CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 42458 of 2015

(Arising out of Order-in-Appeal No. 218/2015 (STA-II) dated 25.08.2015 passed by Commissioner of Service Tax (Appeals), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. ITC Ltd. **...Appellant**
SBU-Packaging and Printing,
Post Box No. 2277,
Thiruvottiyur,
Chennai – 600 019.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

With

i. Service Tax Appeal Nos. 40696,40697 /2016 (M/s. ITC Ltd.)
ii. Service Tax Appeal No. 40936/2016 (M/s. ITC Ltd.)

APPEARANCE:

For the Appellants : Ms. M. Mythili, Advocate
For the Respondent : Mr. N. Satyanarayana, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41375-41378 / 2025

DATE OF HEARING : 22.07.2025
DATE OF DECISION : 26.11.2025

Per Mr. VASA SESHAGIRI RAO

The present appeals are filed by ITC Packaging and Printing Division, Chennai ['Appellant' for Short] arising from Order-in-Appeal ['impugned Order" for short]

confirming demands of service tax, interest and penalty in respect of foreign currency payments made by the appellant during the period 2005–2006 to 2008-09, to various foreign entities for different services. There are three other Appeals of the same Appellant on the same issue for different Tax periods emanating from the issue of SCN/SOD listed below. They are all grouped together for a common decision.

Sl. No.	APPEAL No.	Period	OIA	SCN No & date	Amount
1	ST/42458/15	April 2005 to March 2009	218/2015 dt 25.08.2015	35/2010 dt 23.04.2010	Rs.2,68,037/- & Penalty u/s 78 of FA 1994
2	ST/40696,40697/ 2016	Oct 2011 to March 2012 &July 2012 to March 2013	395 to 397/2015	63/2013 dt 21.10.2013 11/2014 dt 06.05.2014, 39/2014 dt 10.09.2014	Rs.1,22,768/- Rs 64,232/- Penalty u/s Sec 76
3	ST/40936/2016	April 2013 to Sep 2014	11/2016 dt 17.02,2016	8/2015 dt 17.04.2015	Rs.97,054/- Penalty u/s Sec 76

2.1 The facts briefly stated as reflected in the Appeal records are that the appellant is engaged in printing and packaging business. Between April 2005 and March 2009, Oct 2011 to March 2012, July 2012 to March 2013 & April 2013 to Sep 2014 the appellant made outward remittances in foreign currency towards (i) annual membership fees / renewals, participation fees to the IPG, IFPN and BSC; and (ii) pre-shipment inspection fees to Intertek.

2.2 The Department issued various show cause notices/SOD's alleging that the payments constituted taxable imported services for which the appellant was liable under the import/reverse-charge provisions introduced in 2006 and proposed recovery of service tax, interest and imposition of penalties as in the Table above.

2.3 The Adjudicating Authority confirmed the demand along with interest and imposed penalties. Aggrieved, the appellant filed Appeals before the Commissioner (Appeals) who after due process of Law, confirmed the demands as shown in the above table.

2.4 Being aggrieved, the Appellant has filed 4 Appeals as detailed in the above Table before this Tribunal.

3. The Ld. Advocate Ms. L. Mythili appeared for the Appellant and advanced her submissions. The Ld. Authorized Departmental Representative Mr. N. Satyanarayana, appeared for the Respondent Department and presented the Revenue's case.

4. The Ld. Advocate Ms. L. Mythili, made the following submissions on behalf of the Appellant: -

4.1 The organizations to which the Appellant was making the FOREX remittances were not rendering any taxable service to the Appellant.

4.2.1 The payments made to certain organizations is the Appellant's share to be paid as a member of the said organizations/ Associations, which have been formed for furthering common objectives of the Appellant and other member entities.

4.2.2 IPG and IFPN are world-wide Associations in which the Appellant is a member. They are associations in which technical know-how and latest developments in paperboard manufacturing are shared. The payment made by the Appellant is a part of the collective contributions required for running the Association, for achieving the shared objective and mutual benefit of the members.

4.2.3 The remittances made to each of the aforesaid organizations are governed by the doctrine of mutuality, as there is no service being rendered and Service Tax is not attracted on Members contribution to the club, as principles of mutuality will apply.

4.3 The British Safety Council is an Association of which the Appellant is a member conducts a contest for choosing winners of British Sword of Honour Award. This honour is awarded to the Company which is found to be adopting the best safety standards. For holding this contest, a participation fee is charged from the contestant by the British Safety Council. This body chooses the winners amongst the contestants with regard to the safety standards maintained by them. The British Safety Council is also not rendering a taxable service as they are only evaluating the contestants on industrial safety practices.

4.4 The demand of Service Tax under Technical Inspection and Certification services was upheld on the ground that the pre-shipment inspection conducted by M/s. Intertek International, UK on behalf of the Government of Uzbekistan was not shown to be a sovereign function attracting Service Tax merely on the ground that the Appellant had not produced any contract or agreement between the Government of Uzbekistan and Intertek International. The pre-shipment inspection is not a service required by the Appellant but it is a requirement for the Government of Uzbekistan. The Government of Uzbekistan has out-sourced the function of pre-shipment inspection to

another body and Intertek is only acting on behalf of the Government of Uzbekistan.

4.5 The SCN issued for the period 2006-07 (from 19-4-2006) to 2008 is beyond the normal period of limitation. The issues raised in the present case involve essentially questions pertaining to interpretation of the provisions of the Finance Act, 1994. It is now well settled by a plethora of judgments that the extended period of limitation is not invokable where the issue involved is purely one of interpretation of legal provisions. It is further submitted that neither the show cause notice nor the Impugned order have stated any commission or omission on the part of the Appellant which would constitute deliberate suppression of facts with intent to evade payment of Service Tax.

4.6 Since the demand itself is not sustainable, no interest or penalty will apply and prayed that Orders-in-Appeal stated above be set aside to the extent appealed against and the Appeal allowed with consequential relief.

5. *Per Contra*, the Ld. Authorized Departmental Representative Mr. N. Satyanarayana supported the reasoning and conclusions of the Lower Appellate authority. He submitted that the impugned services clearly fall within

the ambit of the taxable category as defined under the Finance Act, 1994, and that the appellant had not disclosed the true nature of the transactions to the Department. He argued that the extended period of limitation has been rightly invoked, since the non-payment of tax came to light only upon departmental verification. It was further contended that the doctrine of mutuality has no application to the period after 01.07.2012, in view of the amended definition of 'person' under Section 65B(37) and the comprehensive coverage of 'service' under Section 65B(44)." He therefore prayed that the impugned orders may be upheld and the appeals dismissed as devoid of merits.

6. We have heard the contentions of both the sides, and on a careful examination of the records, Invoices, the relevant provisions of the Finance Act, 1994, and the judicial precedents placed before us.

7. We frame the following questions for determination: -

i. Whether the annual membership / subscription /participation fees paid in foreign currency to (a) IPG, and b) IFPN during the period 2005–2014 are exigible to service tax under Finance Act 1994? In particular, whether such fees is taxable where the services are

performed and consumed abroad/in India and where the relationship is one of mutuality?

ii. Whether the participation fees paid to contest in the annual Sword of Honour in foreign currency to British Safety Council during 2007–2018 & 2008-2009 are exigible to service tax under Finance Act 1994, in particular, where the relationship is one of mutuality?

iii. Whether the pre-shipment inspection charges paid to Intertek International Ltd. U.K. are exigible to service tax for the period from 2005 to 2009 and whether liability rests Indian recipient under reverse-charge basis?

iv. Whether the Department is justified in invoking extended period for imposing penalties in respect of the above payments for the period 2005–2009?

v. Whether Section 80 of Finance Act, 1994 can be invoked in this case for waiver of penalties?

8. In order to appreciate the rival contentions, it is necessary to advert to the relevant statutory provisions contained in the Finance Act, 1994, as it stood during the material period. (i.e. for the period of 2005–2014): -

A. As per Section 66A of the said Act,

"(1) Where any service specified in clause (105) of Section 65 is:

(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his

permanent address or usual place of residence, in a country other than India, and

(b) received by a person (herein referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient hade himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:"

B. Further, as per Rule 2(1) (d) (iv) of the Service Tax Rules, 1994, person liable for paying Service tax" *means - "in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under Section 66A of the Act, the recipient of such service."*

C. As per Section 65(105)(zzze) of the Finance Act, 1994, Taxable service means *any service provided to its members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount".*

D. As per Section 65(25a) of the Finance Act, 1994, Club or Association" means- any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include –

i. anybody established or constituted by or under any law for the time being in force; or

ii. any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or

iii. any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or

iv. any person or body of persons associated with press or media.

E. Section 65 (25aa) "club or association" means any person or body of persons providing services, facilities or advantages, primarily to its members, for a subscription or any other amount, but does not include—

i. anybody established or constituted by or under any law for the time being in force; or

ii. any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or

iii. any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or

iv. any person or body of persons associated with press or media;]

F. As per Section 65(105) (zzi) of the Finance Act, 1994, Taxable Service means - *any service provided or to be provided to any person, by a technical inspection and certification agency, in relation to technical inspection and certification agency, in relation to technical inspection and certification."* As per Section 65(108) of the Finance Act, 1994 Technical inspection and certification means - *"inspection or examination of goods or process or material or information technology software or any immovable property to certify that such goods or process or material or information technology software or immovable property qualifies or maintains the specified standards, including functionality or utility or equality or safety or any other characteristic or parameters, but does not include any service in relation to inspection and certification of pollution levels."*

G. As per Board's Master Circular No. 96/7/2007 dated 23.08.2007 (Reference Code No. 999.01), only the services rendered by Sovereign / Public authority is exempted from payment of service tax.

H. As per Section 65B (44) of the Finance Act, 1994, "service" means *any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

(a) an activity which constitutes merely, —

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or (iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment; (c) fees taken in any Court or tribunal established under any law for the time being in force. The services provided by the assessee are not covered under Section 66 D (Negative list of services) of the Finance Act, 1994.

9.1 **IPG/IFPN participation / technical meeting fees: -**

The impugned order in Paras 8, 10 & 11 of the Order held that

> *"**8**. ……They made contribution for the expenses to hold meeting among members. ……..Therefore, any idea to improve quality of their business will commercially benefit them. For such an eventual commercial benefit only, the appellant becomes a member of the said Association/Network and makes contribution to it. Hence, it is evident that any idea to improve quality of business is a service provided by the said Group to the appellant.*
>
> *…..*
>
> ***10**. It is not only the services but also any advantage provided by the Club or Association to its members is a taxable service. Hence, it is evident that the activities provided by IPG and PTDNP-Indonesia/ IFPN are the advantages to the appellant. Negative List based service tax regime is broad based one and makes service provided by one person to another person as liable to service tax. In*

> *this case, the appellant and IPG and PTDNP-Indonesia/ IFPN are different legal persons. Hence, the impugned services are liable to service tax.*
> ***11**. Regarding the case laws cited by the appellant in support, I observe that these case laws pertain to provisions of the Act as it stood before 1.7.2012. However, the present dispute involves post 1.7.2012 period. Hence, these case laws are not of any assistance to the appellant."*

9.2 The Appellant has contended that IPG/IFPN are nothing but Associations that do not provide any service, facilities or advantages to its members for a subscription or for any payment. Individual members of the Association make contributions to meet the expenses for holding meetings in order to have a mutual exchange of ideas and with a view to improve quality and cost effectiveness of the products manufactured by them. Hence, the relationship of a Service provider and a service recipient is absent. In this connection, the Appellant relied upon the judgment of the Calcutta High Court in the case of *Saturday Club Ltd. Vs. Assistant Commissioner of Service Tax* - reported in *2005 (180) ELT 0347 (Cal.) = 2006 (003) STR 0305 (Cal.),* wherein it was held as under:

> *"Therefore, principally there should be existence of two sides/entities for having transaction as against consideration. In a members' club there is no question of two sides. 'Members' and 'club' both are same entity. One may be called as the principal when the other may be called as agent, therefore, such Transaction in between themselves can/not be recorded as income, sale or service as per applicability of the revenue tax of the country".*

9.3 A Similar order was passed by the Hon'ble Gujarat High Court in the case of *Sports Club of Gujarat Ltd. Versus Union of India 2010 (20) S.T.R. 17 (Guj.)*.

9.4 Another contention of the appellant is that taxable services were being rendered by International Packaging Group of which the Appellant is a member and as the services having been rendered entirely outside the country, would not attract Service Tax.

9.5 We have given our careful consideration to the rival submissions made above and find that Participation fees and technical meeting charges paid to IPG/IFPN were, on the basis of the documents placed before us, for attendance at periodic technical meetings held outside India.

9.6 We observe that the Department has not produced any tangible material to demonstrate that International Packaging Group (IPG) or International Packaging Forum Network (IPFN) were engaged in providing continuous or structured technical consultancy, data analysis, or knowledge-transfer services which were received or consumed within the taxable territory. The payments made by the appellant are in the nature of membership

renewals and participation fees in international forums held abroad.

9.7 In this regard, we have perused the decision of *State of West Bengal & Ors. Versus Calcutta Club Limited* and *Chief Commissioner of Central Excise and Service & Ors. Versus M/s. Ranchi Club Ltd. 2019 (10) TMI 160 - Supreme Court (LB)* wherein it was held that: -

> *"**80**. It will be noticed that "club or association" was earlier defined under Section 65(25a) and 65(25aa) to mean "any person" or "body of persons" providing service. In these definitions, the expression "body of persons" cannot possibly include persons who are incorporated entities, as such entities have been expressly excluded under Section 65(25a)(i) and 65(25aa)(i) as "anybody established or constituted by or under any law for the time being in force". "Body of persons", therefore, would not, within these definitions, include a body constituted under any law for the time being in force.*
>
> ***81**. When the scheme of service tax changed so as to introduce a negative list for the first-time post 2012, services were now taxable if they were carried out by "one person" for "another person" for consideration. "Person" is very widely defined by Section 65B(37) as including individuals as well as all associations of persons or bodies of individuals, whether incorporated or not. Explanation 3 to Section 65B(44), instead of using the expression "person" or the expression "an association of persons or bodies of individuals, whether incorporated or not", uses the expression "a body of persons" when juxtaposed with "an unincorporated association".*
>
> ***82**. We have already seen how the expression "body of persons" occurring in the explanation to Section 65 and occurring in Section 65(25a) and (25aa) does not refer to an incorporated company or an incorporated cooperative society. As the same expression has been used in Explanation 3 post-2012 (as opposed to the wide definition of "person" contained in Section 65B(37)), it may be assumed that the legislature has continued with the pre-2012 scheme of not taxing members' clubs when they are in the incorporated form. The expression "body of persons" may subsume within it persons who come together for a common purpose, but cannot possibly include a company or a registered cooperative society. Thus, Explanation 3(a)*

to Section 65B(44) does not apply to members' clubs which are incorporated.

***83**. The expression "unincorporated associations" would include persons who join together in some common purpose or common action – see ICT, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balkrishna (1960) 3 SCR 513 at page 519-520. The expression "as the case may be" would refer to different groups of individuals either bunched together in the form of an association also, or otherwise as a group of persons who come together with some common object in mind. Whichever way it is looked at, what is important is that the expression "body of persons" cannot possibly include within it bodies corporate.*

***84**. We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men's Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form."*

9.8 From the ratio of the above decision, it is clear that the demand for the period prior to 1.7.2012 on IPG/IFPN is unsustainable as there was no evidence that these bodies are mere association of persons and not imported neither have rendered any services to the appellant and the condition of relationship of service recipient with the service provider is absent.

9.9 Respectfully following the judgment of the *Calcutta High Court in Saturday Club Ltd. v. Assistant Commissioner, 2005 (180) E.L.T. 437 (Cal.),* as affirmed by the Hon'ble Supreme Court in *State of West Bengal v. Calcutta Club Ltd., 2019 (29) G.S.T.L. 545 (S.C.),* we agree that no service tax was leviable on transactions between a club/association and its members during the pre-01.07.2012

period, as the doctrine of mutuality applied and the club and its members were not treated as distinct persons.

9.10 Therefore, we hold that the that the FOREX payments made to IPG/IFPN are exempt from payment of service Tax for the period Prior to 1.7.2012 (Positive Tax Regime).

9.11 Further, we note that with the advent of the negative-list regime from 1 July 2012, the service-tax law underwent a conceptual transformation. The charging section, Section 66B of the Finance Act, 1994, read with Sections 65B(37) and 65B(44), brought within the net all services provided or agreed to be provided by one person to another for consideration, except those specified in the negative list under Section 66D. The newly inserted Explanation to the definition of "Club or Association" made it explicit that, for the purposes of the Finance Act, a club or association and its members shall be treated as distinct persons. Simultaneously, Section 65B(37) defined "person" to include an association of persons or body of individuals, whether incorporated or not, thereby statutorily deeming such associations as separate juridical entities capable of providing services to their members.

9.12 We note that the CBEC Education Guide, June 2012 (para 2.4.2) also clarified that "an unincorporated association or body of persons and a member thereof are to be treated as distinct persons; accordingly, any provision of service by an association to its members shall be taxable."

9.13 The Lower Appellate Authority has held the case Laws cited by the Appellant are not applicable in view of the explanation to the definition of Club or Association Service after 01.07.2012. Further by virtue of the Explanation and the expanded definition of "person," the relationship between a club and its members has been legislatively bifurcated into two distinct legal entities for the limited purpose of taxation.

9.14 We find that consequently, for the post-1 July 2012 period, once the club, association, or similar body receives consideration from its members for facilities or advantages provided, such activity constitutes a "service" as defined under Section 65B(44), unless specifically exempted. The doctrine of mutuality, though still relevant under general law, stands overridden by the explanation inserted w.e.f. 01.07.2012. for the purpose of service-tax levy under the negative-list regime.

9.15 However, with effect from 01.07.2012, the Finance Act was substantially amended: Section 65B(37) defined "person" to expressly include an association or body of persons, and Section 65B(44) defined "service" as any activity carried out by one person for another. An Explanation was also inserted deeming a club and its members to be distinct persons.

9.16 We note that although the statutory definition of 'club or association service' in Section 65(25a) and 65(105)(zzze) of the Finance Act, 1994 was amended by insertion of an Explanation purporting to treat clubs and their members as distinct persons, the Hon'ble Supreme Court in State of *West Bengal v. Calcutta Club Ltd., 2019 (29) G.S.T.L. 545 (S.C.)* (Three-Judge Bench), after taking full cognizance of these very amendments, has categorically held that the doctrine of mutuality continues to apply and that a club and its members cannot be treated as distinct persons either prior to 01.07.2012 or thereafter. The Hon'ble Court held that the Explanation introduced by the Finance Act did not alter the foundational mutuality principle and that no service tax can be levied on services by a members' club to its own members, both under the pre-negative list regime and even after the introduction of the negative list on 01.07.2012.

9.17 In view of the binding declaration of law by the Hon'ble Supreme Court, and following the principle of judicial discipline, we hold that services provided by a club or association to its own members remain outside the ambit of service tax, notwithstanding the amendments introduced in the statute. We also observe that the ratio of Calcutta Club has been consistently followed by several High Courts i.e. *M/s. Ootacamund Club Versus The Principal Commissioner of GST & Central Excise, Coimbatore 2022 (2) TMI 735 - MADRAS HIGH COURT* and several Benches of the Tribunal across the country, thereby affirming that the doctrine of mutuality continues to render such intra-club transactions non-exigible to service tax even beyond 01.07.2012.

10.1 Next, we take up the issue of payment in FOREX to British Safety Council for participating in the sword of honour contest held abroad.

10.2 We observe that the Lower Appellate Authority in Paras 9,10,12 held that: -

> *"**9**. The appellant have contended that British Safety Council holds contest for choosing the winners of 'British word of Honour Award' and to participate in such contests, they paid the participation fee. The said Award is a prestigious International Health and Safety Accolade which many parties strive to achieve. From these submissions it is evident that what was paid by the appellant was participation fee for participating in a contest for winning*

an award, which, if won, would bring accolades and consequential commercial advantage to the appellant.
***10**. From the above facts, it is evident that services which will provide commercial advantages to the appellant were provided by the said Club or Association or Council to them. However, the appellant contests that the said activities cannot be termed as service provided by these bodies to bring the same under Club or Association Service.*
…….
***12**. A plain reading of the said provisions reveals that not only the services but also any advantage provided by the Club or Association to it's members is deemed as taxable service. Hence, it is evident that the activities provided by International Packaging Group and British Safety Council are the advantages to the appellant and hence are liable to service tax under the said provisions."*

10.3 The Appellant on the other hand adverted to that: -

a. The Sword of Honour is a prestigious International Health and Safety accolade which many associations strive to achieve. This Honour is awarded to the Company which is found to be adopting the best safety standards. For holding this contest, a participation fee is charged from the contestant by the British Safety Council. This body chooses the winners amongst the contestants with regard to the safety standards maintained by them. The finding of the Commissioner (Appeals) that the British Safety Council's Award being prestigious, participation in the contest was for the consequential, commercial advantage of the Appellant, even if taken as a correct observation, does not make the Appellant a

recipient of any services from the British Safety Council.

b. In any event, even assuming without admitting that British Safety Council is a Club or Association of which the Appellant is a member, since the entire activity of the British Safety Council is carried out outside India, the question of levying of Service Tax on the said activity would not arise. Hence, the demand made on the remittances under this head is also without the authority of law and is therefore liable to be set aside.

10.4 We find from the website of British Safety Council that The Sword of Honour is an award scheme available to organisations that have achieved a five-star rating in their Five Star Occupational Health and Safety Audit. A separate award process is independently adjudicated and only those submissions from five-star organisations, which meet defined criteria, are awarded the sword of honour status. A true recognition of excellence in health and safety management.

10.5 We find that on the face of the present record, the appellant has produced Application form for participation in the contest, remittance advices which indicate

international membership benefits. The Department has not produced specific evidence that the particular payments in question were for services performed in India or that the supply consisted of services consumed in India. There is no evidence on record that during the years of participation in the contest, whether the Appellant have been awarded the honour in the contest to show that the services were imported into India.

10.6 We find that the payments made by the appellant in foreign currency to the British Safety Council, U.K. for participation in the 'Sword of Honour' contest were payments for entry/participation fee and for adjudication conducted by the BSC abroad. There is no evidence on record that the appellant paid such fees as a member for member-only reciprocal benefits nor is there any evidence of continuous technical consultancy or online services supplied into India by BSC. For the period prior to 01.07.2012 the doctrine of mutuality (as enunciated in Saturday Club Ltd. discussed *supra*) protects genuine member-to-club reciprocal transactions; conversely, purely commercial supplies are taxable only if they fall within the specific entries in Section 65(105). On the basis of present material, the transaction is an overseas contest/award adjudication performed outside

India and does not fall within any taxable entry for the pre-01.07.2012 period.

Accordingly, the demand on this score is unsustainable and is set aside. Ordered accordingly.

Question No. 3 — Intertek pre-shipment inspection charges

11.1 The Lower Appellate Authority in Para 15(i) held that: -

> *"15(i)As far as pre shipment service provided by M/s.Interek International Limited is concerned, the appellant's plea is that the same was a Sovereign function provided on behalf of the Government of Uzbekistan and hence this is covered by Board's Circular No.96/7/2007-ST dt.23.8.2007 as amended by Circular No.98/1/2008-ST dt.4.1.2008. The relevant clarification vide Board's Circular dt.23.8.2007 on service provided by the Sovereign/Public Authorities.*
> *15(ii). ……. M/s. Intertek International Limited is not a sovereign authority. Nor this company is a Public Authority of the Government of Uzbekistan. I notice that M/s.Intertek International Limited are only a contracted party of Uzbekistan Government. Hence, this case is not governed by the above clarification. Incidentally I note that the above clarification was not amended by Board's Except the above Circular No.98/1/2008-ST dt.4.1.2008 as claimed by the appellant. contention, no other contention was raised by the appellant to repel the taxability of the impugned pre shipment service. I find no reason to interfere with the impugned order confirming the demand of service tax along with appropriate interest in this regard."*

11.2 But the Appellant contented that the Government of Uzbekistan has out-sourced the function of pre-shipment inspection to another body which is Intertek International, UK. There is no privity of contract between the Appellant and Intertek International, UK. Hence, there is no relationship of service provider and service recipient between

Intertek International, UK and the Appellant . The fees paid for compliance of the said purpose can only be treated as towards a sovereign function which would not attract Service Tax in terms of Board's Circular No. 96/7/2007 dated 23-8-2007 as amended by Circular No. 98/1/2008 ST dated 4 1-2008. Hence, the demand under the above head is also not legally tenable and is liable to be set aside.

11.3 We have examined the arguments of both the sides in this regard and find that the levy is for payments made by the appellant to Intertek Testing Services (U.K.) Ltd. for pre-shipment inspection and certification of Import consignments. The Department has classified the activity under “Technical Inspection and Certification Service” as defined in Section 65(105)(zzi) of the Finance Act, 1994, read with Section 65(108) and has demanded service tax from the appellant under the reverse-charge mechanism in terms of Section 66A. But the appellant has contended that the inspection was pursuant to the requirements of the Government of the Republic of Uzbekistan, and that Intertek (U.K.) acted as a designated agency of that Government, and therefore the function was in the nature of a sovereign or statutory certification not amenable to service tax.

11.4 On careful consideration, we find that the record does not disclose any notification or bilateral arrangement conferring statutory authority on Intertek (U.K.) to act as an instrumentality of the Uzbek Government. The engagement between the appellant and Intertek (U.K.) emanates from a commercial contract under which the appellant obtained certification for its import consignments in order to facilitate acceptance of goods in the importing country. The inspection and certification were performed by a private agency for consideration; hence, the activity bears the essential character of a technical inspection and certification service as understood in Section 65(108). It cannot, therefore, be treated as the discharge of a sovereign or statutory function.

11.5 We also find that such services, even when required by foreign governments for export compliance, remain taxable in India under reverse charge if the recipient is located in India and the service is used in relation to Indian imports.

11.6 We find that the above activity, by its very nature, is commercial and not sovereign. Consequently, the payments made to Intertek Testing Services (U.K.) attract service tax under the category of Technical Inspection and

Certification Service on a reverse-charge basis for the period in dispute.

12.1 On the issue of extended period of limitation and penalties, the impugned Order has discussed at length in Para 17(ii) that: -

> *"the non-payment of service tax was detected by the officers of the Department during the audit and subsequent investigation carried out by the officers. But for the audit and investigation the evasion of service tax by the appellant would not have come to light. Moreover, it is not the case of the appellant that they informed the relevant details, reasons for short payments of service tax on their own or they entertained any bonafide doubt in respect of any of the impugned issues."*

12.2 The Department has relied upon the following decisions to fortify the decision of taxability: -

The Tribunal in *S.K.Jalendra & Associates Vs. CCE, Jaipur [2012 (26) STR 135]* has held that: -

> *"7.4 In the third issue, the grievance of the Appellant is that Show Cause Notice was time-barred. We proceeded to enquire the date of visit by the investigating agency and date of issuance of the Show Cause Notice. Being guided by the Apex Court's judgment in C.C.E., Visakhapatnam v. Mehta & Co. reported in 2011 (264) E.L.T. 481 (S.C.), we are able to find that when investigation was made escapement of tax of levy come to the knowledge of the department from the documents and information gathered during investigation on 20-1-2005. That date is material date since that was date of knowledge, to decide the issue of limitation following Apex Court decision cited above. We examined the case of the Appellant in that light. The Appellant having been issued Show Cause Notice on 22-6-2006 i.e. after a year of the visit by the investigating agency the proceeding is not time-barred for escapement of levy and for the reasons attributable to the Appellant who made a gross receipt of Rs. 41,34,000/- during the impugned period. There is no provision in law prescribing time limit for issuance of the Show Cause Notice except law stating that the Show Cause Notice in normal cases is issued within one year of the relevant date (relevant date*

explained in law) and in cases of subterfuge to Revenue within five years of the relevant date. Apex Court in para-24 of the judgment dealt the cause of action in the case of Mehta & Co. in the decision supra. The Appellant falls within the fold of para-24 of the judgment of the Apex Court. Therefore issuance of the Show Cause Notice dated 22-6-2006 is well within time for the period escaping levy. In the present case, limitation can be reckoned from the date of knowledge of the department on 20-1-2005 giving rise to cause of action. Following the ratio laid down by the Apex Court, we hold that the Adjudication is not time-barred. Issue No. 3 is thus answered as above having relevance to issue No. 1."

The Tribunal in *Shilpa Printing Press Vs. CCE, Mumbai [2013(297) ELT 417]* has held that invocation of extended period justified with reference to the facts in the case. Relevant portion is extracted for ease of reference: -

"19. The next point which relates to the point of limitation of one year to be counted from 8-9-1998. The argument is essentially on the ground that the premises were searched on 8-9-1998 and at least on that date all the necessary facts came to the knowledge of the department, even assuming that the department was not aware of those facts. Undisputedly, the premises of the appellants were searched on 8-9-1998 and panchanama in that regard was recorded. However, the facts which were revealed to the department on 8-9-1998 related to the period April, 1997 to March, 1998. In other words, the relevant facts relating to a particular period were revealed to the department after the expiry of such relevant period. That was not the issue in Kushal Fertilisers (P) Ltd. matter decided by the Apex Court. Therein, the relevant period was 1990-91. The assessee therein, under their letter dated 22-1-1991 had informed Section Officer of the department that the assessee had been manufacturing M.S. conduit pipes and its production was exempt from payment of excise duty under Notification No. 202/88-C.E., dated 20-5-1988. They have further informed under their letter dated 29-4-1991 as well as letter dated 6-6-1991 that the officers of the department had been visiting the assessee's factory for inspection of their factory. It is therefore, clear that the necessary declaration in the said case was made by the assessee during the subsequent period of the relevant period and the show cause notice was issued on 28-3-1994. In those circumstances, the Apex Court held thus : "The requisite information was not only furnished on 22-1-1991, indisputably, the officers of the Central Excise

department made inspection of the factory and the books maintained by the appellant, including the production register, which must have disclosed the nature of the products from the factory in question. If the requisite information had been given to the authorities on 22-1-1991, the question which should have been posed and answered was as to whether despite such knowledge, the Commissioner of Central Excise could have proceeded on the basis that there had been a suppression on the part of the appellant". Undisputedly, in this case no information whatsoever relevant for initiation of action was submitted by the appellants during the period from April, 1997 to March, 1998. It is not the case of the appellants that during the said period there was any inspection of the appellants' premises. It is also not the case of the appellants that during the said period the departmental people had inspected the records maintained by the appellants. On the contrary it is an undisputed fact that there was search of the premises on 8-9-1998 and pursuant to that certain relevant facts were revealed to the department. Being so, it is a clear case of facts having come to the knowledge of the department pursuant to the efforts by the department and suppression thereof by the appellants. In these circumstances, therefore, the decision in Khushal Fertilisers (P) Ltd's case is of no help to the appellants. As far as the decision in Nizam Sugar Factory, it is essentially in relation to the issue as to whether the department can invoke the extended period of limitation by issuing second show cause notice in spite of the fact that the department had already issued first show cause notice relating to the subsequent period. Para 8 of the decision in Nizam Sugar Factory's case, discloses the same. The same has not revealed whatsoever in the case in hand. The last point which is sought to be raised is that there was no case for invocation of the extended period of limitation as no positive act which can disclose intention to evade payment of duty has been disclosed and mere inaction or failure on the part of the manufacturer cannot justify invocation of extended period of limitation. The proposition of law as is canvassed can hardly be disputed. However, the same has been considered with reference to the facts of the case. …."

Hence, invocation of extended period and imposition of penalty on the appellant under Section 77 and 78 of the Finance Act is justified.

12.3 The Appellant on the other hand submitted that: -

i. The impugned order has not brought out any commission or omission on the part of the Appellant which would constitute deliberate suppression of facts with intent to evade payment of Service Tax.

ii. The only finding of the Commissioner (Appeals) in this regard is that but for the audit and investigation, the evasion of Service Tax by the Appellant would not have come to light and that the Appellant had not informed the Department the reasons for short payment or that they entertained a bona fide doubt on the question of taxability of the Services in question. None of these constitute deliberate suppression of facts with intent to evade payment of service tax.

iii. Reliance was placed on the decision of the Tribunal in the case of *CCE Tirunelveli Vs. Global Soft* reported in *2011-TIOL-1409 CESTAT-Mad*., it has been held that mere failure to obtain Registration and pay Service Tax is not sufficient to hold that the assessee was guilty of suppression of facts *etc*., so as to invoke the extended period of limitation under proviso to Section 73 (1) of the Finance Act. This finding of the Commissioner (Appeals) runs counter to the decision cited above, apart from law laid down by the Hon'ble

Supreme Court and consistent view taken in the courts across the country with regard to the circumstances in which the extended period of limitation can be invoked.

iv. In the present case the Department's materials do not establish systematic concealment or mala fide suppression. Mere non-payment does not by itself establish suppression. Accordingly, extended limitation and penalty are not justified on the present record.

12.4 Now, we proceed to consider whether the extended period of limitation (and consequential penal consequences) has been rightly invoked by the Department. The alleged short-payment/non-payment came to light only pursuant to departmental audit and investigation; the appellant did not voluntarily disclose the disputed transactions nor did it place the relevant facts before the Department at any earlier point; or request for advance clarification was placed on record by the appellant; and the appellant has not pleaded a *bona fide* legal doubt on the taxability of the transactions.

12.5 We find that the proviso to Section 73(1) of the Finance Act substitutes the ordinary one-year limitation by a longer period where the short-payment arises by reason of

"fraud, collusion or any wilful mis-statement or suppression of facts … with intent to evade payment of tax". The expression "suppression of facts" is not apt to cover mere omission or bona fide error: it denotes deliberate non-disclosure of material facts with the requisite *mens-rea*.

12.6 We observe that the undisputed chronology demonstrates that: -

i. the irregularity was disclosed to the Department only after audit/investigation by departmental officers,
ii. the appellant did not proactively inform the Department and
iii. there is no evidence of any bona fide contemporaneous doubt or correspondence raised by the appellant seeking clarification of taxability.

Whereas here, we note that the Appellant kept the Department entirely in the dark and the non-payment would not have been revealed but for departmental intervention, the factual matrix is one which, on the preponderance of probabilities, establishes deliberate suppression with an intent to evade payment of tax. The Tribunal has applied these tests and sustained invocation of the extended period and penalty in analogous circumstances (*S.K. Jalendra & Associates v. CCE, Jaipur — CESTAT* relied upon by the LAA).

12.7 For these reasons, we hold that the invocation of the extended period of limitation by the LAA is legally tenable on the facts of this case. Further, the imposition of penalty is also sustainable. The appellant will be liable to pay tax for the extended period together with interest; penalty is confirmed under Section 78 of Finance Act, 1994 in respect of Appeal No. ST/42458/15.

Therefore, the Department's invocation of the extended limitation period is sustained and the penalty imposition is confirmed in principle. The appeal is accordingly rejected on the limitation & penalty issues.

13. Finally, we take up the question of waiver of penalty. The issue involved in the present case namely, the taxability of services rendered by clubs and associations to their members was a matter of protracted litigation across the country, and the legal position remained unsettled for several years. Even after the insertion of the statutory Explanation post 01.07.2012, the exact scope and effect of such amendment continued to generate divergent views among different judicial fora. A clear and authoritative exposition of the law emerged only with the judgment of the Hon'ble Supreme Court in *State of West Bengal v. Calcutta Club Ltd., 2019 (29) G.S.T.L. 545 (S.C.),* wherein the

doctrine of mutuality was reaffirmed and the levy itself was held to be unsustainable.

14. Considering that the period in dispute is from 2005 to 2014, i.e., much prior to the final settlement of the controversy by the Apex Court, we are satisfied that the Appellant had a reasonable cause within the meaning of Section 80 of the Finance Act, 1994 for the non-payment of tax. The imposition of penalty in such circumstances would be wholly unjustified. We therefore invoke Section 80 to waive the penalties imposed in the foregoing paragraphs.

15. To sum up, we hold that: -

i. The appeals are partly allowed as detailed in the Table below.

ii. The impugned orders confirming demand of service tax are set aside in respect of payments to IPG/IFPN and participation fees in respect of BSC for the period prior to 01.07.2012 and after 01.07.2012 in respect of IPG/IFPN. In respect of Intertek Testing the demand is confirmed along with interest.

iii. Invocation of extended limitation and imposition of penalty are upheld but penalty waived in terms of provisions of Section 80 of the Finance Act, 1994.

Sl. No.	Appeal No.	Period of Demand	Decision of LAA	Decision by Tribunal
1	ST/42458/15	April 2005 to March 2009	Demand Upheld by LAA	Demand confirmed only in respect of Intertek Testing and others dropped. Interest and penalty under Section 78 of FA 1994 is upheld. However, penalty is waived under Section 80 of FA 1994
2	ST/40696/16	2009-10 to 2011-12	Demand dropped beyond 18 months. *Oct 2011 to March 2012 Confirmed by LAA	No transaction for the period Oct 2011 to March 2012. Demand set aside.
3	ST/40697/16	April 2012 to June 2012	Held as time barred by LAA	No contest
4	ST/40697/16	July 2012 to March 2013	Upheld in by LAA	Only demand on IPG. Set aside
5	ST/40936/16	April 2013 to Sept 2014	Upheld by LAA	Only demand on IPG/IFPN post 01.07.2012. Set aside.

14. Thus, the Appeals are partly allowed on the above terms with consequential benefits, as per the Law.

(Order pronounced in open court on 26.11.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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