- employee relationship between the franchisee and the assesseees since a player's duty is to support/promote the business of M/s. ICL. He also contended interalia that once a player signs the contract, he has too little choices other than promoting the brand of the franchisee; that a player's primary activity is the brand promotion; that cause-4 of the agreement clearly points out to the above; that in terms of clause-5 of the agreement a player is obliged to wear the team clothing as per the choice of the franchisee; that from the definition of BAS of the taxable activity as per Section 65 (105) (zzzzq), the activity of a player as per the agreement being in connection with the business of M/s. ICL, is

nothing but a provision of BSS, etc. He also further pointed out at the findings of the original authority wherein, interalia, it is observed that the player of the repute of an international cricketer, wearing the team clothing which sports the name of the brand of cement manufactured by M/s. ICL gets a boost to its brand value and thereby the brand image of cement gets enhanced; the intention of M/s. ICL in participating in Indian Premiere League (IPL) is purely commercial in nature; participation of a player in IPL representing Chennai Super Kings owned by M/s. ICL by sporting the attire given by M/s. ICL and taking part in various promotional activities only enhances the brand image of the cement; that such activity of the assessee was nothing but services rendered to enhance the brand value and thereby the business of M/s. ICL, etc. In the same paragraph, the adjudicating authority holds that the assessee had thus rendered his services in promoting the business of M/s. ICL, the franchisee owners of Chennai Super Kings in the IPL, a taxable activity under BSS. With regard to the demand under Business Promotion Services for the period post 01.07.2010, Ld. DR relied on the findings of the first appellate authority.

**Our Analysis and Findings:**

7.1 The period of dispute in all the above appeals is 2008-09 to 2010-11; upto 30.06.2010 the service tax was fastened by categorizing the service under BSS whereas, for the period 01.07.2010 to 31.03.2011, the demand is raised by categorizing the same under Business Promotion Service.

7.2 The genesis of the dispute is the tripartite agreement between the Board of Control for Cricket in India (BCCI), franchisee and the assessee the terms and conditions of which are common in respect of all the players/assesseees except the remuneration. On a perusal of the above tripartite agreement titled "Indian Premiere League Playing Contract" (Contract in short) it clearly emerges that it is the assessee who is recognized as a player first. There is also one another agreement between the franchisee and the assessee wherein also, an assessee is recognized as a player, clause -2 of this agreement even makes it all the more clear that the franchisee is engaging player as a professional cricketer who shall be employed by the franchisee. From this, it is abundantly clear that a person who has earned the reputation and recognition as a player is employed by the franchisee and it is not the other way round. The Revenue while referring to clause-5 of the contract wants to impress that by virtue of the dress code, a player is obligated to his franchisee. On going through the above clause, we find that the contract between the parties also provides a free hand in terms of clauses 5.2, 5.3, 5.4 and more importantly, 5.5, which prohibits commercial usage of such supplied clothing. Therefore, if the same is considered as a binding condition, then it's all the more strengthens the bondage of employer-employee relationship and we do not see anything wrong with employer prescribing uniform code with his employees. After carefully considering the facts of the case, we find that the employer-employee

relationship cannot be disputed and that therefore, the decision in the case of *Sourav Ganguly Vs. UOI* – 2016 (43) STR 482 (Cal.) relied on by the Ld. Consultant for the assesseees which decision has been followed in *Shri Karan Sharma Vs. CCE & ST, Meerut* –and *CCE, Goa Vs. Swapnil Asnodkar* (supra) is squarely applicable to the present case also.

7.3. A set of services alleged to be falling under BSS by the Revenue is also held to be covered under another set of services namely Brand Promotion Services. Admittedly, the brand promotion service was introduced w.e.f. 01.07.2010 and as observed as having been argued by the Ld. DR in paragraph-6 above of this order, cannot be made use to fit into another service ie., the categorization of the same set of activities under two different services for two different periods is not permissible. Having taxed under BSS, the Revenue should not have changed its stands for a different period when there is no change in the nature of services alleged.

7.4 On an overall analysis and in view of our findings herein above, we find that the decision of the Hon'ble Kolkata High Court in the case of *Sourav Ganguly* (supra) is required to be followed, there exists employer-employee relationship, the players are paid remuneration and therefore, there is no service which is liable to be brought under the tax net for both the periods under the alleged heads. In view of the above, this ground of the department appeals are liable to be dismissed, which we hereby do, for the same reasons, there cannot be

liability under BPS and consequently, the assessee's appeals are required to be allowed and the same are allowed.

7.5 The next point urged on behalf of the assessee is that the working of the taxable value where the Revenue sought to include, for the year 2011-12, the prize money. It is not disputed by the Revenue that the prize money was not given by its franchisee, it's rather the money received from BCCI directly for winning and not towards any services. Hence, we are of the view that the prize money could never be included in the taxable value. But, however, since we are holding that there was no service at all, the above question is just academic.

8. In the result, all the assessee's appeals are allowed and all the Revenue appeals are dismissed.

9. We find that the prayer for amendment of the cause title in the miscellaneous applications filed by the Revenue needs to be amended in accordance with the change in the jurisdiction of the Revenue from CCE & ST, Chennai to the Commissioner of GST & CE, Chennai South Commissionerate, MHU Complex, 692, Anna Salai, Nandanam, Chennai-600035. Accordingly, all the miscellaneous applications for change of cause title are allowed.

(Order pronounced in the open Court on 30-042019)

(P.DINESHA)  
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)  
MEMBER (TECHNICAL)

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