

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Sl. No.	Appeal No.	Appellant (s)	Respondent (s)	Impugned Order
1.	ST/3251/2012			OIO No. 18/2012-Adjn. (ST) (Commr.) dt. 18.07.2012
2.	ST/31099/2016	M/s Exhibition Society	CST, Hyderabad-II	OIO No. HYD-SVTAX-000-COM-70-16-17 dt. 29.08.2016
3.	ST/30376/2016			OIO No. HYD-SVTAX-000-COM-49&50-15-16 dt. 29.02.2016
4.	ST/30476/2016			

Appearance

Shri R. Muralidhar, N. Anand, Advocate for the Appellant.
Shri Guna Ranjan, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 14/11/2018
Date of Decision: 20/12/2018

FINAL ORDER No. A/31582-31585/2018

[Order per: P. Venkata Subba Rao]

These appeals have been filed by the appellant against the impugned orders as below:

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The appellant is a charitable society registered as such and is engaged in organizing industrial exhibitions. They have been paying service tax in relation to Business Exhibition Services. Show cause notices were issued to the appellant and demands were confirmed with respect to the following amounts as follows:

i) The value of the entry tickets sold to general public under the category of Business Exhibition Service:

Learned Counsel for the appellant argues that the sale of entry tickets to general public is not a taxable service as sale of entry tickets to exhibitions is covered by entry No. 62 of list II (State List) of 7th Schedule to the Constitution of India since tax on entertainments, amusements, etc., is a state subject. He also argues that the tickets are sold to the visitors to the exhibition to allow them entry into the exhibition premises where entertainment and amusement facilities are also provided. Business exhibition means an exhibition to market or to promote or to advertise or to showcase any product or services, intended for the growth in business of the producer or provider of such product or services, as the case may be (Section 65 (19a) of the Finance Act, 1994) and the business exhibition service is defined in section 65 (105) (zzo) of the Finance Act, 1994 as a service provided or to be provided to an exhibitor, by the organiser of business exhibition, in relation to business exhibition. These tickets cannot be charged under the business exhibition service up to 01.07.2012 as the service is provided to the visitors and not the exhibitors. W.e.f. 01.07.2012 section 66D has been introduced in the Finance Act, 1994 and all services are made chargeable to service tax subject to a

negative list. It is his submission that "activity of admission to entertainment events or access to amusement facilities" is covered in the negative list. He draws the attention of the bench to Section 65B(9) in which "amusement facility" was defined as a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided. He would argue that the amusement facilities provided in the exhibition grounds clearly put them in the negative list and therefore no service tax can be collected even after 01.07.2012.

ii) The sale or transmission of electricity during the exhibition:

The appellant had sold electricity to exhibitors. Learned Counsel submits that they have a contract with the Andhra Pradesh State Electricity Board under which they receive electricity from them and in turn, sell it to the exhibitors during the period of exhibition and collect amounts for the electricity. The department seeks to charge this amount under business exhibition services holding this as a part of the gross amount received for the Business Exhibition services in terms of Rule 5(1) of the Service Tax (Determination of Value of Service) Rules, 2006. This rule provided for charging service tax even on reimbursable expenses. Learned Counsel argues that in the case of *Intercontinental Consultants & Technocrats Pvt. Ltd., Vs. UOI* [2013 (29) STR 9 (Del.)] the Hon'ble High Court of Delhi has held this Rule ultra vires the Act and ruled that reimbursable expenses cannot part of

the taxable services. This decision of the Hon'ble High Court of Delhi was upheld by the Hon'ble Supreme Court as reported at [2018 (10) GSTL 401 (S.C.)]. As an alternative argument he says that sale of electricity is sale of goods since electricity is goods/excisable goods under the sales tax laws and also under the Central Excise Tariff Act. Hence, the activity of sale of goods is not liable for payment of service tax since it is not a taxable service. He further submits that w.e.f 01.07.2012 also service related to transmission or distribution of electricity is a negative service for levy of service tax. The appellant was permitted to sell/ transmit electricity within the exhibition area and is exempted for obtaining licence to transmit electricity vide Section 16 of the APER Act, 1998. As a further alternative argument he submits that transmission of electricity is exempted during the period of dispute vide Section 11C Notification No. 45/2010-ST dated 20.07.2010.

iii) Publicity income which they received for sale of space or time for advertisement under advertisement service during the period 2005-2006 to 2009-2010:

Learned Counsel submits that he is not pressing this point and they have already paid the service tax along with interest on delayed payment of service tax and only contesting the imposition of equivalent penalty under Section 78 is set aside.

iv) Short payment of service tax paid by the appellant on the Business Exhibition and Mandap keeper services:

Learned Counsel submits that they have paid service tax during the relevant period and they are not clear to how this differential duty was

demanded by the Department and had specifically requested the Department to provide the break-up of Annexure D to the show cause notice so that they can provide explanations. The respondent has blindly confirmed this demand without providing the details. He prays that this matter may be remanded back to the original authority with a direction to provide the details of the differential duty demanded and after considering their explanation decide the matter.

v) Interest on delayed payment of service tax on stall rentals received in advance:

Learned Counsel submits that these amounts are proposed to be charged under Business Exhibition service by the Department. Narrating the sequence events the Learned Counsel submits that before the exhibition begins they invite applications for putting up notice for allotment of stalls and at the time of filing of submitting applications, the applicants have to deposit amount equivalent to stall rental. This is a refundable deposit and if the applicant is not allotted a stall, the amount gets refunded. If the applicant is allotted a stall in the ensuing exhibition, then the advance amount received would be appropriated towards stall rentals. Learned Counsel argues that they have not received any consideration towards rendering of any taxable service when the refundable advance is received. The department views this as a delay holding that the service tax should have been paid as soon as the advances were received. Learned Counsel argued that the demand of interest on this amount does not sustain.

vi) Renting of immovable property service:

Learned Counsel submits that before the issuance of show cause notice itself, they have paid the service tax this amount along with interest but are only contesting of Rs. 18,059/- being the service tax proposed to be levied for the period April, 2007 on the ground that renting of immovable property service became a taxable service only on 01.06.2007. He also prays that no penalty may be imposed on them under Section 78 of the Act on this count as no penalty is imposable in view of Section 80(2) inserted by the Finance Act, 2012. Learned Counsel further argues that they are a charitable society and have no intention to evading service tax or depriving the tax legitimately due to the Revenue and no malafide can be attributed to them even, if there are differences between the Department and the appellant on the leviability of the service tax. Therefore no penalties may be imposed upon them.

3. Learned Departmental Representative reiterates the arguments made in the impugned orders.

4. We have considered the arguments on both sides and perused the records. As far as the value of entry tickets sold to general public under the category of Business Exhibition service up to 01.07.2012 is concerned, the Department proposed to tax this under Business Exhibition service. Business exhibition means an exhibition to market, or to promote, to advertise, or to showcase any product or service intended for the growth in business of the producer or provider of such product or service and the services to an exhibitor, by the organizer of a business exhibition, in relation to business exhibition is business exhibition service. The tickets sold to general public for

entering into the exhibition cannot by any stretch of imagination be called the service rendered to exhibitor. This service is rendered to the visitor to enable him to enjoy the facilities in the premises. Therefore, prior to 01.07.2012 the tickets sold to visitors cannot be charged to service tax under business exhibition services. Post 01.07.2012, all services are chargeable to service tax under Section 66D but for the negative services. The appellants' claim that their exhibition is merely an amusement facility does not hold any water. It is true that there are also amusement facilities within the premises but that does not characterize it as an amusement facility. The exclusion of amusement facility under Section 65 B(9) also clarifies that amusement facility does not include a place within such facility where other services are provided. We, therefore, hold that the appellant is liable to pay service tax w.e.f. 01.07.2012 on the value of the entry tickets sold to general public.

5. As far as the sale of electricity is concerned, the Department seeks to charge these reimbursable expenses in terms of Rule 5(1) of Service Tax (determination value of service) Rules, 2006. This rule has been already held ultra vires by the Hon'ble High Court of Delhi which decision was upheld by the Supreme Court in the case of Intercontinental (supra). Therefore, the demand on this account needs to be set aside and we do so. Insofar as the publicity income is concerned, the appellant is not disputing the demand and only contesting the imposition of penalty under Section 78 of the Act and will deal with the penalties separately.

6. As far as the allegation of short payment of service tax on Mandakeeper services and Business Exhibition Services is concerned,

there is a dispute regarding the method of calculation and it requires further examination and decision by the original authority and the demand on this count needs to be remanded to the original authority. Insofar as the interest on delayed payment of service tax on stall rentals is concerned, it is not in dispute that the rentals were received in advance with applications from the exhibitors by the appellant. In case, the stall is allotted the rental amount is refunded and if it is allotted the same is retained. Therefore this cannot be merely called an advance as there is an indisputable link between the allotment of stall (rendering of the Business Exhibition Service) and the collection of the amount in advance. Merely because some applicants are not allotted a stall and their amounts are refunded to them the service tax does not get payable only after the allotment process is complete. As there was a delay in payment of service tax on stall rentals received is liable to interest and confirmed penalty and we do so.

7. As far as the demand and renting of immovable property service is concerned, we find that the appellants paid the service tax along with interest and is only contesting the rent pertaining to the months of April and May, 2007 on the ground that the renting of immovable property became a taxable services vide Section 65 (105) (zzzz) of the Finance Act, 1994 is w.e.f 01.06.2007. We find strong force in the arguments of the appellant and hold that the demand to this extent needs to be set aside and we do so.

8. As far as the imposition of the penalties under Section 78 on the appellant is concerned, we find that the appellant is a charitable society registered as such and is engaged in the organizing industrial exhibition. It is difficult to attribute malafide intention to evade

payment of service tax so as to defraud the Government by the society. Even if their understanding the law is different from the understanding of the Department that should not form a basis for imposition of penalties we therefore find that this a fit case to set aside the penalties imposed under Section 80 of Finance Act, 1994. In conclusion, the demand of service tax on the value of entry tickets sold to general public is upheld w.e.f 01.07.2012 and is set aside for the earlier period. The demand of service tax on the sale/ supply of electricity are set aside. The demand of service tax on publicity income for sale of space or time of advertisement and advertisement services is upheld. The interest on delayed payment of service tax on stall rentals received in advance is upheld. The demand of service tax on renting of immovable property services is upheld w.e.f. 01.06.2007 and the demands on the rents received prior to this period are set aside. The demand on account of short payment of service tax on the exhibition services and mandakeeper services is remanded back to the original authority with a direction to provide details of the calculations to the appellants and after following principles of natural justice decide the matter afresh. The penalties imposed upon the appellants are set aside. The appeals are disposed of as indicated herein above.

(Order pronounced on 20/12/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

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