CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

SERVICE TAX APPEAL NO.51464 of 2017

[Arising out of Order-in-Original/Appeal No.208/S.T./D.L.H./2017-18 dated 29.05.2017 passed by the Commissioner of Service Tax (Appeals -1), Delhi].

M/s. Seble Cinema **...Appellant**
Mathura Road, Badarpur
New Delhi-110044

VERSUS

The Commissioner of Central
Excise & CGST, Delhi (East) **...Respondent**

APPEARANCE:

Mr. Dhruv Tiwari, Advocate for the appellant
Dr. Radhe Tallo, Authorised Representative for the Respondent

Coram:
HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION: 22/03/2023

FINAL ORDER NO.50552/2023

DR. RACHNA GUPTA

The appellant in the present case is the owner of Cinema hall and is engaged in the business of exhibiting films in its theater. He entered into the agreements with the film distributors. However, three show cause notices have been served upon the appellant demanding the service tax from the appellant under renting of immovable property service alleging that by way of the agreements with the distributor appellant has rented its theater for screening films. The details are given below:-

Show Cause Notices	Dated 21.04.2014	Dated 22.04.2015	Dated 19.02.2016
Period of Dispute	FY 2008-09 to 2012-13	FY 2013-14	FY 2014-15
Demand in dispute	Rs.22,27,732/-	Rs.7,25,709/-	Rs.6,58,828/-
Penalty imposed	• Penalty equal to 100% of demand confirmed for the period upto 07.04.2011 and Penalty equal to 50% ibid for the remaining period, under Section 78 of Chapter V of the Finance Act 1994; and • Rs.10,000/- each under Section 77(1)(a) ibid and Section 77 (2) ibid.	• Rs.72,571/- Under Section 76 of Chapter V of the Finance Act, 1994; and • Rs.10,000/- each under Section 77 (1) (a) ibid and Section 77 (2) ibid.	• Rs.65,883/- under Section 76 of Chapter V of the Finance Act, 1994; and • Rs.10,000/- each under Section 77 (1) (a) ibid and Section 7792) ibid.

2. The proposal has been confirmed by the Original Adjudicating Authority vide the order No.78, 79 and 80 of dated 17.10.2016. Appeal thereof has been rejected vide the Order –in-Appeal No.208/2017-18 dated 29.05.2017. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Mr. Dhruv Tiwari, ld. Counsel for the Appellant and Dr.Radhe Tallo, ld. Authorised Representative for the Revenue.

4. Ld. Counsel for the appellant has submitted that the similar issue stands no more *res integra*, as has been decided by this Tribunal in several adjudications as follows:-

i. Commissioner of Service Tax, New Delhi v. Wave Infratech Pvt. Ltd. – 2023(1)TMI 108 – CESTAT New Delhi
ii. Moti Talkies v. Commissioner of Service Tax, Delhi-I – 2020 (6) TMI 87- CESTAT, New Delhi
iii. Satyam Cineplexes Ltd. v. Pr. Commissioner of S.T., Delhi-1- 2021 (8) TMI 1222 – CESTAT, New Delhi
iv. The Asian Arts Printers v. Pr. Commissioner of S.T., Delhi-I – 2020 (12) TMI 1012 – CESTAT, New Delhi.
v. Golcha Properties Pvt. Ltd. V. Pr. Commissioner of S.T., Delhi-I – 2020 (11) TMI 137 – CESTAT, New Delhi
vi. Regal Theatre v. Pr. Commissioner of S.T., Delhi-I – 2020 (11) TMI 436- CESTAT, New Delhi.
vii. Inox Leisure Ltd. v.CST, Hyderabad – 2021 (10) TMI 893 – CESTAT, Hyderabad as affirmed by Hon'ble Supreme Court in CST v.Inox Leisure Ltd. – 2022 (3) TMI 1206 – SC Order.
viii. Five Vision Promoters v.CCE & ST, Ghaziabad – 2022 (3) TMI 52 – CESTAT, Allahabad.
ix. Delhi International Airport Pvt. Ltd. v. Union of India & Ors.- 2017 (2) TMI 775 – Delhi High Court
x. Mormugao Port Trust v. Commissioner of Customs, Central Excise & Service Tax, Goa – 2016 (11) TMI 520 – CESTAT, Mumbai as affirmed by the Hon'ble Supreme Court in 2018 (10) TMI 1675- Supreme Court.
xi. Old Word Hospitality v.CST, New Delhi – 2017 (2) TMI 1176 – CESTAT, New Delhi.

5. It is brought to the notice by the ld. Counsel for the appellant that in the case of **Moti Talkies** (supra) the order of Commissioner (Appeals) was verbatim as the present order in appeal. Ld. Counsel has accordingly prayed for the similar relief of setting aside the impugned demand alongwith the interest and the penalty imposed. Appeal is accordingly prayed to be allowed.

6. Ld. DR has acknowledged the decisions as have been relied upon by the appellant.

7. We have perused the record of the appeal and the decisions as have been relied upon by the appellant. From the decision dated 03.03.2020 in **Moti Talkies** (supra) the apparent facts of that case are as follows:-

> *"2. The appellant is the owner of a cinema hall situated at Chandni Chowk, New Delhi and is engaged in the business of exhibiting films in its theatre. The copy right over the films is owned by the distributors. The appellant enters into agreements with the film distributors to obtain such copy rights under which the right to exhibit the films is transferred to the appellant, either temporarily or in perpetuity, depending upon the nature of the agreements between the parties."*

8. The perusal is sufficient to hold that the facts of the present appeal are identical. Perusal is sufficient to accept the contention of the ld. Counsel for the appellant that the order under challenge in that case is verbatim to the order in appeal in the present case. The Hon'ble Bench while adjudicating the said issue has held as follows:-

"18. It is not possible to accept the reasonings given by the Commissioner (Appeals) for confirming the demand of service tax under —renting of immovable property‖ for the simple reason that the appellant has not provided any service to the distributors nor the distributors have made any payment to the appellant as consideration for the alleged service. In fact, the appellant who has paid money to the distributors for the screening rights conferred upon the appellant. The Commissioner (Appeals) completely misread the agreements entered into between the appellant as an exhibitor of the films and the distributors to arrive at a conclusion that the appellant was providing the service of —renting of immovable property".

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23. The position in law does not change with effect from 1 July, 2012 because even under section 66B of the Finance Act, service tax is levied on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another. Though, renting of immovable property is a declared service under section 66E of the Finance Act, then too under section 67(1) of the Finance Act, the value shall, in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him. The appellant is not receiving any payment from the distributor and, therefore, no service can be said to have been provided by the appellant. "

9. Same is the outcome in the other decisions relied upon by the ld. Counsel for the appellant. Since those decisions have been acknowledged by ld. D.R., and no distinguishing fact or evidence is brought to our notice nor the same is apparent, we find no reason to differ from those decisions.

10. In view thereof the demand in the present case alongwith the penalty imposed is held to be liable to be set aside. Consequent thereto, the order in appeal is set aside and the appeal stands allowed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Anita